

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 2 September 2010 TRIBUNAL SITTING No. 61 / CASE 2  
CASE REFERENCE: 844740

Network Operator: Edge Telecom Ltd, London

## THIS CASE WAS BROUGHT AGAINST THE NETWORK OPERATOR UNDER PARAGRAPH 9.1 OF THE CODE

### BACKGROUND

The Executive contacted the Network Operator on two dates requesting details of its premium rate outpayments for the period 1 April 2009-31 March 2010 (Year End Outpayment Report). The Executive did not receive the requested information from the Network Operator by the specified deadline. On the 24 May 2010, following submission of the Network Operator's Report and breach letter response, the Executive issued a warning to the Network Operator advising that failure to provide funding statements by specified deadlines in future would result in the opening of an investigation.

The Executive contacted the Network Operator on 1 July 2010 and 15 July 2010 formally requesting details of its actual premium rate outpayments and revenue for the period 1 April 2010-30 June 2010 (Quarter One Report).

PhonepayPlus was concerned of the apparent failure to comply with formal directions issued by it and the Network Operator's failure to supply the Quarter One Report showing the actual level of outpayments and revenue within specified deadlines.

PhonepayPlus raised the following potential breaches under the PhonepayPlus Code of Practice (11<sup>th</sup> Edition Amended April 2008) ('the Code'):

- Paragraph 6.6 (Annex 1) – Funding arrangements – Quarterly reports and/or
- Paragraph 2.1.3 – General responsibilities – Comply with the funding provisions

### **(i) The Investigation**

The Executive conducted this investigation using the Standard Procedure in accordance with paragraph 9.1 of the Code.

The Executive sent two formal requests (dated 1 July 2010 and 15 July 2010) for the Network Operator's actual premium rate outpayments and revenue for the period 1 April 2010-30 June 2010. Following no response to its formal requests, the Executive sent a breach letter dated 3 August 2010 raising alleged breaches of paragraphs 2.1.3 and/or 6.6 (Annex 1) of the Code. The Executive received an email response to the breach letter and a completed Year-End Report on 4 August 2010.

The Tribunal made a decision on the breaches raised by the Executive on 2 September 2010.

## SUBMISSIONS AND CONCLUSIONS

### ALLEGED BREACHES

The Tribunal found that the appropriate charge in these circumstances is a breach of paragraph 2.1.3 of the Code which imposes an obligation to comply with the funding arrangements in Annex 1, including paragraph 6.6 of that Annex. Accordingly the Tribunal did not consider the alleged breach of paragraph 6.6 of Annex 1 as a free-standing breach but as part of the alleged breach of paragraph 2.1.3 of the Code

### GENERAL RESPONSIBILITIES – COMPLY WITH THE FUNDING PROVISIONS (Paragraph 2.1.3)

*“Networks operators must have regard to and comply with the funding provisions which are set out in Annex 1 to Part 2 of this Code.”*

1. The Executive submitted that on 1 July 2010 it had issued a formal direction to the Network Operator directing it to complete and return actual outpayments and revenue (in accordance with paragraph 6.6 of Annex 1 of the Code) for the period 1 April 2010 to 30 June 2010 by 22 July. On 15 July 2010 a reminder was issued advising that the funding statement for actual outpayments and revenue for the period 1 April 2010 to 30 June 2010. Further to these requests, a funding statement for actual outpayments and revenue was received on 4 August 2010.

The Executive made reference to paragraph 2.1.3 of the Code and submitted that in light of the Network Operator’s failure to provide the funding statements by specified deadlines, it was of the view of that a breach of paragraph 6.6 of Annex 1 of the Code has occurred, and conjunctively, or alternatively, a breach of paragraph 2.1.3 of the Code has also occurred.

2. The Network Operator accepted that it had been late in submitting its annual report for 2009/2010 and the quarterly report for 2010/2011 Q1. It stated that this had been an oversight on its part and it would endeavour to meet the deadlines for Q2 onwards. It stated that it was re-organising internally and should be able to get away from having an internal dependency on having a single member of staff who can submit these reports. This should be completed in time for the 2010/2011 Q3 or annual report. It stated that it would be providing a new email contact address for PhonepayPlus enquiries and requests in the near future.
3. The Tribunal considered the evidence, including the Network Operator’s acceptance of the breach, and concluded that it had failed to provide PhonepayPlus with its quarterly reports as soon as was reasonably practicable following the end of the quarter and was therefore in breach of paragraph 6.6 (Annex 1) of the Code. The Tribunal therefore found that the Network Operator was in breach of its general responsibility and upheld a breach of paragraph 2.1.3 of the Code.

**Decision: UPHELD**

### SANCTIONS

The Tribunal’s initial assessment was that, overall, the breach was **significant**.

In determining the sanctions appropriate for the case, the Tribunal took into account the following aggravating factor:

- The Network Operator had previously been warned that failure to adhere to a deadline set by the Executive could result in a formal investigation being commenced by the Executive.

In mitigation, the Tribunal noted the following factors:

- The Network Operator quickly dealt with the issue on receipt of the breach letter,
- The Network Operator accepted that there had been a breach

Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **significant**, being a breach of a significant administrative obligation.

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanction:

- A Formal Reprimand.
- A fine of £500