

Thursday 05 July 2012
TRIBUNAL SITTING No. 103 / CASE 2
CASE REFERENCE: 08350/ 08356

Level 2 provider:	Alpha-Telecom Limited and Adrian Richards t/a Excelsior International
Type of service:	N/A
Level 1 provider:	N/A
Network operator:	2Communications Limited

**THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER
UNDER PARAGRAPH 4.4 OF THE CODE**

BACKGROUND

Services provided by Alpha-Telecom Limited and Adrian Richards t/a Excelsior International, the Level 2 providers, were the subject of a PhonepayPlus investigation and adjudication (case references 03379 and 02103 respectively) which resulted in sanctions being imposed by a Tribunal on 26 April 2012. The sanctions imposed by the Tribunal included a fine of £25,000, for which the Level 2 providers were jointly and severally liable, and a prohibition on each Level 2 provider from providing or having involvement in, any premium rate service for a period of 12 months from the date of publication of the decision. In addition, administrative charges of £4076.70 and £3782.70 were subsequently invoiced by the Executive to Alpha-Telecom Limited and Adrian Richards t/a Excelsior respectively.

The Level 2 providers did not respond to the initial investigation or the formal breach letter sent to them by the Executive.

The Level 2 providers were advised of the above sanction and administrative charge in an adjudication letter, sent to each of them on 09 May 2012. Invoices in respect of the fine and administrative charge were sent to the respective Level 2 providers on the same date. The Level 2 providers did not respond to any of the correspondence and did not make any payment to PhonepayPlus.

The Investigation

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”).

The Executive sent breach letters to the Level 2 providers on 22 May 2012. Within the breach letters the Executive raised further breaches of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”) under the following provisions:

- Paragraph 4.8.4(b)- in relation to the failure to comply with a sanction (against both Level 2 providers jointly);
- Paragraph 4.10.2- in relation to non payment of an administrative charge (against Alpha-Telecom Limited); and,
- Paragraph 4.10.2- in relation to non payment of an administrative charge (against Adrian Richards t/a Excelsior International).

The Level 2 providers did not respond to the alleged breaches. On 05 July 2012, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

Paragraph 4.8.4(b)

“The failure of any relevant party to comply with any sanction within a reasonable time will result in:

(b) a further breach of the Code by the relevant party, which may result in additional sanctions being imposed...”

1. The Executive noted that on 26 April 2012, the Tribunal adjudicated on services that had been the subject of a PhonepayPlus investigation (case references 03379 and 02103) and had been operated and promoted by the Level 2 providers, Alpha-Telecom Limited and Adrian Richards t/a Excelsior International.

The adjudication resulted in the imposition of a fine of £25,000 for which the Level 2 providers were jointly and severally liable.

On 09 May 2012, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the fine to be made within 10 calendar days. The deadline for compliance with the fine sanction passed without receipt of payment or any communication from either Level 2 provider.

In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.8.4(b).

2. The Level 2 providers failed to provide any response.
3. The Tribunal considered the evidence and concluded on the basis of the Executive’s submissions that there had been a further breach of the Code. Accordingly, the Tribunal upheld a further breach of the Code under paragraph 4.8.4(b).

Decision: UPHELD

ALLEGED BREACH TWO

Paragraph 4.10.2

“Non-payment of the administrative charge within the period specified by PhonepayPlus will be considered a breach of the Code and may result in further sanctions and/or legal action.”

1. On 26 April 2012, the Tribunal recommended that PhonepayPlus invoice Alpha-Telecom 100% of the £4,076.70 administrative costs incurred as a result of the investigation and Tribunal proceedings. On 09 May 2012, the Executive sent Alpha-Telecom a post adjudication letter, which included an invoice for the payment of the administrative charges within 10 calendar days. Alpha-Telecom did not pay the invoice. In light of the above, the Executive submitted that a breach had occurred under paragraph 4.10.2 of the Code.
2. Alpha-Telecom failed to provide any response or settle the invoice.

3. The Tribunal considered the evidence and concluded on the basis of the Executive's submissions that there had been a breach of the Code. Accordingly, the Tribunal upheld a breach of the Code under paragraph 4.10.2.

Decision: UPHELD

ALLEGED BREACH THREE

Paragraph 4.10.2

“Non-payment of the administrative charge within the period specified by PhonepayPlus will be considered a breach of the Code and may result in further sanctions and/or legal action.”

1. On 26 April 2012, the Tribunal recommended that PhonepayPlus invoice Adrian Richards t/a Excelsior International 100% of the £3,782.70 administrative costs incurred as a result of the investigation and Tribunal proceedings. On 09 May 2012, the Executive sent Adrian Richards t/a Excelsior International a post adjudication letter, which included an invoice for the payment of the administrative charges within 10 calendar days. Adrian Richards t/a Excelsior International did not pay the invoice. In light of the above, the Executive submitted that a breach had occurred under paragraph 4.10.2 of the Code.
2. Adrian Richards t/a Excelsior International failed to provide any response or settle the invoice.
3. The Tribunal considered the evidence and concluded on the basis of the Executive's submissions that there had been a breach of the Code. Accordingly, the Tribunal upheld a breach of the Code under paragraph 4.10.2.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

The Tribunal's initial assessment of the breaches of the Code was as follows:

Paragraph 4.8.4(b)- Failure to comply with a sanction

The initial assessment of paragraph 4.8.4(b) of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 providers' failure to pay the fine incurred demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

Paragraph 4.10.2- Non payment of an administrative charge (against Alpha-Telecom Limited)

The initial assessment of paragraph 4.10.2 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider's failure to pay the administrative charge demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the

view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

Paragraph 4.10.2- Non payment of an administrative charge (against Adrian Richards t/a Excelsior International)

The initial assessment of paragraph 4.10.2 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider's failure to pay the administrative charge demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

The Tribunal's initial assessment was that, overall, the breaches were **very serious**.

Final Overall Assessment

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

Sanctions Imposed

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

- A formal reprimand; and,
- A prohibition on the Level 2 providers from providing, or having any involvement in, any premium rate services for a period of 5 years (starting from the date of publication of this decision), or until the breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later. The prohibition is to run concurrent with the 12 month prohibition imposed by the Tribunal on 26 April 2012.