THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS
TRIBUNAL DECISION

Thursday 26 MAY 2011 TRIBUNAL SITTING No. 77 / CASE 1
CASE REFERENCE: 01325

Service provider: Mr Fabio Goncalo Ferraz Ricardo Bernando trading as 'Low Cost Cars', Portugal

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 853856) which resulted in sanctions being imposed on the Service Provider trading as 'Low Cost Cars' on 17 March 2011. One of the sanctions imposed by the Tribunal was a fine of £12,000.

The Service Provider was advised of the above sanction by PhonepayPlus in an adjudication letter, sent by post and sent electronically on 30 March 2011. This correspondence included invoices 10445 and 10446 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 8.9.3(b) (in respect of non-payment of fine imposed under paragraph 8.9.2(d))
- 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 26 May 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE
FAILURE TO COMPLY WITH SANCTION (Paragraph 8.9.3(b))

"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 10445 in respect of the fine of £12,000 imposed on it by the Tribunal of 17 March 2011. 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 8.9.3(b).

2. The Service Provider did not respond to the Executive's submissions in relation to this breach.

3. The Tribunal considered the evidence and concluded that the Service Provider had not paid the £12,000 fine imposed on it by the Tribunal of 17 March 2011 and that this amounted to a further breach under paragraph 8.9.3(b) 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 10446 in respect of an administrative charge of £2,192 (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 appeared to have occurred by virtue of paragraph 8.12 of the Code.

2. The Service Provider did not respond to the Executive's submissions in relation to this breach.

3. The Tribunal considered the evidence and concluded that the Service Provider had failed to pay the administrative charge imposed on it by the Tribunal of 17 March 2011 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**, 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.

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

- A Formal Reprimand;
- A prohibition on the Service Provider from involvement in, or contracting for, any premium rate services, for a period of 12 months (starting from the date of the publication of this decision), or until the breaches are remedied by payment of the fine and the administrative charge, whichever is the later.