

Tribunal meeting number: 238

Case reference: 157189

Level 2 provider: Halak Online Ltd, Israel

Type of service: Helpline contact number

Network operator: Dynamic Mobile Billing Ltd, UK

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 and administrative charges imposed by an earlier Tribunal (case reference: 137924). The case, heard on 7 June 2018, concerned an Information, Connection and Signposting Service operated by Halak Online Ltd (the "Level 2 provider"). The Network operator for the Service was Dynamic Mobile Billing Ltd (the "Network operator").

The Executive had received 3 complaints concerning the Service between 16 September 2017 and 29 November 2017. No additional complaints had been received since the Tribunal of 7 June 2018.

The Service was a 'call connection' service that offered connection to organisations sought by consumers. In addition, the Service offered consumers the option of downloading a recording of their phone call. The Level 2 provider gave the following description of the Service:

Helplinecontactnumber.co.uk allows customers to record their calls with all companies listed on our website through 0871 access numbers.

The Service cost 13p per minute plus any call connection charges. The Level 2 provider stated that from 16 October 2017 the Service began operating on 0870 numbers and the price point changed from 13p to 10p. The Executive contacted the Network Operator to confirm the date on which the price point of the service changed and when the Service began operating on 0870 numbers. The information provided by the Network Operator showed that different PRNs began operation on 0870 on different dates.

The Level 2 provider stated that the 0871 numbers went live on the Level 2 provider website in June 2017.

The Network operator confirmed the Service ceased operation on 5 October 2018, after the Executive directed the Network operator to bar access to the Service as a result of the sanction imposed by the Tribunal of 7 June 2018.

On 7 June 2018, the Tribunal upheld breaches of rules 2.2.7 (pricing information), 3.4.1 (registration), 3.11.3 (breach of special condition ICSS 1), 3.11.3 (breach of special condition ICSS 5), 3.11.3 (breach of special condition ICSS 11), 3.11.3 (breach of special condition ICSS 11). The overall assessment of the case was '**very serious**' and the following sanctions were imposed as a result;

- a formal reprimand
- a requirement that the Level 2 provider remedy the breach by addressing the issues around transparency and pricing, number registration, and the ICSS Special conditions
- a requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority
- a bar on access to the service until compliance advice is sought and implemented to the satisfaction of PSA and the breach has been remedied to the satisfaction of PSA
- 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 PSA that such refunds have been made
- an aggregate fine of £200,000.

The Tribunal also recommended payment of 100% of the administrative charge; £5,728.00. The Level 2 provider was notified of the Tribunal's decision on 20 June 2018.

The Level 2 provider had made no attempts to comply with the financial sanction, nor pay the administrative charges, therefore the Executive submitted that breaches of 4.8.6 (b) and 4.11.2 of the Code had occurred.

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 all 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 the "recipient had refused delivery". On one occasion, the call had been answered by a male who gave his name as "Mike". The Executive left a message for the Directors of the Level 2 provider, asking that they make contact. The Level 2 provider subsequently emailed the Executive.

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 made no attempts to comply with the sanctions imposed by the Tribunal of 7 June 2018.

On 7 June 2017 the following breaches of the Code were upheld against the Service (case reference **137924**):

- Rule 2.2.7 – Pricing information
- Rule 3.4.1 – Registration
- Paragraph 3.11.3 – Special conditions ICSS 1
- Paragraph 3.11.3 – Special conditions ICSS 5
- Paragraph 3.11.3 – Special conditions ICSS 11
- Paragraph 3.11.3 – Special conditions ICSS 13

The overall assessment of the case was ‘**very serious**’ and the following sanctions were imposed:

- a formal reprimand
- a total fine of £200,000
- a requirement that the Level 2 provider remedy the breach by addressing the issues around transparency and pricing, number registration, and the ICSS Special conditions
- a requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority
- a bar on access to the service until compliance advice is sought and implemented to the satisfaction of PSA and the breach has been remedied to the satisfaction of PSA
- 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 PSA that such refunds have been made.

On 20 June 2018, a formal notification of the Tribunal outcome was sent to the Level 2 provider by email and post, which included an invoice of the fine with a deadline for payment of 5pm on 27 June 2018. The Level 2 provider did not respond to the formal notification.

When attempting to deliver the Tribunal outcome by post, the package was returned as “undeliverable” despite the Executive providing the delivery company with the registered address, email and telephone details of the provider. The Executive noted that these contact details had been used throughout the investigation, and leading up to the Tribunal, to successfully communicate with the Level 2 provider.

On 9 and 12 July 2018, further payment reminders were sent to the Level 2 provider, both with a stated deadline of 2 working days. Again, the Level 2 provider did not respond to the Executive. When sending the first payment reminder, the Executive had ensured that read receipts and delivery reports were requested. A delivery receipt was received by the Executive, but no read receipt was received. No further communication was received from the Level 2 provider.

The Executive contacted the Network operator on 11 July 2018 to confirm the contact details for the Level 2 provider and to establish whether there had been any recent communication between the Level 2 provider and the Network operator. The Network operator stated the below, and provided two email addresses for the Level 2 provider;

“I’ve been in touch with Halak quite frequently, and had an email from my contact there earlier today.”

The Executive noted that one of the email addresses supplied by the Network operator had been the same email address that the formal notification and first payment reminder had already been sent to. In the interest of completeness, the Executive issued another payment reminder to the second email address supplied by the Network operator, however, no response was received from the Level 2 provider.

On 5 October 2018, the Network operator confirmed that the Level 2 provider had continued to correspond with the Network, yet the Executive received no further correspondence from the Level 2 provider.

The outstanding amount owing to the PSA for the fine totalled £200,000.00.

In respect of the remedy the breach sanction and the bar on access sanction, imposed by the earlier Tribunal, the Executive confirmed that the Service ceased its promotions in January 2018. Access to the Service was barred following the issuing of a direction by the Executive to the Network operator on 1 October 2018 to bar access.

On the 20 June 2018, following the imposition of the refund sanction by the earlier Tribunal, the Executive requested that the Level 2 provider complete and return a refund request form by 27 June 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 7 June 2018, the Executive contacted the Network operator and requested that it

resolve the outstanding complainant refund claims. On 8 June 2018 the Network operator agreed that it would refund all PSA complainants users who made a valid refund claim. On 9 August 2018 the Executive sent closure emails to all complainants detailing the Network operator's contact details should they wish to obtain a refund. The closure email advised complainants to contact the Executive in the event that they were unable to obtain a refund within 30 days of the email. The Executive had received no further correspondence from the complainants to suggest that they were unable to receive a refund.

Due to the refund payments being made by the Network operator, the Executive did not consider it proportionate to raise a breach of paragraph 4.8.6(b).

In respect of the failure by the Level 2 provider to comply with the fine sanction, the Executive relied upon correspondence with the Network operator in which it had confirmed the Level 2 provider had remained in communication with the Network operator, despite not responding to the Executive and failing to pay the fine.

The Executive stated that the Level 2 provider had intentionally breached rule 4.8.6(b) based on the non-payment of the fine. The Executive further stated that the Level 2 provider had failed to engage with the Executive and had shown a disregard for the decision of the earlier Tribunal.

In response to questioning by the Tribunal, the Executive confirmed that the service had generated some revenue and continued to operate between the earlier Tribunal on 7 June 2018 and the issuing of the direction to bar access to the service by the Executive on 1st October 2018. The Executive stated that the delay in issuing the Direction was due to the fact that there had been an unexpected staff changeover at short notice in respect of the case, leading to a delay.

2. The Level 2 provider did not respond to the Warning Notice. However, it did state, in an email dated 7 January 2018, that the company had ceased operations:

"I am sorry to announce that Halak Online Ltd was closed. So there was no one to respond to your email.

Since you requested the fine, our main customers and suppliers have stopped working with us and the revenue has fallen to a level we could no longer hold in the company, therefore we had to cancel all activities in the UK and / or anywhere else"

3. The Tribunal considered the Code and all the evidence before it. The Tribunal was satisfied that the Level 2 provider had failed pay the fine. Furthermore, the Tribunal considered that the failure to pay the fine was intentional, noting that the Level 2 provider failed to engage with the Executive or to respond to requests for payment of the outstanding fine, yet it had continued to operate as a company during that time.

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

Alleged breach 2

Paragraph 4.11.2 (b) of the 14th Edition of the Code of Practice states:

“Non-payment of the administrative charge within the period specified by the PSA will be considered a breach of the Code and may result in further sanctions and/or legal action.”

1. The Executive stated that on 7 June 2017 the Tribunal upheld breaches of the Code against the Service and considered the case to be ‘very serious’. As well as imposing sanctions, the Tribunal recommended that 100% of the administrative charge be paid by the Level 2 provider.

The Executive notified the Level 2 provider of the administrative charge on 20 June 2018 in a formal notification and sent two further payment reminders on the 9 and 12 July 2018. The Executive stated that the Level 2 provider had made no attempt to respond or to pay the administrative charge.

The Executive relied upon correspondence with the Network operator in which it had confirmed that the Level 2 provider had remained in communication with the Network operator, despite not responding to the Executive and making no attempt to pay the administrative charge.

The Executive asserted that every reasonable attempt to inform the Level 2 provider of the administrative charge had been made. Despite this, the Level 2 provider had intentionally disregarded all correspondence from the Executive. The Executive stated that it considered this conduct to amount to an attempt by the Level 2 provider to avoid compliance with the sanctions and administrative charge.

The full administrative charge of £5,728.00 remained outstanding and therefore a breach of paragraph 4.11.2(b) of the Code had occurred.

2. The Level 2 provider did not respond to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal was satisfied that the Level 2 provider had failed pay the administrative charge. Furthermore, the Tribunal considered that the failure to pay the administrative charge was intentional, noting that the Level 2 provider failed to engage with the Executive or to respond to requests for payment of the charge, while continuing to operate its company.

For the reasons set out by The Executive, the Tribunal was satisfied that the Level 2 provider had failed to pay the administrative charge, in breach of paragraph 4.11.2(b) of the Code.

Decision: Breach upheld

Service revenue

Since the date of last tribunal adjudication, the Service had generated gross revenue of £6,980 with the total Level 2 provider revenue being £4,692.

Mitigation and aggravation going to the apparent breaches

The Executive submitted that there were no aggravating or mitigating factors going to the breaches, with which the Tribunal agreed.

Executive's initial assessment of severity

The Executive considered the breach of paragraph 4.8.6 (b), failure to comply with a sanction, to be '**very serious**' as the breach was committed intentionally and demonstrated a fundamental disregard for the Code.

The Executive considered the breach of paragraph 4.11.2, non-payment of administrative charge, to be '**very serious**' as the breach was committed intentionally and demonstrated a fundamental disregard for the Code.

The Tribunal agreed that the breach of paragraph 4.8.6 (b) was **very serious**, for the reasons advanced by the Executive.

The Tribunal considered the breach of 4.11.2 to be **moderate**, rather than **very serious**. The Tribunal was satisfied that the breach was intentional, was capable of impacting on consumer confidence in the premium rate industry and also demonstrated a disregard for the finding of the earlier Tribunal. Notwithstanding this, the administrative nature of the charge and the amount owing, namely £5,728.00, warranted a **moderate** seriousness rating in the view of the Tribunal.

Recommended sanctions - initial assessment

The Executive recommended the following initial sanctions:

- a formal reprimand

- that the Level 2 provider be prohibited from having any involvement in any current or future PRS operated on a number or number range within the PSA's regulatory remit for a period of 5 years or until all sanctions imposed by the Tribunal of 7 June 2018 have been complied with, whichever is the later.

The Tribunal was in agreement with the Executive's recommended initial sanctions, but the view of the Tribunal was that the breaches were sufficiently serious that a fine of £250,000 was also justified, particularly given the fundamental disregard shown by the Level 2 provider for the sanctions imposed by the earlier Tribunal.

Aggravating factors applying as a whole

The Executive submitted that when the Level 2 provider was initially made aware of the special conditions by the Network operator on 20 October 2015, it chose to operate ICSS Services on the 0844 number range, it was submitted, in order to avoid PSA regulatory requirements. Later, on 9 January 2017 the Level 2 provider requested 0870 and 0871 numbers, but made no attempt to comply with the Code. The Executive stated that this demonstrated the provider's intention to disregard the Code and seek to avoid regulation.

In addition, The Level 2 provider had continued to trade, yet had made no attempt to pay the outstanding fine or administrative charge.

The Tribunal did not consider that it was aggravating that the Level 2 provider had chosen to operate a service using the 0844 number range, noting that ICSS services on this number range had only very recently been brought within the regulatory remit of the PSA.

However, the Tribunal agreed with The Executive that it was an aggravating factor that the Level 2 provider had continued to operate, knowing that there was an outstanding fine and administrative charge.

Mitigating factors applying as a whole

The Executive submitted that there were no mitigating factors present and the Tribunal agreed with his assessment.

Proportionality considerations

The Executive stated that the recommended sanctions would result in the removal of the Level 2 provider from the UK premium rate industry. It recognised that this would prevent the Level 2 provider operating existing premium rate services and may impact upon the financial health of the business. Nonetheless, the Executive was satisfied that the prohibition was justified when balanced against the need to deter the Level 2 provider and others in the industry from failing to comply with sanctions imposed by the Tribunal.

The Tribunal agreed with the proportionality of the assessment, but considered that, in addition to the Executive's recommended sanctions, a fine of £250,000 should also be imposed. The Tribunal reviewed past practice and precedent cases of the Tribunal on breach of sanctions cases, such as had occurred here. The approach seems to have been to not impose 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 strictures of the Sanctions Guidance are followed and the case warrants it. Here the Tribunal regarded the conduct of the provider as very serious and considered that it was necessary to mark the non-compliance with a fine in order to both sufficiently punish the Level 2 provider for its conduct and to achieve credible deterrence in respect of both the Level 2 provider and the broader industry. The Tribunal noted that a failure by providers to comply with the sanctions imposed by the Tribunal had the potential to undermine the regulation of premium rate services as a whole.

Balancing the need to deter such conduct and the potential impact of the sanctions on the Level 2 provider, the Tribunal considered that a fine of £250,000 comprised of £200,000 for the failure to pay the fine and £50,000 for the failure to pay the administrative fee was necessary and justified.

Final Sanctions

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

- formal reprimand
- fine of £250,000, comprised of £200,000 for the breach of paragraph 4.8.6 (b) of the Code and £50,000 for the breach of paragraph 4.11.2 (b) of the Code
- that the Level 2 provider be prohibited from having any involvement in any current or future PRS operated on a number or number range within the PSA's regulatory remit for a period of 5 years or until all sanctions imposed by the Tribunal of 7 June 2018 have been complied with, whichever is the later.

Administrative charge recommendation: 100%