

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

**Thursday 13 September 2012
TRIBUNAL SITTING No. 108 / CASE 2
CASE REFERENCE: 09824**

Level 2 provider:	Simon Johnson (sole trader)
Type of service:	N/A
Level 1 provider:	N/A
Network operator:	Oxygen8 Communications Limited

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

BACKGROUND

A service provided by Simon Johnson was the subject of a PhonepayPlus investigation and adjudication (case reference 06065) which resulted in sanctions being imposed by a Tribunal on 24 May 2012. The sanctions imposed by the Tribunal included a fine. In addition, an administrative charge of £6,273.90 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 6 June 2012. The Level 2 provider paid the fine, however the Level 2 provider stated that he had limited financial means and therefore could not pay the administrative charge.

Despite lengthy correspondence with the Executive, the Level 2 provider failed to provide the evidence necessary to verify that he had limited means and therefore was not in a position to pay the administrative charge.

The Level 2 provider did not respond to the formal breach letter, save for a request that, "...the Tribunal to reconsider waiving the administrative fee on this occasion," or pay the administrative charge.

The Investigation

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the Code.

The Executive sent a breach letter to the Level 2 provider on 20 August 2012. Within the breach letter the Executive raised a further breach of the PhonepayPlus Code of Practice (12th Edition) (the "**Code**") under the following provision:

- Paragraph 4.10.2 – Non payment of an administrative charge

On 13 September 2012, the Tribunal reached a decision on the breach raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

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 24 May 2012, the Tribunal recommended that PhonepayPlus invoice the Level 2 provider 100% of the £6,273.90 administrative costs incurred as a result of the investigation and Tribunal proceedings.

On 6 June 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.

The Level 2 provider, on numerous occasions, requested that PhonepayPlus waive the administrative charge due to his “dire financial situation” and his “...inability to pay”. In response to the provider’s requests between 18 June 2012 and 13 July 2012, the Executive requested that the Level 2 provider supply satisfactory evidence of financial hardship.

On 3 July 2012, the Level 2 provider supplied the following documents:

- A bank statement for the period of 14 June to 3 July (all payment details had been redacted therefore there was no detail in relation to debits and credits);
- A credit card statement, highlighting £204.88 of debt;
- A water bill showing £42.24 of debt; and
- Notification that he had cancelled his landline telephone account.

The Executive repeatedly notified the Level 2 provider that the above documentation was not sufficient. However, the Level 2 provider refused to provide any further documentation. The administrative charge was not paid.

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

2. In response to the breach letter, the Level 2 provider stated,

"I again reiterate that i a [sic] unable to pay your administrative charges due to continued financial hardship, as clearly demonstrated in all previous documentation sent to you. I draw your attention to the overdraft amount of nearly £2000 shown on my Barclays bank statement. The last date on the statement you have clearly shows this. Despite your doubts, all transaction are private and not business and therefore this is why all details were removed. So despite your incorrect assumptions, interpretations and, conclusions of my bank statement, can i remind you that the overall figures clearly show that outgoings significantly outstrip so-called income, which is monies from my savings and not as you claim from a salary (just because it has been transferred on a Thurs, at the end of the month) I have been as open as possible regarding my finances.

“Other documentation sent also confirms my difficulty in paying ongoing bills etc.. Can i also remind the Tribunal of my co-operation in making payment towards the fine.

"Finall [*sic*] , could i therefore ask the Tribunal to reconsider waiving the administrative fee on this occasion."

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. The Tribunal considered the submissions made by the Level 2 provider regarding hardship. However, the Tribunal was not persuaded that sufficient evidence had been produced in support of this submission. The Tribunal noted that the Level 2 provider had been given an opportunity to provide documentary evidence of hardship and it was reasonable to expect that information to be produced. The Tribunal considered that the Level 2 provider had provided partial and unsatisfactory information regarding his finances and it was not satisfied that the claim of hardship was made out. 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 breach of the Code was as follows:

Paragraph 4.10.2- Non payment of an administrative charge

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

- 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 Level 2 provider had made some attempt to co-operate with the Executive, albeit that the administrative charge was not paid and satisfactory evidence of financial hardship was not provided.

The Tribunal's initial assessment was that, overall, the breach was **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 **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 two years (starting from the date of

publication of this decision), or until the breach is remedied by payment of the original administrative charge, whichever is later.