

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 6 January 2011 TRIBUNAL SITTING No. 68 / CASE 2  
CASE REFERENCE: 849594

Network Operator: Softswitch Telecom Limited, Birmingham

## THIS CASE WAS BROUGHT AGAINST THE NETWORK OPERATOR UNDER PARAGRAPH 8.5 OF THE CODE

### BACKGROUND

The Network Operator was the subject of a PhonepayPlus investigation and adjudication on 2 September 2010 (case reference 844750) which resulted in a fine of £1,000 and administrative charges being imposed on the Network Operator.

The Network Operator was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and email on 15 September 2010. Invoices in respect of the fine and administrative charges associated with the cost of the investigation were sent to the Network Operator on the same date. The Network Operator did not respond.

On 29 September 2010, the Executive contacted the Network Operator and advised that payment of the fine and administration charge was yet to be made. A further deadline of 6 October was given for full payment to be made. The Network Operator did not respond to the Executive's request.

The Executive believed that this contravened the following provisions of the PhonepayPlus Code of Practice (11<sup>th</sup> Edition, Amended April 2008) ('the Code'):

- Paragraph 9.2.6 (in respect of non-payment of an invoiced administration charge)

### The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 9.1 of the Code.

The Tribunal made a decision on the alleged breach raised by the Executive on 6 January 2011.

### SUBMISSIONS AND CONCLUSIONS

#### ALLEGED BREACH ONE NON-PAYMENT OF ADMINISTRATIVE CHARGE (NETWORK OPERATOR PROVISION) Paragraph 9.2.6)

*"All network operators on whom a sanction is imposed 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 be a failure by the network operator to comply with its obligations under the Code and may result in the imposition of a further sanction direction."*

1. The Executive submitted that the Network Operator failed to make payment of an invoice in respect of an administrative charge of £2,429.90 and it followed that there had been a further breach of paragraph 9.2.6 of the Code.
2. The Network Operator did not respond to the Executive's allegations.
3. The Tribunal considered the evidence and concluded that the Network Operator had failed to pay the administrative charge imposed on it by the Tribunal of 2 September 2010 and that this amounted to a further breach under paragraph 9.2.6 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** and could potentially incur a maximum fine or other sanction, 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;
- The Tribunal instructed the Network Operator to cease providing its network and services for the carriage of any premium rate services for a period of three years, or until payment of the outstanding fine and administrative charges (including the administrative charges arising from this case), whichever is the sooner.