



Tribunal Sitting Number 136 / Case 3

Case Reference: 30701

Level 2 provider: WDMG LTD, Bristol

Type of Service: N/A

Level 1 provider: N/A

Network operator: N/A

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 WDMG LTD was the subject of a PhonepayPlus investigation and adjudication (case reference 16565), which resulted in sanctions being imposed by a Tribunal on 30 May 2013. The sanctions imposed by the Tribunal included a fine of £26,000 and general refunds. In addition, an administrative charge of £3,749.50 was imposed.

The Level 2 provider was advised of the fine and administrative charge in an adjudication letter sent by email on 12 June 2013. The Level 2 provider failed to respond to any post adjudication correspondence and the deadline passed without payment of the fine.

In March 2013, the Level 2 provider advised that its sole director had filed for bankruptcy.

The Investigation

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

The Executive sent a breach letter to the Level 2 provider on 23 September 2013. Within the breach letter the Executive raised the following breach of the Code:

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

The Level 2 provider responded on 23 September 2013. On 17 October 2013, the Tribunal reached a decision on the breach raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

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

“The failure of any relevant party to comply with any sanction within a reasonable time will result in a further breach of the Code by the relevant party, which may result in additional sanctions being imposed.”

1. The Executive noted that on 30 May 2013, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference 16565). The adjudication resulted in the imposition of sanctions, including a fine of £26,000 and a requirement that the Level 2 provider refund all consumers who claim a refund, for the full amount spent by them on the service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.



On 12 June 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the fine of £26,000 to be made within ten calendar days. The deadline passed without PhonepayPlus receiving payment of the fine. In correspondence with the Executive, the Level 2 provider stated that it was unable to pay the fine due to financial hardship.

The Executive directed the Network operator to pay to PhonepayPlus withheld revenue of £6,000. The withheld revenue was used to pay the administrative costs and £2,250.50 towards the fine. The outstanding fine due to PhonepayPlus is £23,749.50.

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

2. The Level 2 provider submitted a brief response which stated that the sole director had been declared bankrupt and as a result the Level 2 provider had ceased operation. The Level 2 provider stated it was unable to assist further and suggested contacting the Official Receiver.
3. The Tribunal considered the evidence, including the Level 2 provider's brief submissions regarding financial hardship. The Tribunal noted that withheld revenue had resulted in part payment of the fine but that £23,749.50 of the fine remained outstanding. However, the Tribunal found that the Level 2 provider had not paid the fine in the time period specified and concluded on the basis of the Executive's evidence that there had been a further breach of the Code due to non-payment of the fine. Accordingly the Tribunal upheld a further breach pursuant to paragraph 4.8.2(b).

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

The Tribunal's initial assessment of the breach 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.

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

Final Overall Assessment

In determining the final overall assessment for the case, the Tribunal took into account the following aggravating factor:

- The Level 2 provider failed to co-operate with the Executive following the adjudication on 30 May 2013.



The Tribunal found no mitigating factors. Having taken into account the aggravating factor, 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 provider from providing, or having any involvement in, any premium rate service for a period of three years (starting from the date of publication of this decision), or until payment of the outstanding fine and instant administrative charges, whichever is the later.