

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 2 September 2010 TRIBUNAL SITTING No. 61/ CASE 5
CASE REFERENCE: 845893

Service provider: Think Telecom Ltd, Cheshire
Network Operator: Core Telecom

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 827863) that resulted in sanctions being imposed on the Service Provider known as Think Telecom Solutions Ltd ('Think Telecom') on 1 April 2010. One of the sanctions imposed by the Tribunal was a fine of £55,000.

Think Telecom was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 14 April 2010. This correspondence included invoices 9777 and 9780 in respect of the fine and administrative charges associated with the cost of the investigation.

Think Telecom made payment covering the administration charge of £4127.28. However, no payment in respect of the fine was made, resulting in this further alleged breach being raised. The Network Operator made a part-payment of the fine sanction, a sum of £19,608 (representing the sum it had withheld from Think Telecom). Think Telecom contacted the Executive on 27 April 2010 and indicated that it was not able to pay the outstanding fine amount of £35,392.

The Executive raised the following alleged breach of the PhonepayPlus Code of Practice 11th Edition Amended April 2008 ('the Code'):

- Paragraph 8.9.3b (in respect of non-payment of fine imposed under paragraph 8.9.2d)

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 2 September 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 Think Telecom Limited failed to make payment of Invoice 9777 in respect of the fine of £55,000 imposed on it by the Tribunal of 1 April 2010. It submitted that, as the Information Provider has clearly failed to pay a fine imposed on it, a further breach of the Code appears to have occurred by virtue of paragraph 8.9.3b.
2. The Service Provider stated that it was not in a position to repay the amount of £35,392 owed to PhonepayPlus and as such it was withdrawing from the UK premium rate number market. It stated that it was possible it might re-enter the market and it therefore promised to try to repay the fine as soon as possible to remove itself from the prohibited list published on the PhonepayPlus website.
1. The Tribunal considered the evidence and concluded that, as the Information Provider had not paid Invoice 9777 in respect of the fine imposed on it by the Tribunal of 1 April 2010, it had breached paragraph 8.9.3b of the Code. The Tribunal upheld a further breach of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal took the view that the case should be regarded overall as **serious**.

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 bar on the Service Provider from all premium rate services until such date as the remainder of the fine and the new administrative charge in relation to this case are paid.