



Tribunal meeting number 152 / Case 2

Case reference: 42032
Level 2 provider: Worldwide Websites Limited (UK)
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 Worldwide Websites Limited (the “**Level 2 provider**”) was the subject of a PhonepayPlus investigation and adjudication (case reference: 19887), which resulted in sanctions being imposed by a Tribunal on 14 November 2013. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £75,000, a requirement that access is barred to the Level 2 provider’s service until compliance advice has been implemented to the satisfaction of PhonepayPlus and a requirement that refunds are 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 £8,592.30 was imposed.

The Level 2 provider was informed of the sanctions imposed in a formal notification sent on 27 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.

The Level 2 provider did not acknowledge receipt or respond to the notification. On 7 January 2014, the Executive phoned the director of the Level 2 provider and he stated that he was aware of the Tribunal decision of 14 November 2013, but disagreed with the Tribunal’s findings. Between 9 January 2014 and 29 January 2014, the Level 2 provider corresponded with the Executive regarding an out of time application for a review of the original Tribunal’s decision. On 10 February 2014, a review application submitted by the Level 2 provider was considered by the Chairman but was refused. The Level 2 provider made contact with the Executive on 17 February 2014 to confirm that it had attempted to contact two complainants to provide them with a refund, but it had not received a response. The Level 2 provider failed to respond to any further correspondence from the Executive and no further communication was received.

The Level 2 provider failed to pay the fine and administrative charge in the time period specified. On 7 April 2014, the Executive directed the Level 1 providers to pay over to PhonepayPlus withheld revenue of £25,894.79. Payment of the withheld revenue was expected in due course. Consequently, the total amount outstanding to PhonepayPlus, having taken into account the withheld revenue, was £57,697.21.

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 28 May 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 dated 14 November 2013;
- Email correspondence between the Executive and the Level 2 provider;
- Email correspondence between the Executive and the Level 1 providers;
- The covering letter and email to the breach of sanction letter dated 28 May 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 14 November 2013, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference:19887). The adjudication resulted in the imposition of sanctions, including a fine of £75,000 and a requirement that the Level 2 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 27 November 2013, the Executive sent the Level 2 provider a formal notification which included an invoice for payment of the £75,000 to be made within seven working days. Payment was not made within the time period specified (or at all).

The Executive noted that the Level 2 provider had made attempts to contact the complainants to pay refunds and had provided supporting evidence to the Executive. Accordingly, the Executive accepted that the Level 2 provider had complied with the refund sanction.

However, the Executive submitted that the Level 2 provider was in breach of paragraph 4.8.4(b) of the Code as it had failed to pay the fine within the time period specified.

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. 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 14 November 2013, the Tribunal recommended that PhonepayPlus impose 75% of the administrative costs incurred in relation to the Level 2 provider’s case (£8,592.30). On 27 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.