

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 2 September 2010 TRIBUNAL SITTING No. 61 / CASE 3
CASE REFERENCE: 844750

Network Operator: Softswitch Telecom Limited, Birmingham

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

BACKGROUND

The Executive contacted the Network Operator on 1 July 2010, 15 July 2010 and 2 August 2010 requesting details of its 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 information showing the actual level of outpayments and revenue within the specified deadline, or at all, and did not respond to the Executive's breach letter

PhonepayPlus raised the following potential breaches under the PhonepayPlus Code of Practice (11th 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 three formal requests (dated 1 July, 15 July and 2 August 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 12 August 2010 raising alleged breaches of paragraphs 2.1.3 and/or 6.6 (Annex 1) of the Code.

The Executive received no response to the breach letter. 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. On 15 July and 2 August 2010 reminders were issued advising that the required information had yet to be received. The information was not received by the specified deadline and has still not been received. The Executive submitted that it had received no response to the breach letter.

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 did not respond to this alleged breach of the Code.
3. The Tribunal considered the evidence and concluded that the Network Operator 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 has still not provided the required information and has not engaged with the Executive.

There were no mitigating factors in relation to this case.

Having taken into account the aggravating factor, 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 £1,000