

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 10 June 2010 TRIBUNAL SITTING No. 55 / CASE 1
CASE REFERENCE: 839763

Network Operator: Vectone Network Limited, London

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

BACKGROUND

The Executive contacted the Network Operator on five separate dates formally requesting details of its actual premium rate outpayments for the period 1 October 2009-31 December 2009. The Executive did not receive the requested Quarter Three Report from the Network Operator by the specified deadline.

On the 26 March 2010, following submission of the Network Operator's Quarter Three Report and breach letter response, the Executive issued correspondence 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 April 2010 and 21 April 2010 formally requesting details of its actual premium rate outpayments and revenue for the period 1 April 2009-31 March 2010;

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

PhonepayPlus consequently formed the view that this contravened the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code') and raised the following potential breaches under the Code:

- Paragraph 8.1 (Annex 1) – Adjustments – Statement of outpayments 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 and 21 April 2010) for the Network Operator's actual premium rate outpayments and revenue for the period 1 April 2009-31 March 2010. Following no response to its formal requests, the Executive sent a breach letter dated 19 May 2010 raising alleged breaches of paragraphs 2.1.3 and/or 8.1 (Annex 1) of the Code. The Executive received an email response to the breach letter and a completed Year-End Report on 27 May 2010.

The Tribunal made a decision on the breaches raised by the Executive on 10 June 2010.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

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 made reference to paragraph 8.1 – Annex 1 – Funding Arrangements – Adjustments – Year-End Reports that reads as follows:

“At the end of each year and in any event by no later than 30th April, network operators must provide PhonepayPlus with a statement of the actual aggregate outpayments that they have made, and the revenue that they have received in their capacity as a network operator during the preceding year. The statement must identify all cases in which the network operator has provided premium rate services in respect of which there is no identifiable outpayment (see Section 10 of this Annex). Where it has supplied no such services, the network operator must state this in the statement.”

The Executive submitted that, on 1 April 2010, it issued a formal direction to the Network Operator to complete and return actual outpayments and revenue (in accordance with paragraph 8.1 of Annex 1 of the Code) for the period 1 April 2009 to 31 March 2010. A deadline of 26 April 2010 was set for the submission of the Year-End Report. The Executive submitted that, on 21 April 2010, a reminder was issued to the Network Operator advising that the funding statement for actual outpayments and revenue for the period 1 April 2009 to 31 March 2010 had yet to be received.

The Executive submitted that, further to these requests, a funding statement for actual outpayments and revenue was received on 27 May 2010.

It submitted that, in light of the Network Operator's failure to provide the funding statements within the specified deadline as detailed above, the Executive was of the view that a breach of paragraph 8.1 (Annex 1) of the Code has occurred, and also, or alternatively, this was a breach of paragraph 2.1.3 of the Code which states:

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

2. The Network Operator stated that the Executive's direction of 1 April 2010 had been received and forwarded internally to the department that produces its figures. It stated that the information had not been forthcoming and a failure to chase the matter internally had led to the deadline being missed. It stated that a better internal diary system would be maintained in an effort to ensure prompt filing and the return had now been filed.
3. The Tribunal considered the evidence and concluded that the Network Operator's failure to adhere to the deadline set by the Executive to provide a statement of the Network Operator's actual aggregate outpayments amounted to non-compliance with paragraph 8.1 (Annex 1) of the Code. The Tribunal 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 **moderate**.

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.

There were no mitigation factors to consider.

Having taken into account the aggravating factor, the Tribunal concluded that the seriousness of the case should be regarded overall as **moderate**.

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

- A Formal Reprimand.

The Tribunal commented that, given that the Network Operator would be required to pay the administrative charges of £2,068, it was not minded, on this occasion, to impose a financial sanction.