



Tribunal meeting number 175 / Case 3

Case reference: 83200
Level 2 provider: Cash Finance Direct (Holdings) Limited (UK)
Type of service: Fixed lined brokerage service
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

On 31 July 2015, a PhonepayPlus Tribunal considered a case concerning a fixed lined brokerage service (the “**Service**”) which was operated by Cash Finance Direct (Holdings) Limited (the “**Level 2 provider**”).

The Tribunal upheld four breaches of the PhonepayPlus Code of Practice (12th Edition) in relation to misleading conduct, undue delay in the provision of a service, failure to provide refunds promptly and in an easily accessible manner, and failure to treat consumers fairly and equitably. The Tribunal concluded that the seriousness of the case should be regarded overall as serious.

The Tribunal imposed the following sanctions on the Level 2 provider:

- a fine of £100,000; and
- a requirement that the Level 2 provider must 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.

The Tribunal additionally recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the case. The total administrative charge was £11,804.85.

A formal notification was sent to the appointed liquidators of the Level 2 provider (the “**Liquidators**”) by email (copying in the director of the Level 2 provider) and post on 19 August 2015. The formal notification comprised of:

- a cover letter dated 19 August 2015;
- the Tribunal’s decision of 31 July 2015;
- an invoice (no:13194) for payment of the fine of £100,000;
- a further separate invoice (no:13195) for payment of the administrative charge of £11,804.85; and
- a request for the Level 2 provider to provide contact details for complainants to claim refunds in accordance with the refund sanction imposed by the Tribunal.

The total sum, representing both the fine and the administrative charge, owed to PhonepayPlus was £111,804.85.

Payment of the invoices for both the fine and the administrative charge were to be received within seven working days of notification of the adjudication, being Friday 28 August 2015. On 19 August 2015, the Executive received a telephone call from the Liquidators to confirm that the



Level 2 provider is in voluntary liquidation and is in no position to pay the fine due. On 1 September 2015, the Executive issued a failure to comply with sanction notice.

From 19 August 2015 to 10 September 2015 the Executive received several pieces of correspondence from the Liquidators outlining that due to the insolvent position of the Level 2 provider, the fine and the refunds would rank as unsecured claims in the liquidation and will not be paid.

The deadline for payment of the fine and the administrative charge was not met and as at 22 September 2015 no payment had been received.

The investigation

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (13th Edition) (the "Code").

The Executive sent a breach letter to the Level 2 provider on 22 September 2015. Within the breach letter the Executive raised the following breaches of the Code:

- Paragraph 4.8.5(b) – Failure to comply with sanctions
- Paragraph 4.10.2 – Non-payment of an administrative charge

The Level 2 provider acknowledged receipt of the breach letter on 2 October 2015. On 29 October 2015, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The post adjudication notification sent 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 31 July 2015;
- Correspondence between the Executive and the Level 2 provider (through its Liquidators); and
- The breach letter dated 22 September 2015

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

Paragraph 4.8.5(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 July 2015, the Tribunal adjudicated on a service operated by the Level 2 provider. As set out in the "Background" section above, the adjudication resulted in the imposition of sanctions, including a fine of £100,000.

On 19 August 2015, the Executive sent the Level 2 provider notification of the adjudication, together with an invoice (no:13194) for payment of the £100,000 fine. Payment was to be made within seven working days of receipt of the invoice. The deadline for compliance with the fine sanction, being 28 August 2015, passed without payment being made. The Executive had not as at 22 September 2015 received payment of the fine.



Accordingly, the Executive submitted that the Level 2 provider had acted in breach of paragraph 4.8.5(b) of the Code.

2. The Level 2 provider acting through its liquidators did not provide a formal response to the breach letter. The Liquidators had previously corresponded with the Executive to confirm that the Level 2 provider was insolvent and there were no prospects of a return to any creditors in the liquidation.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal found that the Level 2 provider had not complied with the sanctions imposed by the previous Tribunal. Accordingly, the Tribunal upheld a breach of paragraph 4.8.5(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. The Executive noted that on 31 July 2015, the Tribunal recommended that PhonepayPlus invoice 100% of the administrative charges incurred by in relation to the case against the Level 2 provider.

On 19 August 2015, the Executive sent the Level 2 provider notification of the adjudication, together with an invoice (no: 13195) for payment of the administrative charge of £11,804.85. Payment was to be made within seven working days of receipt of the invoice.

From 19 August 2015 to 10 September 2015 the Executive received several pieces of correspondence from the Liquidators outlining that due to the insolvent position of the Level 2 provider, there were no prospects of return to any creditors in the liquidation.

As set out in the “Background” section above, the deadline for payment on the invoice, being 28 August 2015, passed without payment being made. The Executive had not as at 22 September 2015 received payment of the invoice.

Accordingly, the Executive submitted that the Level 2 provider had acted in breach of paragraph 4.10.2 of the Code.

2. The Level 2 provider acting through its liquidators did not provide a formal response to the breach letter. The Liquidators had previously corresponded with the Executive to confirm that the Level 2 provider was insolvent and there were no prospects of a return to any creditors in the liquidation.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal found that the Level 2 provider had not paid the administrative charge (although it noted that the Level 2 provider had stated that it was not in a position to do so). 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 4.8.5 (b) – Failure to comply with a sanction

The initial assessment of paragraph 4.8.5(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 demonstrated fundamental non-compliance with the obligations imposed by the Code, which, in the view of the Tribunal, undermined 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 demonstrated fundamental non-compliance with the obligations imposed by the Code, which, in the view of the Tribunal, undermined 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 did not find any aggravating factors.

In determining the final overall assessment for the case, the Tribunal took into account the following mitigating factor:

- Prior to the adjudication of 31 July 2015, the Level 2 provider was already in an insolvent position which would hinder its ability to comply with financial sanctions. The Tribunal noted that the Level 2 provider would remain unlikely to be in a position to comply with the financial sanctions.

Having taken into account the circumstances of the case, 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 refunds, the outstanding fine and original and instant administrative charges, whichever is the later.



Administrative charge recommendation:

100%