



### Tribunal Sitting Number 132 / Case 3

Case Reference: 27904

Level 2 provider: Waqar Ashraf trading as book-your-theory-test-online

Type of Service: Customer support

Level 1 provider: N/A- Breach of sanction

Network operator: Premium O 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 Waqar Ashraf trading as “book-your-theory-test-online” was the subject of a PhonepayPlus investigation and adjudication (case reference 17843) which resulted in sanctions being imposed by a Tribunal on 16 May 2013. The sanctions imposed by the Tribunal included a fine of £85,000 and general refunds. In addition, an administrative charge of £8,049.47 was imposed.

The Level 2 provider was advised of the fine and the administrative charge in an adjudication letter sent by email on 29 May 2013. At around this time the Level 2 provider’s designated contact stated that she no longer wished to act on the Level 2 provider’s behalf. The Level 2 provider failed to respond to any further correspondence from PhonepayPlus.

#### The Investigation

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

The Executive sent a breach letter to the Level 2 provider on 30 July 2013. Within the breach letter the Executive raised the following breaches of the Code:

- 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 provide a response to the breach letter. On 22 August 2013, the Tribunal reached a decision on the breaches raised by the Executive.

#### SUBMISSIONS AND CONCLUSIONS

##### ALLEGED BREACH 1

##### Paragraph 4.8.4 (b)

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 16 May 2013, the Tribunal adjudicated on a service that had been the subject of a PhonepayPlus investigation (case reference 17843) and had been operated and promoted by the Level 2 provider. The adjudication resulted in the imposition of a fine of £85,000 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 29 May 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the £85,000 fine to be made within 7 calendar days. The deadline for compliance with the fine sanction passed without PhonepayPlus receiving payment of the fine.

The Executive also issued a form to assist with the payment of refunds to consumers. The form was accompanied by a direction to complete and return the form within 48 hours. The Executive did not receive the completed form.

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

2. The Level 2 provider did not provide a response to the breach letter.
3. The Tribunal considered the evidence and concluded on the basis of the Executive's evidence that there had been a further breach of the Code. Accordingly, the Tribunal upheld a further breach pursuant to paragraph 4.8.4(b) of the Code.

#### **Decision: UPHELD**

#### **ALLEGED BREACH 2**

##### **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 Tribunal of 16 May 2013 recommended that PhonepayPlus impose 100% of the administrative costs incurred by PhonepayPlus on the Level 2 provider (£8,049.47). On 29 May 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for the payment of the administrative charge. The invoice requested that payment of £8,049.47 be made within 7 calendar days. The deadline for payment passed without PhonepayPlus receiving payment of the administrative charge.

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

2. The Level 2 provider did not provide a response to the breach letter.
3. The Tribunal considered the evidence and concluded on the basis of the Executive's evidence that there had been a further breach. Accordingly, the Tribunal upheld a further breach of the Code pursuant to paragraph 4.10.2 of the Code.

#### **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**

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 or engage with PhonepayPlus following the original Tribunal hearing.

The Tribunal did not find any 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 bar on access to all of the Level 2 provider's services and numbers until the breaches are remedied by payment of the fine and the original and instant administrative charges.