

Tribunal meeting number 204

Case reference: 126175

Level 2 provider: Treasure Media Limited

Type of service: Glamour video subscription service

Level 1 provider: Zamano Solutions Limited; Veoo Ltd

Network operator: All Mobile Network operators

This case was brought against the Level 2 provider under Paragraph 4.5 of the Code of Practice

Background

The case concerned a breach of the sanctions imposed by a Tribunal on 15 August 2016, (case reference: 62595).

The case of 15 August 2016, concerned the adult and glamour video subscription service 'Glamour Teasers' (the "**Service**") operated and promoted by the Level 2 provider Treasure Media Limited (the '**Level 2 provider**').

A finding of the Tribunal was that the Level 2 provider did not have robust evidence which established consumers' consent to be charged for the Service, and that consumers had been charged without their consent. In reaching its decision, the Tribunal of 15 August 2016 stated that it was concerned that:

- a) the Level 2 provider had not put in place the system for robust independent verification of consent to charge until 11 July 2016, despite having had a contract in place with the Third-Party Verifier since 2014;
- b) the Level 2 provider did not appear to be taking pro-active steps to ensure that it did not charge consumers including existing subscribers, unless it held robustly verifiable evidence of their consent (instead waiting for consumers to text "STOP" and claim a refund); and
- c) the period of time taken to remedy this issue from when the Level 2 provider was first on notice of it showed a disregard for the interests of consumers.

Accordingly, the Tribunal upheld a breach of rule 2.3.3 (consent to charge), assessed the case to be **very serious** and imposed the following sanctions:

- a formal reprimand;
- a fine of £135,000;
- requirement that the Level 2 provider remedy the breach by ensuring that it has robust verification of each consumer's consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service; 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 administrative charge was £12,749.62.

The formal notification of the Tribunal's decision was sent to the Level 2 provider by email and post on 26 August 2016. The formal notification comprised of:

- a cover letter dated 26 August 2016;
- the Tribunal's decision of 26 August 2016;
- an invoice (no:13609) for payment of the fine of £135,000 and a further separate invoice (no:13610) for payment of the administrative charge of £12,749.62
- 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 the Phone-paid Services Authority was £147,749.62

The Level 2 provider requested that the fine and administration charge were paid in full from withheld revenues.

The total sum owed of £147,749.62 was received by the Executive on 14 September 2016.

The Level 2 provider submitted evidence of the refunds it had issued to complainants on 24 October 2016.

The Tribunal of 15 August 2016 imposed a remedy the breach sanction under paragraph 4.8.3(a) of the Code, which required the Level 2 provider to:

“remedy the breach by ensuring that it has robust verification of each consumer’s consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service”.

A post adjudication cover letter was sent by post and email to the Level 2 provider on 26 August 2016, requesting that the Level 2 provider to read the Tribunal's decision carefully and confirm that it had remedied the stipulated breach by no later than Tuesday 6 September 2016.

The Executive received no response from the Level 2 provider by the deadline. The Executive therefore sent further emails on 8 September 2016 and 12 September 2016.

On 12 September 2016, the Level 2 provider responded, stating:

“Treasure Media implemented GVI (GoVerifyIT) method for all services and by these means the stipulated breach has been remedied in full, i.e. Treasure Media holds robust verification for consent to charge as requested by PhonepayPlus”.

The Executive noted that the implementation of GoVerifyIt (“GVI”) could only verify consent to charge for new subscribers, not existing subscribers to the Service. Therefore, on 14 September

2016, the Executive requested that the Level 2 provider provide evidence of its compliance with the remedy the breach sanction in respect of existing consumers, together with evidence of refunds made to consumers.

The Level 2 provider responded requesting an extension for provision of the information until 20 October 2016. This request was granted by the Executive.

The Level 2 provider subsequently supplied evidence of refunds it had made, but failed to respond to the Executive's request for evidence that it had remedied the breach in respect of existing consumers.

On 25 October 2016, the Executive gave the Level 2 provider a further opportunity to provide evidence of how it had remedied the breach in respect of existing consumers, with a deadline of 1 November 2016 for response. The Level 2 provider failed to respond.

The Executive received no evidence from the Level 2 provider in respect of compliance with the remedy the breach sanction in respect of existing consumers.

Summary of complaints

The Executive noted that since the sanctions had come into effect on 26 August 2016, it had received a further 33 complaints from members of the public regarding the Service.

Complainants variously alleged that the Service charges were unsolicited.

A sample of the complainant's accounts are below:

"...Without subscribing to this service I recived this text I replied to stopped the messages to the company but didn't stopped....Every week on Tuesday...Total amount charged was over £22.00....."

".....This company have been texting my phone and charging me £3 per week WITHOUT my permission. I have never contacted them, never agreed to this and never signed up to anything. I have contacted Vodafone and they have confirmed I have never contacted them they have been charging without me without the proper authorisation. I require them to issue immediate refunds for all the money. They been charging me since 25th Dec 2015, once a week..."

"...never subscribed to a service to which now i am paying for. i have on numerous occasions text stop to this service but still they continue to take money from mobile phone credits....this has caused me savere stress and i don't know what to do as i cant afford it..."

The Level 2 provider was requested to provide message logs for 26 complainant MSISDN's. These were supplied by the Level 2 provider and the Executive noted that 16 of the 26 message logs related to consumers who had opted-in to the Service prior to the original adjudication and were still being charged after the sanctions came into effect on 26 August 2016. In addition, the Executive noted that of the 16 consumers who had opted-in to the Service prior to the original Tribunal and who were still being charged after 26 August 2016, seven had terminated the Service by texting 'STOP'. The Executive noted that those consumers would otherwise still have been charged.

The Executive also contacted GVI to enquire whether they hold evidence that the 33 complainants had consented to the service charge. In its response, GVI confirmed that it held no evidence of their consent to the service charges.

Interim measures in place

On 6 January 2017, the Code Adjudication Panel ("CAP") considered an application by the Executive for the imposition of interim measures. Accordingly, an interim measure to impose a withhold of service revenue was agreed. This decision is included at Appendix A.

The Investigation

In accordance with the transitional arrangements set out at paragraph 1.8 of the PSA Code of Practice (14th Edition), the Executive conducted this matter as a Track 2 procedure in accordance with paragraph 4.5 of the Code of Practice (14th Edition).

On 15 December 2016, the Level 2 provider was informed of the Executive's decision to proceed to a breach of sanctions investigation, and to formally suspend the Service within 24 hours, pursuant to 4.8.6(a) of the Code. The Level 2 provider was provided with an opportunity to make representations, but as it failed to respond within the stipulated 24-hour deadline, the Executive shortly thereafter issued the Level 1 provider Veoo Ltdd with a direction to suspend the Level 2 provider's Service.

Post the suspension of its Services, the Level 2 provider submitted a response and was informed by the Executive that its response would be forwarded to the Tribunal for consideration.

The Executive sent a Warning Notice to the Level 2 provider on 3 February 2017 with a deadline for response of 17 February 2017. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the "Code"):

- Paragraph 4.8.6(b) – Failure to comply with sanctions

On 23 March 2017, the Tribunal reached a decision on the breach raised by the Executive. The Tribunal considered the following evidence in full:

- The Tribunal adjudication of 15 August 2016;
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider's responses including supporting documentation);

- Message logs from the Level 2 provider
- Correspondence between the Executive and the Verifier, GVI;
- Complainant accounts;
- The Warning Notice, including attachments and the Level 2 providers' response, including attachments;
- The Level 2 provider's email dated 16 December 2016.

Submissions and Conclusions

Alleged Breach 1

Paragraph 4.8.6(b) – “The failure of any relevant party to comply with any sanction within a reasonable time will result in:

(b) 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 had acted in breach of paragraph 4.8.6(b) of the Code as it had failed to comply with remedy the breach sanction imposed by the Tribunal on 15 August 2016 (Case reference: 62595). In that case the Tribunal upheld a number of breaches against the Level 2 provider. One of the sanctions imposed was that the Level 2 provider “remedy the breach by ensuring that it has robust verification of each consumer’s consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service”.

The Executive stated that on 26 August 2016, it had sent the Level 2 provider a formal notification of the Tribunal’s decision, which included the ‘post adjudication letter’ which read:

“In respect of the remedy the breach sanction imposed by the Tribunal, please read the decision carefully and confirm that Treasure Media Limited has remedied the stipulated breach by no later than Tuesday 6 September 2016”.

The Level 2 provider had failed to respond by the deadline and the Executive therefore sent two further emails; on 8 and 12 September 2016. On 12 September 2016, the Level 2 provider responded stating the following:

“Treasure Media implemented GVI (GoVerifyIT) method for all services and by these means the stipulated breach has been remedied in full, i.e. Treasure Media holds robust verification for consent to charge as requested by PhonepayPlus”.

The Executive submitted that it was not satisfied that implementation of the GVI method referred to by the Level 2 provider amounted to robust evidence of consent to charge existing subscribers of the Service. Therefore, on 14 October 2016, in addition

to requesting evidence of consumer refunds, the Executive had requested that the Level 2 provider also provide evidence that it held robust evidence and verification of consent to charge existing subscribers. The request stated the following:

“In relation to your email of 12 September 2016, it is noted that the Tribunal of 15 August 2016 imposed a requirement that Treasure Media Ltd remedy the breach by ensuring that it has robust verification of each consumer’s consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service. The Executive notes that the implementation of GVI (GoVerifyIT) method for all services does not remedy the breach in respect of consumers who subscribed prior to the implementation of GVI.....Please provide this information no later than 5pm on Tuesday 18 September 2016”.

In response to this request, the Level 2 provider had requested an extension of time to respond to the request to 20 October 2016. The Executive had granted the extension. 4 days after the extended deadline, on 24 October 2016, the Level 2 provider submitted a response. Whilst the Level 2 provider had supplied evidence of refunds made to consumers, it had failed to provide evidence of robust verification of consent to charge existing consumers.

On 25 October 2016, the Executive had again requested evidence of robust verification for consent to charge existing consumers from the Level 2 provider. It gave the Level 2 provider a deadline of 1 November 2016 to respond. The Level 2 provider failed to respond to this request.

The Executive stated that it had received no further communication from the Level 2 provider regarding this matter.

The Executive submitted that it had received a further 33 complaints since the date the sanctions had come into effect on 26 August 2016.

Consequently, the Level 2 provider was requested to provide message logs for 26 of the complainants. The Level 2 provider supplied the message logs requested and from these logs the Executive had identified the following:

- 16 complainants were charged after 26 August 2016, including some who had been billed for a significant period of time after the adjudication; and
- Seven complainants who had stopped the subscription to the Service themselves by texting ‘stop’ or an equivalent command.

The Executive subsequently contacted the third party verifier GoVerifyIt (“GVI”) on 9 December 2016, to ascertain whether or not it held verification of consumer consent to charge in respect of the 33 complainants. GVI responded on 13 December 2016 confirming that it held no evidence of opt-ins for any of the 33 complainant MSISDN’s supplied by the Executive.

On 15 December 2016 at 12.07pm, the Executive notified the Level 2 provider of its intention to proceed to an investigation into a potential breach of paragraph 4.8.6 (b) of the Code due to its apparent failure to comply with the Remedy the Breach sanction

imposed by the Tribunal of 15 August 2016 and due to the receipt of a further 33 complaints in respect of the Service. The Level 2 provider was also informed that the suspension of its Services would commence in 24 hours' time and that the Executive would consider any representations made before this time.

The Level 2 provider did not make representations within the 24 hour deadline and shortly thereafter both the Level 1 providers in respect of the Service were issued with formal directions to suspend the Level 2 provider's Service.

Following the suspension of the Level 2 provider's Service, the Executive received an email from the Level 2 provider at 14:16 pm apologising for the delayed response. The email cited the Level 2 provider's misunderstanding of the Tribunal sanction and stated that human error was to blame for consumers who were continuing to be charged for the Service.

The Executive had responded to the Level 2 provider's email confirming that its response was out of time and confirming that the Executive was proceeding to a breach of sanctions investigation.

The Executive stated that the original Tribunal of 15 August 2016, when considering the consent to charge breach, had stated that it was concerned about the following:

- the Level 2 provider had not put in place the system for robust independent verification of consent to charge until 11 July 2016, despite having had a contract in place with the Third-Party Verifier since 2014;
- the Level 2 provider did not appear to be taking pro-active steps to ensure that it did not charge consumers including existing subscribers, unless it held robustly verifiable evidence of their consent (instead waiting for consumers to text "STOP" and claim a refund);
- the period of time taken to remedy this issue from when the Level 2 provider was first on notice of it, showed a disregard for the interests of consumers.

The Executive submitted that, the Level 2 provider had failed to ensure that it held robust verification of each consumer's consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service. The Executive relied upon the Level 2 provider's failure to provide the Executive with evidence to demonstrate its compliance with the sanction and the fact that the Executive had continued to receive complaints from consumers who alleged that they had been charged for the service without their consent.

Consequently, for the reasons set out above, the Executive asserted that Level 2 provider has failed to comply with the Remedy the Breach sanction imposed by the Tribunal. Accordingly, the Executive asserted that a breach of paragraph 4.8.6(b) of the Code had occurred.

2. The Level 2 provider admitted the breach in part. It stated that it had worked relentlessly in the months following the initial breach to comply with all of the sanctions. It submitted

that there had been a degree of human error and a lack of understanding regarding the exact sanction in terms of ensuring it had the correct level of verification in place before making any further charges. It had worked hard at implementing GVI into all of its services and had confirmed this to the Executive when requested to do so at the time its understanding was that this was sufficient.

The Level 2 provider further stated that it had worked hard and provided details of all the refunds that had been issued as part of completing the sanctions. When it had requested compliance help from the Executive, it felt that this request had been largely ignored and it was simply sent an email address to send information to. The Level 2 provider supplied and relied upon a copy of an email sent to John Hodge dated 5th January 2017.

The Level 2 provider stated that, on the whole, there were many confusions surrounding the case. It had been approached by the Contact Assessment Team on Friday 9th December 2016 and asked to provide logs for 20 numbers. This request had been sent to it in a very generic way, whereby the Executive had asked for it to provide logs for the numbers and said "sorry for the inconvenience". The tone of the email strongly suggested that there was nothing serious underlying the information being requested. The Level 2 provider stated that, when it replied to this email and provided the logs, it was subsequently suspended from the market 2 days later.

The Level 2 provider submitted that there was no evidence that this was a new case, and on reviewing the numbers it had only been sent 4 requests for information by the Executive. This led it to believe that there was a lack of openness from the Executive in its intention to breach Treasure Media Limited again. It submitted that the way in which this matter had been conducted set a worrying trend for a government funded authority.

The Level 2 provider admitted that there was an element of human error and confusion regarding the breach of sanction and that through correspondence in September and October 2016 it had become clear that there had been a misunderstanding on its part. It had remedied this by removing a large number of subscription billing messages, as it did not have the level of verification needed. The Level 2 provider stated that this was very evident in the logs that it sent back showing there was only one number that was still being billed in December, the rest having ceased. This showed that it had actively sought to remedy the last remaining breach.

3. The Tribunal considered the Code and all the evidence before it.

Having considered the Executive's evidence, including the recent complaints, the message logs supplied by the Level 2 provider and the information supplied by GVI, the Tribunal found that there was strong evidence to show, on a balance of probabilities, that the Level 2 provider had failed to ensure that it had robust verification of existing subscribers' consent to be charged before making any further charge to the consumer, and had therefore failed to comply with the Remedy the Breach sanction imposed by the Tribunal of 15 August 2016.

The Tribunal considered the representations made by the Level 2 provider and concluded that the representations amounted to a full admission of the breach.

The Tribunal did not accept that there had been any confusion on the part of the Level 2 provider regarding the requirements of the Remedy the Breach sanction. The Tribunal considered that the wording of the sanction was very clear.

Consequently, the Tribunal was satisfied, on the balance of probabilities, for the reasons advanced by the Executive, that the Level 2 provider had failed to comply with the sanction imposed by the Tribunal of 15 August 2016. Accordingly, the Tribunal upheld a breach of paragraph 4.8.6(b) of the Code.

Decision: UPHELD

SANCTIONS

Representations on sanctions made by the Executive

1. The Executive submitted that the following sanctions were appropriate:
 - a formal reprimand;
 - a fine of £250,000;
 - a requirement that the Level 2 provider make refunds, within 28 days, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund, and provide evidence to PSA that such refunds have been made;
 - that the Level 2 provider be prohibited from providing, or having any involvement in, any premium rate service for a period of five years from the date of publication of this decision;based on a preliminary assessment of the breach as “very serious”.
2. The Level 2 provider provided no response to any of the proposed sanctions.

Initial overall assessment

The Tribunal's initial assessment of the breach of the Code was as follows:

Paragraph 4.8.6(b) – Failure to comply with sanctions

The initial assessment of paragraph 4.8.6(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 deliberately failed to comply with a sanction imposed by a previous Tribunal and continued to charge subscribers when it knew it did not have robust verification of consent to charge;
- The nature of the breach was likely to severely damage consumer confidence in premium rate services;
- Consumers had incurred an unnecessary cost and;
- The breach demonstrated fundamental non-compliance with the Code.

Final overall assessment

The Tribunal's final overall assessment for the case was that it was very serious.

The Tribunal did not find any aggravating or mitigating factors.

The Level 2 provider's evidenced revenue in relation to the Service in the period from August 2016 to December 2016 was in the range of Band 3 (£250,000 - £499,999).

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

The Tribunal considered that the Level 2 provider had deliberately failed to comply with a sanction imposed by an earlier Tribunal, resulting in significant further revenue being generated by a non-compliant Service and further harm to consumers. Consequently, the Tribunal considered that it was proportionate and necessary to impose sanctions that would ensure consumers were protected in the future.

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- a formal reprimand;
- a fine of £250,000;
- a requirement that access to the Service be barred for a period of five years from the date of this publication;
- that the Level 2 provider be prohibited from providing, or having any involvement in, any premium rate service for a period of 5 years from the date of this publication; 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 Phone-paid Services Authority that such refunds have been made.

Administrative charge recommendation:

100%

Appendix A



Phone-paid Services Authority

Application for interim measures pursuant to Code of Practice paragraph 4.6

Case ref:	126175
Service:	"Glamourteasers.com" glamour video subscription service
Level 2 provider:	Treasure Media Limited
Level 1 providers:	Veoo Limited; Zamano Solutions Limited
Cost:	£3 per week
Shortcodes:	78123 and 66130

Tribunal number: 201

Adjudication

- The Tribunal has paid full regard to the material supplied by the Executive. In respect of the material submitted by the Executive, the Tribunal noted in particular:
 - a) The requirement to take steps to remedy the breach, including in respect of existing subscribers, was made clear by the previous Tribunal
 - b) The evidence appeared to show that the Level 2 provider had not taken steps to remedy the breach in respect of existing subscribers. It was not clear at this stage whether the apparent non-compliance with the sanction was due to ignorance, or deliberate
 - c) The allegations related to a relatively recent period of time, although effectively this period was said to represent a continuation of the previous misconduct
 - d) The level of revenue generated by the service post-adjudication
 - e) The Tribunal was concerned that the fine imposed by the previous Tribunal may have been treated as a cost of doing business.
- The Tribunal has paid full regard to the representations provided by the Level 2 provider. In respect of the material submitted by the Level 2 provider, the Tribunal noted in particular:
 - a) The Level 2 provider did not appear to be denying that the charging of existing subscriber (without holding evidence of their consent) had taken place, nor offer any proper explanation for why this has taken place
 - b) The Level 2 provider had previously stated that it had put in place GVI (which would evidence consent for new subscribers) and appeared to have considered this was sufficient to comply
 - c) The Level 2 provider evidenced an intention to now take necessary steps to comply with the sanctions.

- d) The Level 2 provider had ceased all UK services as at 21 December 2016; however the Tribunal noted that the Executive had directed suspension of the service for non-compliance with sanctions in any event.
- The Tribunal has paid regard to the Supporting Procedures, including the factors set out at paragraph 80 and paragraph 91.

Having considered the evidence before it, the Tribunal has made the following determinations:

- 3) At first appearance (and subject to evidence, arguments or information being later supplied and/or tested), there does appear to be sufficient evidence that could support a breach of paragraph 4.8.6(b) the Code.
- 4) The Tribunal considers that the Level 2 provider will not be able or willing to pay such refunds, administrative charges and/or financial penalties that may be imposed by a Tribunal in due course. The Tribunal notes in particular:
 - a) the Executive's comments in its Debt Collection Withhold Assessment regarding:
 - i) the Level 2 provider's lack of up-to-date published filed accounts
 - ii) the potential seriousness of the breach, and service revenue
 - iii) that a notice of dissolution had been recently filed at Companies House, (though insofar as this may have resulted from an administrative oversight, no weight was placed on this factor in the circumstances)
 - iv) that the previously imposed fine and administrative charge had been paid in full, but since this had been paid out of a previously imposed withhold no conclusions could be drawn from this either way
 - b) noting the apparent non-compliance with the previously imposed sanctions (save where a withhold compelled them to do so), there is considered to be a risk of non-compliance with any future sanction unless the provider was compelled to so comply.
- 5) The Tribunal is satisfied that the Phone-Paid Services Authority has made reasonable endeavours to notify the relevant party of its initial findings and the proposed interim measures. The Tribunal has paid regard to paras. 86 and 100 of the Supporting Procedures, and notes that the papers were emailed to the Level 2 provider and downloaded on 21 December 2016, and the director was also called on 4 January 2017.
- 6) The Tribunal considers that the measures set out below are appropriate and proportionate to take in the circumstances of this case. The Tribunal noted in particular:
 - a) There is evidence that consumer detriment (being charging of consumers where the Level 2 provider did not hold adequate evidence of their consent) had been ongoing after the adjudication, until suspension of the service
 - b) The Tribunal had not been referred to any previous cases where a Tribunal had adjudicated on a breach of para. 4.8.6(b) for failure to comply with non-financial sanctions
 - c) If the breach was deliberate, then the case may be extremely serious, and it was appropriate for any future Tribunal to be able to apply further financial sanctions without their powers to do so effectively being diluted

- d) The Level 2 provider would be able to re-commence the service to take revenue for the business if it complied with the sanctions.
- 7) Accordingly, the Tribunal hereby directs that:
- a) The Phone-Paid Services Authority is authorised to direct a withhold of up to £260,000.
 - b) The sums directed to be withheld may be allocated and re-allocated between any Network operators or Level 1 providers for the Service as the Executive sees fit from time to time, provided that the total sum withheld by all providers does not exceed the maximum sum authorised in this decision.
 - c) The Executive is given discretion to vary the total directed to be withheld downwards in the event that it is provided with alternative security which is, in its view, sufficient to ensure that such refunds, administrative charges and/or financial penalties as it estimates a CAT may impose in due course are paid.
 - d) Such interim measures are to be revoked upon the case being re-allocated to Track 1 or otherwise discontinued without sanction.

ROBIN CALLENDER SMITH
6 JANUARY 2017