

Tribunal Meeting Number 142 / Case 1

Case reference: 30361
Level 2 provider: CommandM PTY Limited (Australia)
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 CommandM PTY Limited was the subject of a PhonepayPlus investigation and adjudication (case reference 18061), which resulted in sanctions being imposed by a Tribunal on 11 July 2013. The sanctions imposed by the Tribunal included a fine of £250,000 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 £8,197.00 was imposed.

The Level 2 provider was notified of the fine and the administrative charge by the Executive in an adjudication letter sent on 24 July 2013. In addition, the Level 2 provider was sent a form to complete to assist in the administration of the refund sanction.

On 29 July 2013, the Level 2 provider stated that it intended to submit an application for a review of the original Tribunal's decision. However, it failed to submit an application. On 9 August 2013, the Level 2 provider stated that it was suffering financial hardship and it requested that it be allowed to pay the outstanding amount in instalments. The Executive asked the Level 2 provider to confirm the instalment amounts it could afford to pay and to provide evidence of financial hardship. On 29 August 2013, the Level 2 provider supplied bank statements in support of its request to pay in instalments. The Executive requested further details regarding the instalment amounts. However, the Level 2 provider failed to respond. Accordingly, the payment plan was not progressed.

On 23 August 2013, the Executive directed the Level 1 provider to pay to PhonepayPlus withheld revenue of £85,037.55. Consequently, the total amount outstanding to PhonepayPlus is £173,159.45.

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 December 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. The Level 2 provider contacted the Executive on 15 January 2014 to request an extension to the response deadline. Following a request from the Executive for supporting evidence, the Level 2 provider failed to respond. On 23 January 2014, 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 11 July 2013 the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference 18061). The adjudication resulted in the imposition of sanctions, including a fine of £250,000 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 24 July 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the fine of £250,000 to be made within seven working days.

In addition, the Executive issued a form to the Level 2 provider, which it was required to complete within 48 hours by providing contact details, to ensure the complainants could request and receive refunds.

Both deadlines passed without PhonepayPlus receiving payment of the fine or the return of the refunds form. In addition, the Level 2 provider did not provide any evidence that it 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) 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 found that the Level 2 provider had not paid the fine or taken steps to comply with the refund sanction 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. Accordingly, the Tribunal upheld a breach of paragraph 4.8.2(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 11 July 2013, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider's case (£8,197.00). On 24 July 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the administrative charge of £8,197.00 within seven working 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 that on the basis of the Executive's evidence there had been a further breach of the Code as a result of the 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 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 found no aggravating or mitigating factors. 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 and original administrative charges, whichever is the later.

