

Tribunal meeting number 180 / Case 1

Case reference: 87228
Level 2 provider: Blue Triangle Technology 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 Blue Triangle Technology Limited (“the **Level 2 provider**”) was the subject of a Phonepayplus investigation and adjudication (case reference: 57739), which resulted in sanctions being imposed by a Tribunal on 25 June 2015. The sanctions imposed by the Tribunal were:

- a formal reprimand;
- a fine of £20,000;
- 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 this decision and thereafter implements that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus, for a period of 12 months from the date of publication of this decision; 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 £10,809.

The formal notification was sent to the Level 2 provider by email and post on 8 July 2015. 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 (being 15 July 2015).

On 13 July 2015 the Level 2 provider requested a review of the Tribunal decision. On 30 July 2015 the Executive confirmed to the Level 2 provider that its application for review had been certified as without merit. On 31 July 2015, the Level 2 provider contacted the Executive to request a payment plan. This request related to payment of both the fine and the administration charge and requested permission to pay in instalments of £1,500 per month. The Level 2 provider stated that it was experiencing financial hardship and was therefore unable to make payment of the amounts outstanding by the specified deadline. PhonepayPlus requested relevant financial documentation from the Level 2 provider to support its request. Following receipt and consideration of the Level 2 provider’s submission of its financial documentation and an upfront payment of £1,500 by the Level

2 provider, a payment plan was agreed. A standstill agreement detailing the terms of the payment plan was drawn up. The terms of the payment plan required the sum of £1,725 to be paid on the second day of each month until all amounts outstanding have been paid.

On 13 November 2015 the Executive informed the Level 2 provider that it failed to comply with the settlement agreement and the Executive would consider initiating enforcement action against the Level 2 provider. The total sum, representing both the fine and the administrative charge, originally owed to PhonepayPlus was £30,809. As at the date of the adjudication, PhonepayPlus had received a total payment of £3,225 from the Level 2 provider which has been allocated to the administrative charge. The Level 2 provider still owed a total outstanding amount of £27,584 in relation to the fine and administrative charge as at the date of the adjudication.

The Executive noted that the Level 2 provider did contact the Executive regarding the compliance advice sanction, however as the Service was no longer operating, correspondence in this regard ceased. The Executive was unable to confirm whether the Level 2 provider had complied with the refund sanction imposed by the Tribunal, though noted that as at the date of the breach letter, no correspondence had been received from consumers to suggest they had not been refunded.

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 Executive sent a breach letter to the Level 2 provider on 28 January 2016. Within the breach letter the Executive raised the following breach of the PhonepayPlus Code of Practice (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 responded on 10 February 2016. On 3 March 2016, 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 dated 8 July 2015, including the fine and administrative charge invoices and the refund request;
- The Tribunal decision against the Level 2 provider dated 25 June 2015;
- Correspondence between the Executive and the Level 2 provider;
- Correspondence between the Executive and the Network operator; and
- The breach letter of 28 January 2016 and the Level 2 provider's response of 10 February 2016.

SUBMISSIONS AND CONCLUSIONS

**ALLEGED BREACH 1****Paragraph 4.8.5(b) – Failure to comply with sanction**

“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 asserted that the Level 2 provider acted in breach of paragraph 4.8.5(b) of the Code as it had failed to comply with the fine sanction imposed by the Tribunal.

As set out in the “Background” section above, on 25 June 2015, a PhonepayPlus Tribunal imposed sanctions on the Level 2 provider including a fine of £20,000.

The Executive noted that on 8 July 2015, it had sent the Level 2 provider an invoice (no: 13149) for payment of the £20,000 fine. The deadline for payment was within seven working days of the date the invoice was issued.

On 31 July 2015, the Level 2 provider requested a payment plan option to make payment of both the fine and the administration charge. A standstill agreement and payment structure were drawn up which the Level 2 provider signed on 11 September 2015. The Executive noted that this agreement required the sum of £1,725 to be paid on the second day of each month until all amounts outstanding had been paid.

The Executive noted that on 2 October 2015 the Level 2 provider advised that its first instalment of £1,725 would be paid late due to the Director of the Level 2 provider travelling. The Executive noted that it received the first instalment of £1,725, three days late, on 5 October 2015.

The Executive noted that between 23 and 27 October 2015 it received correspondence from the Level 2 provider who stated that due to a fabricated story by a UK reporter it had no funds and was not in a position to make the next payment. The Executive noted that on 28 October the Level 2 provider confirmed that it would not be able to meet the next instalment and requested for this to be delayed. The Executive noted that on 29 October 2015 it requested confirmation from the Level 2 provider as to when the next instalment would be paid and proof of its inability to make payment. The Executive noted that between 2 November and 12 November the Level 2 provider submitted PDF screen shots of its bank accounts, however the Executive stated that it had not been satisfied by the evidence.

The Executive noted that on 13 November 2015 it informed the Level 2 provider that it had failed to comply with the settlement agreement and the Executive would consider initiating enforcement action against the Level 2 provider. On 16 November 2015 the Level 2 provider requested a payment of £250 followed by quarterly reviews by the Executive of its bank statements. The Executive noted that it had confirmed that the Level 2 provider had failed to comply with the terms of the settlement agreement and it would be initiating enforcement proceedings in due course.

The Executive noted that as at the date of the breach letter, PhonepayPlus had received a total payment of £3,225 from the Level 2 provider which had been allocated to the administrative charge. The Executive noted that the Level 2 provider still owed a total outstanding amount of £20,000 in relation to 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 submitted the following in response to the alleged breaches.

Firstly, that there had been an issue of identity theft which resulted in the original breach, because the identity of the director was used for calling people in a scam. The Level 2 provider was penalised financially for this. The Level 2 provider stated that all the concerned departments in the UK (the watchdog, Financial Conduct Authority (“FCA”) and Companies House etc.) were notified via proper documentation. The Level 2 provider had acknowledgement of the same. The Level 2 provider referred to the evidence supplied in the course of the original investigation.

Secondly, the Level 2 provider had to make heavy payments to all the claimants/consumers. The Level 2 provider stated that it had already submitted copies of evidence to the Executive of all the customers that were refunded in the last year. The Level 2 provider submitted that none of the consumers/clients were left without being paid.

Thirdly, that after understanding the gravity of the matter, in which the Level 2 provider was made a scapegoat, the Level 2 provider had submitted its licences and work permissions from the government of United Kingdom. The Level 2 provider stated that after this issue arose, there was a complete closure of all its business.

Fourthly, the Level 2 provider stated that all the information of the proceedings of the case were revealed publicly and the Level 2 provider was tormented with it and its goodwill was completely tarnished. The Level 2 provider’s director stated that he lost all his business upfront and was shunned completely by all his financial partners.

Fifthly, the Level 2 provider stated that it had been not functional and any bank transactions were over, since it was left with no business at all. The Level 2 provider stated it had lost all its contracts, none of the premium numbers were working, the FCA licence was surrendered, and hence it had no source of income. The Level 2 provider stated that, having been given a payment plan, it made the first payment thinking it could somehow manage, however due to a reporter doing a sting on the Level 2 provider’s director and fabricating an entire incident, it lost that source of income. The Level 2 provider stated that it was helpless at this stage and had no other option than to close and think of doing something else in a different industry.

The Level 2 provider stated that it was facing real hardships of life to make the two ends meet for a living. The Level 2 provider’s director stated that his financial status as well as social status had been complete ruined because of the identity theft, and he was left with



nothing to quote for. The Level 2 provider complained that it was facing further punishment and penalties for something that it had not even done.

3. The Tribunal considered the Code and all the evidence before it. 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 4.8.5(b) of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Paragraph 4.10.2 – Failure to pay administrative charge

“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 asserted that the Level 2 provider acted in breach of paragraph 4.10.2 of the Code as it had failed to pay the administrative charge within the period specified by PhonepayPlus.

The Executive noted that on 25 June 2015, the Tribunal recommended that PhonepayPlus seek to recover 100% of the administrative charges incurred by PhonepayPlus in relation to the case against the Level 2 provider. The Executive noted that on 8 July 2015, the Executive sent the Level 2 provider an adjudication letter together with an invoice (no:13150) for payment of the administrative charge of £10,809.00. The deadline for payment was within seven working days from the date of the invoice.

As set out above in the alleged breach of para. 4.8.5(b), a standstill agreement and payment structure were drawn up which the Level 2 provider signed on 11 September 2015 which required the sum of £1,725 to be paid on the second day of each month until all amounts outstanding had been paid. As set out above in the alleged breach of para. 4.8.5(b), after paying the first installment the Level 2 provider stated that it had no funds and was not in a position to make a subsequent payment. As set out above in the alleged breach of para. 4.8.5(b), on 13 November 2015 the Executive informed the Level 2 provider that it had failed to comply with the settlement agreement and the Executive would consider initiating enforcement action against the Level 2 provider. On 16 November 2015 the Level 2 provider requested a payment of £250 followed by quarterly reviews by the Executive of its bank statements. The Executive noted that it had confirmed that the Level 2 provider failed to comply with the terms of the settlement agreement and that it would be initiating enforcement proceedings in due course.

The Executive noted that as at the date of the breach letter, PhonepayPlus had received a total payment of £3,225 from the Level 2 provider which has been allocated to the administrative charge. The Executive noted that as at the date of the breach letter, the Level 2 provider still owed a total outstanding amount of £7,584 in relation to the

administrative charge. 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's submissions in response to alleged breach are set out above.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal concluded 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 4.8.5(b) – Failure to comply with 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 criteria:

- 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 – Failure to pay 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 criteria:

- 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 breach was 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:



- The Level 2 provider had paid some of the fine to PhonepayPlus (and not as a result of withheld service revenue), making two instalment payments.

The Tribunal also noted that there was no evidence to suggest that the Level 2 provider had failed to comply with the refund sanction, although considered that because provision of such refunds was a separate requirement of the original sanction, a failure to do so would have made the breach more serious.

The Tribunal noted that the service revenue in the original adjudication was recorded as being in the lowest band (£1 - £4,999).

Having taken into account the circumstances of the case, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

Sanctions imposed

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions, which in the circumstances of this case it determined were proportionate to the breaches identified, and in its view would ensure compliance standards remain high and ensure that consumers were protected in the future:

- 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 two years, starting from the date of publication of this decision, or until payment of the refunds, the outstanding fine and the original and instant administrative charges, whichever is the later.

Administrative charge recommendation:

100%