

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday 18 August 2011
TRIBUNAL SITTING No. 83 / CASE 1
CASE REFERENCE: 02351/CB**

Network Operator: Telecom Express Limited

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

BACKGROUND

On 12 April 2011, the Executive sent an email to the Network Operator setting out the deadlines for its submission to PhonepayPlus of its quarterly and annual returns of premium rate outpayments for the 2011/2012 financial year (the "Outpayments"). The specified deadline for receipt of the outpayments for the period from 1 April 2011 to 30 June 2011 (the "Quarter One Report") was 25 July 2011.

On 4 July 2011, the Executive issued formal directions (the "Formal Directions") to the Network Operator which reiterated the deadline of 25 June 2011 for submission of the Quarter One Report.

On 27 July 2011, the Executive sent a reminder (including a copy of the Formal Directions) to the Network Operator and informed it that the Quarter One Report had not been received. The Executive provided an extended deadline of 12pm on 28 July 2011 for submission of the Quarter One Report. The Executive did not receive the requested Quarter One Report until 8 August 2011.

The Executive was concerned by the failure of the Network Operator to comply with the Formal Directions and, although the Network Operator submitted the Quarter One Report on 8 August 2011, it was not submitted by the specified deadlines and only submitted after receipt of the Executive's breach letter.

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

- Paragraph 6.6 (Annex 1) – Funding arrangements – Payments – Quarterly reports; 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 a breach letter to the Network Operator on 4 August 2011 and raised alleged breaches of paragraphs 2.1.3 and/or 6.6 (Annex 1) of the Code. A late submission of the Quarter One Report was supplied to the Executive on 8 August 2011.

The Tribunal reached a decision on the breaches raised by the Executive on 18 August 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACHES

The Tribunal found that the appropriate charge in these circumstances was 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 6.6 of that Annex. Accordingly, the Tribunal did not consider the alleged breach of paragraph 6.6 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 July 2011, it issued the Formal Direction to the Network Operator, directing it to complete and return the Quarter One Report by 25 July 2011. On 27 July 2011, the Executive issued a reminder to the Network Operator, advising it that the Quarter One Report had not been received and extending the deadline to 12pm on 28 July 2011. The Executive did not receive the Quarter One Report until 8 August 2011.
2. The Network Operator informed the Executive that the person responsible for submitting details of Outpayments was on holiday when the Quarter One Report fell due. It stated that no other employee of the Network Operator had access to the computer username and password to access the relevant information to facilitate submission of the Quarter One Report. It was not therefore possible for the Network Operator to submit the Quarter One Report online.
3. The Tribunal considered the evidence and concluded that the Network Operator had failed to provide PhonepayPlus with the Quarter One Report, despite receiving Formal Directions and various reminders from the Executive. It followed that there had been a breach of paragraph 6.6 (Annex 1) of the Code. The Tribunal noted the Network Operator’s submission regarding the responsible person being on holiday, but considered that this was not an acceptable reason for its failure to provide the required Quarter One Report. Accordingly, 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 mitigating factors that were relevant to this case.

The Tribunal took into account the following aggravating factor:

- The Network Operator had previously been warned about its failure to adhere to the deadline set by the Executive for the submission of details of Outpayments. This was for the period from July 2010 to September 2010. The Network Operator had been warned that any repetition could result in a formal investigation being commenced by the Executive.

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