

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS
TRIBUNAL DECISION**

**Thursday 13 September 2012
TRIBUNAL SITTING No. 108 / CASE 1
CASE REFERENCE: 10840**

Level 2 provider:	Daniel Marshall (sole trader)
Type of service:	N/A
Level 1 provider:	N/A
Network operator:	Core Telecom Limited

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

BACKGROUND

A service provided by the Level 2 provider, Daniel Marshall trading as Housing Help UK, was the subject of a PhoneyPayPlus investigation and adjudication (case reference 07101) which resulted in sanctions being imposed by a Tribunal on 19 July 2012. The sanctions imposed by the Tribunal included a fine of £6,000. In addition, an administrative charge of £6,369 was imposed.

The Level 2 provider was advised of the fine and the administrative charge by the Executive in an adjudication letter sent by email and post on 1 August 2012. The Level 2 provider sent correspondence to the Executive stating that he could not pay the fine and administrative charge. However, the Level 2 provider failed to provide a reason or evidence to support this assertion.

The Level 2 provider did not respond to the formal breach letter or pay the fine and/or the administrative charge.

The Investigation

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

The Executive sent a breach letter to the Level 2 provider on 20 August 2012. Within the breach letter the Executive raised further breaches of the Code under the following provisions:

- Paragraph 4.8.4(b) – Failure to comply with a sanction
- Paragraph 4.10.2 – Non payment of an administrative charge

The Level 2 provider did not respond to the alleged breaches. On 13 September 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 19 July 2012, the Tribunal adjudicated on a service that had been the subject of a PhonepayPlus investigation (case reference 07101) and had been operated and promoted by the Level 2 provider, Daniel Marshall trading as Housing Help UK.

The adjudication resulted in the imposition of a fine of £6,000.

On 1 August 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 ten calendar days. On 1 August 2012, the Level 2 provider stated via email, “I can not pay this so what do I do now.” As a result the PhonepayPlus Finance Team requested evidence of financial hardship from the Level 2 provider. Despite correspondence stating that evidence of financial hardship would be provided, the Level 2 provider only provided a list of monthly outgoings.

The Executive sent further correspondence on 14 and 16 August, the Level 2 provider failed to provide evidence of financial hardship or pay the fine.

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 provider failed to provide any response to the breach letter 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 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. The Executive noted that on 19 July 2012, the Tribunal recommended that PhonepayPlus invoice the Level 2 provider 100% of the £6,369 administrative costs incurred as a result of the investigation and Tribunal proceedings.

On 1 August 2012, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the administrative charge to be made within ten calendar days. On 1 August 2012, the Level 2 provider stated via email, “I can not pay this so what do I do now.” As a result the PhonepayPlus Finance team requested evidence of financial hardship from the Level 2 provider. Despite

correspondence stating that evidence of financial hardship would be provided, the Level 2 provider only provided a list of monthly outgoings.

The Executive sent further correspondence on 14 and 16 August, the Level 2 provider failed to provide evidence of financial hardship or pay the administrative charge.

In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.10.2.

2. The Level 2 provider 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 provider's 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

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

There were no aggravating or mitigating factors.

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 bar on the Level 2 provider from providing or having any involvement in the provision of advice and/or information services for three years (starting from the date of publication of this decision), or until the breaches are remedied by payment fine and of the original and instant administrative charges, whichever is later.