

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday, 14 October 2010 TRIBUNAL SITTING No. 64/ CASE 2
CASE REFERENCE: 830425

Service provider: Phonenumbers4U Limited

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 830425) which resulted in sanctions being imposed on the Service Provider known as Phonenumbers4U Limited on 8 July 2010. One of the sanctions imposed by the Tribunal was a fine of £1,000.

Phonenumbers4U Limited was advised of the above sanction by PhonepayPlus in an adjudication letter, sent by post and sent electronically on 22 July 2010. This correspondence included invoices 9964 and 9966 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 14 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 9964 in respect of the fine of £1,000 imposed on it by the Tribunal of 8 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 stated that it was happy to forward payment of the £1,000 on behalf the Information Provider's breach of the Code. This would also include any interest on the revenue that would have been generated if the revenue had been sent in July.
3. The Tribunal considered the evidence and noted that the Service Provider had now paid the £1,000 fine as set out in its response to the Executive's submissions. The Tribunal found that this payment had been late and, as such, the Service Provider had not complied with a sanction within a reasonable time, 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 9966 in respect of an administrative charge of £5,739.88 (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 stated that it did not think that it had ignored this issue and, since the fine was issued, it had sought advice from its trade association that, in turn, had been in correspondence with PhonepayPlus in regard to the £5,739.88 (incl. VAT) worth of administrative charges attached to the case.

It stated that it had been advised that its trade association was planning to raise the issue with its members and other organisations involved in premium rate across the board in relation to administrative costs associated with adjudication cases generally. The Service Provider made reference to the fairness and legality of there being no process to appeal against costs which would be afforded in a normal legal process.

It stated that, in the meantime, it was happy to forward payment for the client's fine of £1,000.00 and 50% of the administrative costs of £2,869.94 by the client, and proposed to do this forthwith on the basis that this was a fair cost award.

In addition to the above, it stated that it was happy to forward the total profit that the Information Provider would have been paid for this service (as this was never paid out, due to the Information Provider's disappearance) in the amount of £36.37. It stated that, in addition, it would forward its profit from the service which, after the cost of routing to a mobile, was a total of £5.28 throughout the duration.

3. The Tribunal considered the evidence and noted the part-payment of the administrative charge made to the Executive. The Tribunal found that the

Service Provider had failed to pay the total administrative charge imposed on it by the Tribunal of 8 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, but the Tribunal noted that the fine had now been paid, although the payment was late.

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, any premium rate services, for a period of three months, starting from the date of the publication of this decision and to be suspended for five days to allow the Service Provider to pay the remainder of the administrative charge in relation to the original case, as well as the new administrative charge in relation to this case, failing which the prohibition will come into force.