

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 9 June 2011 TRIBUNAL SITTING No. 78 / CASE 2
CASE REFERENCE: 01455

Network Operator: Edge Telecom 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 several dates requesting details of its premium rate outpayments for the period 1 April 2010-31 March 2011 (End of Year Report). The Executive did not receive the requested End of Year Report from the Network Operator after an apparent failure to meet the deadline of the 12 May 2011.

PhonepayPlus was concerned of the apparent failure to comply with formal directions issued by it and, although the Network Operator supplied the information requested, it was not by the specified deadline.

PhonepayPlus raised the following potential breaches under the PhonepayPlus Code of Practice (11th Edition, Amended April 2008) ('the Code'):

- Paragraph 8.1 (Annex 1) – Funding arrangements – Payments - End of Year and/or
- Paragraph 2.1.3 – General responsibilities – Comply with the funding provisions

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 4 April 2011 and 10 May 2011) for the Network Operator's actual premium rate outpayments and revenue for the period 1 April 2010-31 March 2011 (End of Year Report). The Executive subsequently sent a breach letter dated 24 May 2011, raising alleged breaches of paragraphs 2.1.3 and/or 8.1 (Annex 1) of the Code.

The Tribunal made a decision on the breaches raised by the Executive on 9 June 2011.

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 8.1 of that Annex. Accordingly, the Tribunal did not consider the alleged breach of paragraph 8.1 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 4 April 2011, it issued a formal direction to the Network Operator, directing it to complete and return the actual outpayments and revenue for the period 1 April 2010 to 31 March 2011. It submitted that, on 10 May 2011, a reminder was issued, advising that the funding statement for actual outpayments and revenue for the period 1 April 2010 to 31 May 2011 had not been received. It submitted that, despite these requests, a funding statement for actual outpayments had not been received.
2. The Network Operator stated the contact who dealt with these requests had left the company in January 2011. It stated that the email notifications from the Executive had been missed and that everything would be done to correct this issue in the future.
3. The Tribunal considered the evidence and concluded that the Network Operator had failed to provide PhonepayPlus with the End of Year Report, following requests for this information from the Executive; it followed that there had been and a breach of 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 factors:

- The breach history of the Service Provider and its previous failures to provide information required under the Code.

The Tribunal considered various potential mitigating factors and concluded that none were applicable to this case.

The Tribunal concluded that, given the further breaches of paragraph 2.1.3 of the Code, the similar breach history and failure to fulfil an administrative function, that the seriousness of the case should be regarded overall as **significant**.

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.