



Tribunal Sitting Number 132 / Case 4

Case Reference: 30056
Level 2 provider: Zooborang Ltd
Type of Service: Entertainment - Adult
Level 1 provider: N/A- Breach of sanction
Network operator: N/A- Breach of sanction

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 Zooborang Ltd was the subject of a PhonepayPlus investigation and adjudication (case reference 15316) which resulted in sanctions being imposed by a Tribunal on 27 June 2013. The sanctions imposed by the Tribunal included a fine of £60,000 and general refunds. In addition, an administrative charge of £10,157.80 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 on 10 July 2013. On the day payment of the fine and administrative charge was due, the Level 2 provider notified the Executive that it was going into administration.

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 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 27 June 2013, the Tribunal adjudicated on a service that had been the subject of a PhonepayPlus investigation (case reference 15316) and had been operated and promoted by the Level 2 provider. The adjudication resulted in the imposition of a fine of £60,000 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 10 July 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the £60,000 fine to be made within seven calendar days. On the day



payment of the fine was due, the Level 2 provider notified the Executive that it was entering into administration. 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 27 June 2013 recommended that PhonepayPlus impose 80% of the administrative costs incurred by PhonepayPlus on the Level 2 provider (£10,157.80). On 10 July 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 £10,157.80 be made within seven 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 of the Code. Accordingly, the Tribunal upheld a further breach 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

The Tribunal did not find any aggravating or mitigating factors. The Tribunal noted that the Level 2 provider entering administration was not a mitigating 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 the breaches are remedied by payment of the fine and original and instant administrative charges, whichever is the later.