



Tribunal meeting number 152 / Case 3

Case reference: 42025
Level 2 provider: A&M Lead Factory B.V. (The Netherlands)
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 A&M Lead Factory Limited (the “**Level 2 provider**”) was the subject of a PhonepayPlus investigation and adjudication by a Tribunal on 31 October 2013 (case reference: 10568), which resulted in the imposition of sanctions. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £10,000, and a requirement that refunds be paid to 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. In addition, an administrative charge of £4,157.40 was imposed.

The Level 2 provider was notified of the fine and administrative charge by the Executive in an adjudication letter sent on 13 November 2013. In addition, the Level 2 provider was issued with a request to confirm its contact details to assist in the administration of the refund sanction.

On 14 November 2013, the Level 2 provider stated that it intended to submit an application for a review of the original Tribunal’s decision. The Level 2 provider submitted a review application, but it failed to make payment of the review application fee. In light of this, the review application was not progressed. On 10 December 2013, the Level 2 provider stated that it was suffering from financial hardship and the Executive asked the Level 2 provider to provide evidence of financial hardship and to confirm any instalment amounts that it might be able to pay in accordance with a potential payment plan.

On 17 January 2014, the Level 2 provider’s contact stated that he had been hospitalised and was unable to deal with the matter but would be in touch soon. The Executive enquired whether there was another individual within the organisation who could assist. On 23 January 2014, the Level 2 provider reiterated that it was suffering financial hardship and that it disagreed with the original Tribunal decision. The Level 2 provider failed to respond to further correspondence from the Executive and no further communication was received.

The total amount outstanding to PhonepayPlus is £14,157.40. In addition, the Level 2 provider failed to co-operate with PhonepayPlus regarding the administration of the refunds.

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 2 June 2014. 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. The Tribunal was satisfied that the Executive had made all reasonable attempts to inform the Level 2 provider of the proceedings. On 26 June 2014, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The post adjudication letter and email to the Level 2 provider, including the fine and administrative charge invoices and the refund request;
- The Tribunal decision against the Level 2 provider of 31 October 2013;
- Email and letter correspondence sent to the Level 2 provider;
- The covering letter and email to the breach of sanction letter dated 2 June 2014; and
- Confirmation of delivery of the breach of sanctions letter to the Level 2 provider.

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 31 October 2013, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference: 10568). The adjudication resulted in the imposition of sanctions, including a fine of £10,000 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 13 November 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the £10,000 to be made within seven working days. Payment was not made within the time period specified (or at all).

In addition, the Executive issued the Level 2 provider with a request to confirm its contact details within 48 hours to assist in the administration of the refund sanction. The Executive did not receive any confirmation or any other evidence demonstrating that the Level 2 provider had complied with the refund sanction.

Accordingly, the Executive submitted that the Level 2 provider had failed to pay the fine and comply with the refund sanction within the time period specified (or at all), and was accordingly in breach of paragraph 4.8.4(b) of the Code.

2. The Level 2 provider did not provide a response to the breach letter.



3. The Tribunal considered the evidence. The Tribunal concluded that there had been a further breach of the Code due to non-payment of the fine and failure to comply with the refund sanction. Accordingly, the Tribunal upheld a breach of 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. On 31 October 2013, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider’s case (£4,157.40). On 13 November 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the administrative charge. The invoice requested that payment be made within seven working days. The deadline 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 that, on the basis of the Executive’s evidence, there had been a further breach of the Code as a result of non-payment of the administrative charge. Accordingly, the Tribunal upheld a breach of 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 and comply with the refund sanction 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 concluded that the overall seriousness of the case should be regarded 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 the original and instant administrative charges, whichever is the later.