



## Tribunal meeting number 176 / Case 2

Case reference: 85479  
Level 2 provider: Technology and Communication Limited (Hong Kong)  
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 Technology and Communication Limited (“**the Level 2 provider**”) was the subject of a PhonepayPlus investigation and adjudication (case reference: 60325), which resulted in sanctions being imposed by a Tribunal on 3 September 2015. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £60,000, a requirement that the Level 2 provider submits all Service promotional material that was intended for publication to PhonepayPlus for compliance advice for a period of one month from the date of the decision. Such advice was to be sought within two weeks of the date of publication of the decision and thereafter implemented by the Level 2 provider within two weeks of such advice being provided (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 claimed a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there was good cause to believe that such claims were not valid, and provide evidence to PhonepayPlus that such refunds had been made. In addition, an administrative charge of £9,685.24 was imposed.

The Level 2 provider was informed of the sanctions imposed in a formal notification sent by email and post on 16 September 2015. 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 (25 September 2015). The Level 2 provider sent the completed refund form by the specified deadline. In relation to the compliance advice sanction, the Executive understood that the Level 2 provider ceased promoting the service and therefore would not have been required to obtain compliance advice.

On 23 September 2015, the Executive received an email from the Level 2 provider requesting that funds that were being withheld by the Network operator (following a direction from PhonepayPlus during the Track 2 investigation) be released and sent to the Executive in part payment of the amounts outstanding to PhonepayPlus. The Executive corresponded with the Level 2 provider and the Network operator to arrange for the withheld funds to be released and to be used as requested by the Level 2 provider. On 9 October 2015, the Network operator paid £50,003 withheld funds to PhonepayPlus. On 30 September 2015, the Executive notified the Level 2 provider that there was a balance of £19,682.24 owing to PhonepayPlus and that payment was overdue and it invited a response from the Level 2 provider by 2 October 2015. The Executive did not receive a response so it sent a follow up email to the Level 2 provider on 5 October 2015 advising it of the consequences of failure to make payment. The Level 2 provider did not provide a response. In a subsequent follow up email on 9 October 2015, the Executive advised the Level 2 provider that it would be issuing a direction to the Network operator to suspend access to its premium rate numbers and the Level 2 provider responded and stated:

“I never received written notice from you, your request is invalid. An Email makes no evidence before the Chinese Court”



The Executive responded by confirming that, as the Level 2 provider had acknowledged receipt of the notification, this clearly indicated that it was aware of the sanctions imposed and it was required to pay the outstanding sum. As at the date of the Executive drafting the breach letter, the Executive had not received a response from the Level 2 provider and no further payment had been received.

The Level 2 provider failed to pay the full fine in the time period specified. Consequently, the total amount outstanding to PhonepayPlus, having taken into account the withheld revenue, is £19,682.24.

### The investigation

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

The Executive sent a breach letter to the Level 2 provider on 15 October 2015. Within the breach letter the Executive raised the following breach of the Code:

- Paragraph 4.8.5 (b) – Failure to comply with a sanction

The Level 2 provider contacted the Executive on 16 October 2015 and stated that the current director was no longer part of the company and that the Level 2 provider would cease its activities on 18 October 2015 at midnight. The Executive responded to ask the Level 2 provider if it intended to provide any further response to the breach letter but it did not receive a response.

### Preliminary issue

The Tribunal considered the documentation relating to service of the breach letter, and that the Level 2 provider had responded by email 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 and that the breach letter had been acknowledged by email. The Tribunal therefore concluded that it was fair to proceed in the absence of the Level 2 provider. On 12 November 2015, the Tribunal reached a decision on the breach 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 3 September 2015;
- The completed refund form provided by the Level 2 provider;
- Correspondence between the Executive and the Level 2 provider between 21 September 2015 and 16 October 2015;
- Correspondence between the Executive and the Network operator between 6 and 12 October 2015;
- The breach letter dated 3 September 2015; and
- Service of the breach letter documents.

**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 3 September 2015, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference: 60325). The adjudication resulted in the imposition of sanctions, including a fine of £60,000.

On 16 September 2015, the Executive sent the Level 2 provider a formal notification of the outcome of the adjudication, which included an invoice for payment of the £60,000 to be made within seven working days. As explained in the “Background” section above, the Level 2 provider requested that the withheld revenue held by the Network operator be used in part settlement of the amounts outstanding to PhonepayPlus. The Network operator paid £50,003 to PhonepayPlus. The withheld revenue was used to pay the administrative charge of £9,685.24 and part of the fine. However, there was still a balance outstanding and the Level 2 provider was required to make payment of £19,682.24 to settle the fine. The deadline for compliance with the fine sanction passed and PhonepayPlus did not receive full payment of the fine

The Executive noted that the Network operator had withheld revenue from the Level 2 provider (in accordance with a direction from PhonepayPlus) in the amount of £5,000 to pay any consumers’ refund claims. If the amount withheld was not fully used for refunds, the Executive would direct the Network operator to pay over the remaining withheld funds in further part payment of the fine outstanding. Notwithstanding this, the Executive submitted that the Level 2 provider had failed to comply with the sanction within a reasonable time and any further funds that may be paid to PhonepayPlus would not be sufficient to meet the full amount outstanding.

In light of the above, the Executive submitted that a breach of paragraph 4.8.5(b) of the 13th Code has occurred.

2. As outlined in the “Background” section above, the Level 2 provider responded to the breach letter by stating that the director of the Level 2 provider was no longer part of the company and that it would cease trading at midnight on 18 October 2015. The Level 2 provider did not provide any further response to the breach raised.
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 full fine. Accordingly, the Tribunal upheld a breach of paragraph 4.8.5(b) of the Code.

**Decision: UPHELD****SANCTIONS****Initial overall assessment**

The Tribunal's initial assessment of the breach 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 full 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 did not find any aggravating or 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 full payment of the outstanding fine and instant administrative charges, whichever is the later.

**Administrative charge recommendation:**

**100%**