



Tribunal Meeting Number 146 / Case 3

Case reference: 33388
Level 2 provider: Global Billing Solutions Limited (Ireland)
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 Global Billing Solutions Limited was the subject of a PhonepayPlus investigation and adjudication (case reference 28902), which resulted in sanctions being imposed by a Tribunal on 8 August 2013. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £25,000 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 £5,164.42 was imposed.

The Level 2 provider was notified of the fine and the administrative charge by the Executive in an adjudication letter sent on 21 August 2013. In addition, the Level 2 provider was sent a form to complete to assist in the administration of the refund sanction.

On 21 August 2013, the Level 2 provider stated that it intended to submit an application for a review of the original Tribunal's decision. On 6 September 2013, the Executive issued an invoice for payment of the review fee to the Level 2 provider. No payment of the review fee or a review application was received by the Executive. On 6 September 2013, the Level 2 provider stated that it was unable to pay the fine and administrative charge due to financial hardship. The Executive requested evidence of financial hardship in an effort to consider whether a payment plan would be appropriate. The Level 2 provider did not provide any evidence and accordingly, a payment plan could not be progressed.

On 6 September 2013, the Level 2 provider contacted the Executive to confirm that it was willing for the withheld revenue to be paid in part satisfaction of the amount outstanding to PhonepayPlus. On 25 September 2013, the Executive directed the Level 1 provider to pay over to PhonepayPlus withheld revenue of £17,557.30. The receipt by the Executive of the withheld money discharged the Level 2 provider's obligation to pay the administrative charge and reduced the outstanding amount of the fine that remained to be paid. Consequently, the total amount outstanding to PhonepayPlus is £12,607.12.

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 6 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 provided a response on 12 December 2013. On 20 March 2014, and after hearing informal representations from the Level 2 provider, 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 8 August 2013 the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference 28902). The adjudication resulted in the imposition of sanctions, including a fine of £25,000 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 21 August 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the fine of £25,000 within seven working days.

In addition, the Executive directed the Level 2 provider to complete a form to assist in the payment of refunds, which it was required to complete within 48 hours. The Executive did not receive the completed form,

The 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 acknowledged that it had not paid the fine but stated that a payment of £17,557.30 had been made by the Level 1 provider from withheld revenue. The Level 2 provider stated that it had done its best to comply with the sanctions imposed but it had ceased to operate any service in the UK since the original investigation. It added that the service revenue had been withheld by the Level 1 provider and passed to PhonepayPlus. The service was suspended by the Level 1 provider which effectively opted-out all of the service's subscribers. It stated that large sums had been invested in advertising to attract subscribers but the suspension resulted in the loss of consumers and it could not afford to advertise to attract them back to the service. Generally, it stated that the suspension was extremely detrimental to its business and it had been unable to rebuild its business after the suspension leaving it with no alternative but to exit the market. It stated that it was no longer trading, its bank balance was zero and there were no funds available to appoint a liquidator.



Further, the Level 2 provider provided the full details of 19 consumers to whom it stated it had issued refunds.

The Level 2 provider referred to the adjudication on 8 August 2013 and stated that the websites that had been involved in this case were third party websites, which had not been owned or managed by the Level 2 provider. It was not aware of their existence until it had sight of the monitoring report produced by the Executive. It explained that it had no control over the third party and was unable to police every link to its service. The Level 2 provider stated that it was at a loss to understand how the Tribunal reached the decision on the level of fine as it was clear that the third party route to the service did not generate any revenue. It stated that the entire fine was punitive to such an extent that it encompassed the entire withheld revenue and more. It submitted that the amount paid by the withheld revenue should represent a full and final settlement, as there was no further revenue available to pay the outstanding amount to PhonepayPlus.

During informal representations, the Level 2 provider confirmed its written submissions and in addition stated that it wanted this case to be brought to an end. To confirm its current position, it stated that it was not currently running any services in the UK and it had no plans to operate any premium rate services in the UK in the future. It stated that it is looking for new opportunities outside the premium rate market in areas such as online marketing.

The Level 2 provider urged the Tribunal to accept the withheld revenue as full and final settlement of the outstanding amount due to PhonepayPlus. If this was not acceptable, it stated that it could only offer payments of £100 per month. It stated that it was willing to provide documentary evidence to demonstrate its current financial position.

3. The Tribunal considered the evidence. The Tribunal found that the Level 2 provider had not paid the total 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. 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 8 August 2013, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider's case (£5,164.42). On 21 August 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the administrative charge of £5,164.42 within seven working days. The deadline for payment passed without PhonepayPlus receiving payment of the administrative charge from the Level 2 provider.

Following this, the Level 2 provider communicated that it did not have the financial resources to pay the fine or the administrative charge. On 10 September 2013, the Level 2 provider contacted the Executive to confirm that it was willing for revenue withheld by the Level 1 provider to be paid to PhonepayPlus in part payment of the amount outstanding.



The Executive submitted that a breach of paragraph 4.10.2 of the Code had occurred as the Level 2 provider had not made payment of the administrative charge within the time period specified.

2. The Level 2 provider's submissions are outlined in its response to the breach of paragraph 4.8.4(b) of the Code above.
3. The Tribunal considered the evidence and the correspondence between the Executive and the Level 2 provider. The Tribunal noted that the Level 2 provider had communicated with the Executive to request that the withheld revenue be used in part payment of the amount outstanding and that the revenue had been used to satisfy the administrative charge. Therefore the Tribunal concluded that the administrative charge had been paid. Whilst the Level 2 provider had communicated this after the deadline for payment, the Tribunal took the view that in the circumstances it would not be appropriate to uphold a breach of paragraph 4.10.2 of the Code. Accordingly, the Tribunal did not uphold a breach of paragraph 4.10.2 of the Code.

Decision: NOT 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 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

The Tribunal found no aggravating or mitigating factors. The Tribunal noted that the Level 2 provider stated that it could not afford to make payment of the amount outstanding to PhonepayPlus as it had exited the market and had no intention of returning.

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



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- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of one year (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.