



## Tribunal meeting number 167 / Case 2

**Case reference:** 65048  
**Level 2 provider:** New Business Start-Up LTD (UK) (formerly known as BKings Group Limited and BKings Telecommunications Limited)  
**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 New Business Start-Up LTD, formerly known as BKings Group Limited and BKings Telecommunications Limited (the “**Level 2 provider**”) was the subject of a PhonepayPlus investigation and adjudication (case reference: 45162), which resulted in sanctions being imposed by a Tribunal on 13 November 2014. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £40,000, a requirement that the Level 2 provider seek compliance advice for the service and any other services that it operates within two weeks of the date of publication of the decision and thereafter implements that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus, 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. In addition, an administrative charge of £15,565.40 was imposed.

The Level 2 provider was informed of the sanctions imposed in a formal notification sent by email and post on 26 November 2014. In addition, the Level 2 provider was issued with a request to provide its contact details to PhonepayPlus to assist in the administration of the refund sanction. The deadline for payment of the invoices for both the fine and the administrative charge was seven working days from the date of the invoices (5 December 2014). The Level 2 provider sent the completed refund form by the specified deadline. In relation to the compliance advice sanction, the Level 2 provider sought and was provided with compliance advice. Subsequently, the Level 2 provider confirmed and provided evidence to demonstrate that it had implemented that advice.

On 1 December 2014, the Level 2 provider contacted the Executive and stated that it was experiencing financial hardship and it requested that it be given permission to make payment of the fine and administrative charge in instalments in accordance with a payment plan. The Executive requested that the Level 2 provider provide evidence of its financial hardship and to confirm the instalment amounts that it would be able to pay. Between 4 December 2014 and 23 February 2015, the Executive and the Level 2 provider corresponded in relation to a payment plan. On 24 February 2015, a payment plan agreement was signed by the Executive and the Level 2 provider, which required the Level 2 provider to make payments on 5 April 2015 and the fifth of each month thereafter until the amount outstanding had been paid.

From mid-December 2014, the Executive was contacted by complainants who informed the Executive that they had not received the required refund from the Level 2 provider.

On 5 April 2015, the Level 2 provider failed to make payment of the first instalment. The Executive contacted the Level 2 provider for an explanation. The Level 2 provider stated that it had read the payment amounts incorrectly but in any event, it had experienced a decrease in revenue, which had been caused by negative publicity generated by the first adjudication against it. The Level 2 provider stated that it was unable to make payment in accordance with the payment plan and it understood that



non-compliance with the agreement and the sanctions imposed by the Tribunal of 13 November 2014 would result in further breaches of the Code being raised against it.

The Level 2 provider failed to pay the fine and administrative charge in accordance with the payment plan or at all. Consequently, the total amount outstanding to PhonepayPlus is £55,565.40. In addition, the Level 2 provider failed to comply with the refund sanction.

### The investigation

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12<sup>th</sup> Edition) (the “Code”).

The Executive sent a breach letter to the Level 2 provider on 1 April 2015, which was subsequently withdrawn and a further breach letter was sent to the Level 2 provider on 1 May 2015. Within the breach letter the Executive raised the following breaches of the Code:

- Paragraph 4.8.4 (b) – Failure to comply with a sanction; and
- Paragraph 4.10.2 – Non-payment of an administrative charge.

The Level 2 provider did not provide a response to the breach letter within the specified deadline.

The Tribunal considered the confirmations of delivery of the breach letter by post and email to the Level 2 provider, and was satisfied that the Executive had made all reasonable attempts to inform the Level 2 provider of the proceedings. On 28 May 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 13 November 2014;
- The completed refund form provided by the Level 2 provider;
- A copy of the complainant closure letter dated 4 December 2014;
- Correspondence with the complainants and the Level 2 provider regarding the complainants’ attempts to claim their refund;
- A copy of the questionnaire sent to the complainants on 9 March 2015;
- Correspondence between the Executive and the Level 2 provider between 1 December 2014 and 13 April 2015 regarding compliance advice, agreement of a payment plan and failure to make payment in accordance with the payment plan;
- The breach letter dated 1 May 2015; and
- Confirmation of delivery of the breach 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 13 November 2014, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference: 45162). The adjudication resulted in the imposition of sanctions, including a fine of £40,000 and a refund sanction.



On 26 November 2014, the Executive sent the Level 2 provider a formal notification of the outcome of the adjudication, which included an invoice for payment of the £40,000 to be made within seven working days. As explained in the “Background” section above, the Level 2 provider agreed to make payment of the fine in accordance with a payment plan. The first instalment was due on 5 April 2015 but the Level 2 provider failed to make payment of the first instalment or for any other amount. 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 or at all.

In addition, on 26 November 2014, the Executive was issued a form which the Level 2 provider was required to complete to ensure compliance with the refund sanction. The Level 2 provider was directed to return the completed form within 48 hours by providing its contact details to ensure that complainants could request and receive their refunds. The Level 2 provider completed the form within the deadline specified.

On 4 December 2014, the complainants were notified of the outcome of the Tribunal decision of 13 November 2014 and were provided with the Level 2 provider’s contact details to facilitate claiming a refund. From mid-December 2014, the Executive received notification from the complainants that they had been unable to obtain a refund from the Level 2 provider. Generally the complainants stated that they had either been unable to make contact with the Level 2 provider, or it had failed to acknowledge or return calls or emails requesting a refund. An example of an email received by the Executive from a complainant stated:

“Thank you for your email dated 04 December 2014 regarding the outcome of my complaint against [the Level 2 provider]. Just to keep you updated I have made many calls to the number given and have left two messages on the answer phone of [the Level 2 provider] but have not had a reply. As a result I have today also sent [the Level 2 provider] an email requesting a refund and have left my mobile number.”

Between December 2014 and March 2015, the Executive contacted the Level 2 provider a number of times to request that it make contact with various complainants to comply with the refund sanction imposed. However, further reports from the complainants revealed that the Level 2 provider had contacted them to request that they provide their contact details and/or evidence of their claim. Many complainants reported providing the information requested but stated that the Level 2 provider had failed to issue or delayed issue of a cheque for the refund amount. An example of correspondence sent to the Level 2 provider by a complainant stated:

“On 12th December 2014 the day after I received your email and on 4th January 2015 I sent to you an email with my address, and with an attachment of my phone bill highlighting the charge of £45.84 but have still not received a cheque from you. I have left messages on your answer machine but again you have made no contact. This matter has been ongoing for eight months now and I ask you to forward the cheque to me as a matter of urgency. You have all the information you require. I cannot understand what the delay is?”

In addition, some complainants reported receiving refund cheques that they had been unable to cash as they had been post-dated or they had cashed the cheques only to be told by their bank that the cheque could not be tendered due to lack of funds. One complainant provided a copy of a letter from their bank and s/he stated the following in correspondence with the Level 2 provider:

“I was pleasantly surprised to receive payment from you as promised. But then why was I surprised for the cheque payment not to go through? Is it still your companies practice to continue with scams? I will be asking for reimbursement for bank charges and the original payment.”

The Executive submitted that it had been in contact with the Level 2 provider a number of times in an effort to obtain refunds for the complainants. In February 2015, the Level 2 provider stated that it had not been responding to the complainants because it was suffering from financial hardship



and was unable to make payment of the refunds. The Executive asserted that the Level 2 provider's behavior appeared to suggest that it had deployed various tactics in an effort to delay or avoid satisfying complainants' refund claims.

On 9 March 2015, the Executive issued 33 complainants with a questionnaire requesting details of their experience claiming a refund from the Level 2 provider. Of the 15 complainants that responded to the questionnaire, 13 complainants stated that they had not received their refund despite numerous attempts and two complainants reported receiving a refund after numerous attempts to contact the Level 2 provider and after the deadline of 28 days from the date of the complainants' claim.

In addition to the Level 2 provider's failure to make payment of the fine, 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 comply with the refund sanction 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 and failure to comply with the refund 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 13 November 2014, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider's case (£15,565.40). On 26 November 2014, the Executive sent the Level 2 provider a formal notification which included an invoice for payment of the administrative charge. The invoice requested that payment be made within seven working days.

As explained in the "Background" section above, the Level 2 provider agreed to make payment of the administrative charge (and fine) in accordance with a payment plan. The first instalment was due on 5 April 2015 but the Level 2 provider failed to make payment of the first instalment or any other amount.

In light of the above, the Executive submitted that a breach of paragraph 4.10.2 of the Code had occurred, as the Level 2 provider had failed to pay the administrative charge within the time period specified or at all.

2. The Level 2 provider did not respond 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 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 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 found an aggravating factor as follows:

- The Level 2 provider caused further inconvenience to some complainants by engaging them in protracted correspondence that promised a refund, but supplied cheques that bounced, and engaged the Executive's resources further by corresponding with the Executive regarding a payment plan, but did not by the agreed due date make any payments.

The Tribunal did not find any 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 refunds, the outstanding fine and original and instant administrative charges, whichever is the later.

**Administrative charge recommendation:**

**100%**