

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 9 June 2011 TRIBUNAL SITTING No. 78 / CASE 1
CASE REFERENCE: 01457

Network Operator: Spacetel UK 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 the Network Operator's 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 Executive received a response to the breach letter and a completed End of Year Report on 25 May 2011.

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.
2. The Network Operator stated it had been taken over by another company in October 2010. It had wanted to submit that annual return on time, but had failed to read the email sent by the Executive on 27 April 2011. The individual who accepted responsibility for the failure had been on leave. It stated that, on notification by the Executive, it immediately provided the information and that it had organised its resources to ensure that this issue was not repeated.
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**.

The Tribunal considered that there were no aggravating factors that were relevant to this case.

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

Having taken everything into account, the Tribunal concluded that the seriousness of the case should be regarded overall as **moderate**, it being a breach of an important administrative obligation.

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

- A Formal Reprimand.