

Tribunal meeting number:	238
Case reference:	160973
Level 2 provider:	Global Awareness Ltd, UK
Type of service:	Adult video subscription
Network operator:	All mobile network operators

This case was brought against the Level 2 provider under Paragraph 4.8.6(b) of the Code of Practice.

Background

The case concerned non-payment of financial sanctions imposed by an earlier Tribunal on 15 February 2017 (case reference 71967). The original case concerned five adult video subscription services (“the Services”) operated by Global Awareness Limited (the “**Level 2 provider**”). The Level 1 providers for the Services were Veoo Ltd (“**Veoo**”), mGage Europe Limited (“**mGage**”) and Zamano Solutions (“**Zamano**”).

The Executive had received 524 complaints concerning the Services between 25 March 2015 and 5 July 2017.

All five services had ceased operation and promotion as of the date of the original Tribunal.

On 27 December 2016, Global Awareness Ltd dissolved. The Executive submitted a petition to restore the company in order to complete the regulatory process. The company was restored on 31 October 2017.

On 15 February 2017, under the 12th, 13th and 14th Code of Practice, the Tribunal upheld breaches of rules 2.3.3 (consent to charge), 4.2.3/4.2.5 (failure to provide information) and 3.1.7 (inadequate technical quality). The overall final assessment of the case was ‘Very Serious’ and the following sanctions were imposed as a result:

- a formal reprimand
- a total fine of £650,000
- a 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 that the Level 2 provider take all reasonable steps to ensure that message failures are rectified promptly
- a bar on access to all number ranges associated with the Services which the Level 2 provider currently operates until it has sought and implemented:
- compliance advice on Consent to Charge
- remedied the breaches as required by the sanctions

- a requirement that the Level 2 provider must refund all complainants who claim a refund, within 28 days, for the full amount spent by them on the Service, save where there is good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made.

The Tribunal also recommended payment of 100% of the administrative charge of £12,570.00.

The Level 2 provider was notified of the Tribunal's decision on 24 January 2018. A withhold of service revenue had been imposed as an interim measure during the investigation of the original case. After the adjudication, the Executive issued a direction to Veoo and Zamano to release the withheld monies. The PSA received £60,898.93 from Veoo and £197,400.00 from Zamano, which covered payment of the administrative charge in full, as well as part of the fine. The total outstanding fine payment was £404,271.07. The Level 2 provider had made no attempts to pay the outstanding fine and therefore the Executive submitted that a breach of 4.8.6 (b) of the Code had occurred.

The Executive argued that there had been a breach of the following provision of the PSA Code of Practice 14th Edition ("**the Code**"):

Rule 4.8.6(b) – Failure to comply with a sanction

Preliminary issue

In response to questioning by the Tribunal, the Executive confirmed that the Warning Notice and also notification of the Tribunal hearing had been sent to the last known email and postal address for the Level 2 provider. The emails had been delivered but postal delivery service UPS had returned the hard copy Warning Notice and notification of the Hearing date as undelivered. The Executive also confirmed that it had called the last known telephone number for the Level 2 provider on two occasions, but the calls did not connect and there was no option to leave a voice message.

The Tribunal was satisfied that both the Warning Notice and notification of the Hearing date had been validly served by the Executive.

Alleged breach 1

Paragraph 4.8.6 (b) of the 14th Edition of the Code of Practice states:

"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 submitted that a breach of 4.8.6(b) had occurred because the Level 2 provider had failed to pay, in full, the financial sanction imposed by the Tribunal of 15 February 2017 ((case reference 71967). In that case, the following breaches were upheld:
 - Rule 2.2.3 – Consent to Charge
 - Paragraph 4.2.3/4.2.5 – Failure to provide information
 - Paragraph 3.1.7 – Inadequate technical quality

The overall assessment of the case was 'very serious' and the following sanctions were imposed:

- a formal reprimand
- a total fine of £650,000
- a 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 that the Level 2 provider take all reasonable steps to ensure that message failures are rectified promptly
- a bar on access to all number ranges associated with the Services which the Level 2 provider currently operates until it has sought and implemented:
 - compliance advise on Consent to Charge
 - remedied the breaches as required by the sanctions
- a requirement that the Level 2 provider must refund all complainants who claim a refund, within 28 days, for the full amount spent by them on the Service, save where there is good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made.

On 24 February 2017 an informal notification of the Tribunal outcome was sent to the Level 2 provider. The Executive received no response to the informal notification.

Shortly after the Tribunal hearing it became apparent that the Level 2 provider had failed to regularly update the Companies House register and as a result was compulsorily struck off from the register and dissolved on 27 December 2016. The Executive began proceedings to resurrect and restore the company in order to complete its regulatory process.

On 31 October 2017, the restoration process was completed.

On 24 January 2018, a formal notification of the Tribunal outcome was sent to the Level 2 provider by email and post, which included a copy of the adjudication report to be published on the PSA's website, a consumer contact details form to be completed by the Level 2 provider and an invoice for the fine and administrative charges with a deadline of 5pm on 2 February 2018 for payment. The Level 2 provider did not respond to the formal notification.

The Executive was informed by UPS recorded delivery, when attempting to deliver the Tribunal outcome by post, that:

"The receiver has moved. We're attempting to obtain a new delivery address for this receiver."

Subsequently, the posted Tribunal outcome was returned as undeliverable.

The Executive noted that these contact details had been used throughout the investigation, and leading up to the Tribunal, to communicate with the Level 2 provider.

During the original investigation, the Tribunal had imposed a withhold of service revenue. Zamano was directed to withhold revenues of up to £197,400.00 and Veoo was directed to withhold revenues of up to £84,600.00.

On 12 January 2018 the Executive directed the Veoo to release the withheld monies as payment towards the outstanding fine and administrative charge. A payment of £60,898.93 was received from Veoo.

On 13 February 2018, the Executive directed Zamano to release the withheld monies. The Executive confirmed receipt of £197,400.00 from Zamano.

As a result, the administrative charge was paid, in full, from the withheld revenue. £404,217.07 of the fine remained outstanding.

On 23 February 2018, a payment reminder was sent to the Level 2 provider with copies of the fine invoice and the total outstanding balance. An extended deadline of a further 2 working days for payment was given. The Level 2 provider did not respond to the Executive. The Executive ensured that read receipt and delivery report requests were sent with the reminder. A delivery receipt was received; however no read receipt was sent back from the Level 2 provider. No further communication had been received from the Level 2 provider and the outstanding fine amount was £404,217.07.

In respect of the remaining sanctions imposed by the original Tribunal, the Executive confirmed it did not hold evidence to indicate that the Level 2 provider had attempted to remedy the breach. However, the last Service transaction had occurred on 22 December 2016 and the Level 2 provider had subsequently dissolved and was no longer operating the business. For these reasons, the Executive's view was that the risk of harm had ceased, and it therefore did not raise a breach of 4.8.6(b) for failure to comply with the remedy the breach sanction.

In respect of the Service Bar sanction, the Executive noted that the Level 2 provider was no longer operating and had therefore made no attempts to seek compliance advice or remedy the breach with the intention to return to the market. The Services would remain barred until such as the sanction was complied with.

In respect of the General Refunds sanction, on the 24 January 2018 the Executive had requested that the Level 2 provider complete and return a refund request form by 26 January 2018, which detailed all the necessary information to be communicated to complainants who wished to claim a refund. The Level 2 provider did not acknowledge or respond to this request from the Executive. As the Level 2 provider had not responded to the Executive's requests following the Tribunal of 15 February 2017, the Executive used contact details previously provided by the Level 2 provider during the investigation. The Executive advised all complainants to contact the Level 2 provider using the previous contact details and should they fail to obtain a refund within 30 days to contact the PSA. After the 30 days had passed the Executive was contacted by 2 complainants, out of the 524, who had been unable to obtain a refund. In light of there being a relatively small proportion of complainants stating that they had not received a refund, the Executive decided not raised a breach of 4.8.6(b) in relation to the general refunds sanction.

The Executive relied upon correspondence sent to the Level 2 provider which included details of the outstanding fine. The Executive submitted Level 2 provider had made no attempt to pay the outstanding fine and had allowed the company to be struck off and dissolved by failing to submit the required company filings to the Companies register.

In light of this, the Executive asserted that the Level 2 provider had intentionally failed to pay the fine, in breach of rule 4.8.6(b). The Executive stated that the Level 2 provider had failed to engage with the Executive throughout and had shown a complete disregard for the findings of the earlier Tribunal.

2. The Level 2 provider did not respond to the Warning Notice.

The Tribunal considered the Code and all the evidence before it. The Tribunal was satisfied that the Level 2 provider had failed to engage with the Executive or to respond to requests for payment of the outstanding fine. Furthermore, the Tribunal considered that the failure to pay the fine was intentional. For the reasons set out by The Executive, the Tribunal was satisfied that the Level 2 provider had failed to comply with a sanction, in breach of paragraph 4.8.6 of the Code.

Decision: Breach upheld

Relevant service revenue

No relevant service revenue had been generated since the date of the earlier Tribunal.

Mitigation and aggravation going to the breach

The Executive stated that there were no aggravating and or mitigating factors going to the breach.

The Tribunal considered that there was one mitigating factor, which was that there had been a one-year delay on the part of the Executive in pursuing payment of the fine. While the Tribunal understood that, due to the Level 2 provider being dissolved, the Executive could not enforce the sanction at an earlier stage, it nevertheless considered this to be a mitigating factor.

Executive's initial assessment of severity

The Executive considers the breach to be '**very serious**' as the breach was committed intentionally and demonstrated a fundamental disregard for the requirements of the Code.

Recommended sanctions - initial assessment

The Executive recommended the following initial sanctions:

- a formal reprimand
- that the Level 2 provider be prohibited from providing or having any involvement in any premium rate services or promotion for a period of five years from the date of the publication of the Tribunal's decision.

The Tribunal agreed with the Executive's recommended initial sanctions. However, the Tribunal considered that it was also appropriate to impose a fine in respect of the additional breach, given the very serious and intentional nature of the breach. The Tribunal reviewed past

practice and precedent cases of the Tribunal on breach of sanction cases, such as what had occurred here. The approach seems to have been of not imposing any financial penalty unless additional revenues had been generated. That approach was to be departed from in future cases as a breach of sanction was a very serious matter and there are a growing number of cases where this is occurring. A fine or additional sanctions were appropriate provided the structures of the sanctions Guidance are followed and the case warrants it. On the facts of this case, an additional fine was warranted and justified as a deterrent sanction and in light of the seriousness of the breach, in particular, of non-compliance by the Level 2 provider.

Overall case and proportionality assessments

The Tribunal considered that the overall severity of this case was Very Serious.

Aggravating factors applying as a whole

The Executive submitted that the following were aggravating factors:

- the Level 2 provider's failure to submit the required company filings, thereby allowing the dissolution of the company while being aware of an ongoing investigation, which demonstrated the Level 2 provider's intention to avoid regulation
- the Level 2 provider's complete failure to respond to all communications from the PSA since 9 December 2016 when the Warning Notice was issued for the earlier case ref 71967.

The Tribunal did not consider the failure by the Level 2 provider to submit company filings to be an aggravating factor. The Tribunal considered that this could have been for reasons unconnected with the Executive's investigation, noting that this was also a Companies House requirement, not a regulatory requirement. The Tribunal considered that there was no evidence to support that this was a deliberate attempt by the Level 2 provider to avoid regulation.

The Tribunal did however consider the Level 2 provider's failure to respond to all PSA communications to be an aggravating factor.

Mitigating factors applying as a whole

The Executive submitted that there were no mitigating factors.

The Tribunal found that the delay on the part of the Executive in enforcing the fine was a mitigating factor.

Proportionality considerations

The Executive stated that the recommended sanctions of a formal reprimand and five-year prohibition on the Level 2 provider were proportionate and justified. The totality of the recommended sanctions would result in the removal of the Level 2 provider from the UK premium rate industry and might impact on the financial health of the provider should it wish to launch a new premium rate service in the UK. However, the Executive was satisfied that the

prohibition was justified when balanced with the need to ensure that the non-compliance with sanctions would not be repeated by the Level 2 provider or others within the industry.

The Tribunal considered that the prohibition was a proportionate sanction and considered that it was also necessary and proportionate to impose a fine. The Tribunal regarded a breach of this nature to be very serious and, regardless of the fact that nil revenue had been generated by the service, the Tribunal considered there to be a clear need to deter providers from failing to pay financial penalties imposed by the Regulator. To this extent, the fact that no further revenue had been generated since the previous Tribunal was irrelevant.

The Tribunal considered that the imposition of a fine of £200,000 was justified, given the complete failure by the Level 2 provider to engage with the Regulator or to make payment of the fine and the very serious and intentional nature of the breach. The Tribunal therefore did not consider that there was a need to make an adjustment to the initial sanctions.

Final Sanctions

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

- a formal reprimand
- a fine of £200,000
- a prohibition on the Level 2 provider from providing or having any involvement in any premium rate services or promotion for a period of five years from the date of the publication of the Tribunal's decision.

Administrative charge recommendation: 100%