



Tribunal meeting number 153 / Case 2

Case reference: 45179
Level 2 provider: JJP Mobile 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 JJP Mobile B.V. (the “**Level 2 provider**”) was the subject of a PhonepayPlus investigation and adjudication by a Tribunal on 17 April 2014 (case reference: 04842) which resulted in the imposition of sanctions. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £250,000, a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of eight years (starting from the date of publication of the decision) and a requirement that refunds were 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 had been made. In addition, an administrative charge of £13,838.21 was imposed.

The Level 2 provider was notified of the fine and administrative charge by the Executive in a formal notification sent on 30 April 2014. The Level 2 provider failed to pay the fine or administrative charge within the time period specified and on 5 June 2014 the Executive sent a reminder email to the Level 2 provider. A representative of the Level 2 provider responded by email on the same date. In summary, the representative stated that it did not agree with the Tribunal decision of 17 April 2014, the breaches were unfounded and it would not comply with the sanctions imposed. Further, the representative requested that the Executive no longer communicate with the Level 2 provider via email only via post. The Executive requested an up-to-date postal address for future correspondence but did not receive any further response.

The Level 2 provider failed to pay the fine and administrative charge in the time period specified. The total amount outstanding to PhonepayPlus is £263,838.21.

The investigation

Following a referral to the Dutch authorities, in accordance with the E-Commerce Directive (2000/31/EC), and as no response was received by the deadline stipulated it was concluded that they were unable to take any action, the Executive subsequently conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”).

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The Executive sent a breach letter to the Level 2 provider on 23 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 24 July 2014, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The post adjudication notification to the Level 2 provider, including the fine and administrative charge invoices;
- The Tribunal decision against the Level 2 provider dated 17 April 2014;
- Email and letter correspondence sent to the Level 2 provider;
- Email correspondence with the Level 1 provider;
- The covering letter and email to the breach of sanction letter dated 23 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 17 April 2014, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference: 04842). The adjudication resulted in the imposition of sanctions, including a fine of £250,000.

On 30 April 2014, the Executive sent the Level 2 provider a formal notification which included an invoice for payment of the £250,000 to be made within seven working days. Payment was not made within the time period specified (or at all).

Accordingly, the Executive submitted that the Level 2 provider had failed to pay the fine 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 concluded there had been a further breach of the Code due to non-payment of the fine 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 17 April 2014, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider’s case (£13,838.21). On 30



April 2014, the Executive sent the Level 2 provider a formal notification which included an invoice for the payment of the administrative charge. The invoice requested that payment be made 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 on the basis of the Executive's evidence that 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

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 with the Executive following the adjudication of 17 April 2014.



The Tribunal did not find any 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.

The Tribunal noted that a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of eight years had been imposed as a result of the adjudication on 17 April 2014 and accordingly the Tribunal concluded that a further prohibition was not necessary or appropriate in the circumstances of this case.

Administrative charge recommendation:

100%