

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday, 1 October 2010 TRIBUNAL SITTING No. 63/ CASE 2
CASE REFERENCE: 846828**

Service provider: Mr Mark Pointer, trading as 'Call Shop International', UK

THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER UNDER PARAGRAPH 8.5 OF THE CODE

BACKGROUND

This service was the subject of a PhonepayPlus investigation and adjudication (case reference 830140) that resulted in sanctions being imposed on the Service Provider known as Mr Mark Pointer, trading as 'Call Shop International', UK ('Call Shop International'), on 26 July 2010. One of the sanctions imposed by the Tribunal was a fine of £15,000.

Call Shop International was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 6 August 2010. This correspondence included invoices 10008 and 10011 in respect of the fine and administrative charge associated with the cost of the investigation. No payment was made.

The Executive raised further breaches of the PhonepayPlus Code of Practice 11th Edition Amended April 2008 ('the Code') under the following paragraphs:

- Paragraph 8.9.3b (in respect of non-payment of fine imposed under paragraph 8.9.2d)
- Paragraph 8.12 (in respect of non-payment of an invoiced administrative charge)

The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Tribunal made a decision on the breaches raised by the Executive on 1 October 2010.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

FAILURE TO COMPLY WITH SANCTION (Paragraph 8.9.3b)

"The failure of any service provider to comply with any sanction within any reasonable time period imposed on it by PhonepayPlus will result in:

b a further breach of the Code by the service provider, which may result in additional sanctions being imposed."

1. The Executive submitted that the Service Provider had failed to make payment of Invoice 10008 in respect of the fine of £15,000 imposed on it by the Tribunal of 26 July 2010. It submitted that, as the Service Provider had failed to pay the fine, a further breach of the Code had occurred by virtue of paragraph 8.9.3b.
2. The Service Provider did not respond to the Executive's alleged breaches.
3. The Tribunal considered the evidence and concluded that the Service Provider had not paid Invoice 10008 in respect of the £15,000 fine imposed on it by the Tribunal of 26 July 2010 and that this amounted to a further breach under paragraph 8.9.3b of the Code. The Tribunal upheld a further breach of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

NON-PAYMENT OF ADMINISTRATIVE CHARGE (Paragraph 8.12)

"All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by PhonepayPlus. Non-payment within the period laid down by PhonepayPlus will also be a breach of the Code and may result in further sanctions being imposed. PhonepayPlus may direct that the relevant network operator withholds and passes to PhonepayPlus the sum(s) due from the payments outstanding under the contract between the network operator and the service provider."

1. The Executive submitted that the Service Provider had failed to make payment of Invoice 10011 in respect of an administrative charge of £3,782.33 (incl. VAT) issued to it. It submitted that, as the Service Provider had failed to pay the administrative charge, a further breach of the Code appears to have occurred by virtue of paragraph 8.12 of the Code.
2. The Service Provider did not respond to the Executive's alleged breaches.
3. The Tribunal considered the evidence and concluded that the Service Provider had failed to pay the administrative charge imposed on it by the Tribunal of 26 July 2010 and that this amounted to a further breach under paragraph 8.12 of the Code. The Tribunal upheld a further breach of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal took the view that non-compliance with any sanction imposed by a Tribunal is **very serious** and could potentially incur a maximum fine, although the circumstances of the individual case should be taken into account when deciding which sanctions are appropriate.

There were no specific aggravating or mitigating factors for the Tribunal to consider.

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

- A Formal Reprimand;
- The Tribunal imposed a prohibition on the Service Provider from involvement in, or contracting for the provision of any premium rate services until such time as the outstanding fine and administrative charge in relation to the original case, as well as

the new administrative charge in relation to this case, are paid by the Service Provider.