Tribunal meeting number: 249
Case reference: 162296
Level 2 provider: Heart Communications Limited (London, UK)
Type of service: Information Service on working from home as a virtual assistant
Level 1 provider: Numbers Plus Limited (Bristol, UK)
Network operator: N/A

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

Background

The case concerned non-payment of financial sanctions and administrative charges imposed by an earlier Tribunal (case reference: 133839). The case, heard on 10 October 2018, concerned an Information Service operated by Heart Communications Limited (the "**Level 2 provider**"). The Level 1 provider for the Service was Numbers Plus Limited (the "**Level 1 provider**").

The Executive had received 9 complaints concerning the Service since 11 April 2017. No additional complaints had been received since the Tribunal of 10 October 2018.

The Level 2 provider stated the Service provided information on working from home as a virtual assistant charged at £2.50 per minute plus phone company access charge.

The Service was promoted on www.ukassignments.co.uk and www.paidpeople.co.uk operating on premium rate number 09131240150 costing £2.50 per minute plus phone company access charge. Users of the Service were required to call a premium rate number in order to obtain an activation code which gave them access to a member's area of the website with information and advice relating to the Virtual Assistant industry. This included but was not limited to filing envelopes, mystery shopping and website testing.

On 10 October 2018, the Tribunal upheld breaches of rules 2.2.7 (pricing information), 2.3.2 (misleading), 2.3.4 (undue delay), and 2.6.1 (complaint handling). The overall assessment of the case was '**very serious**' and the following sanctions were imposed as a result:

- a fine of £165,000
- a requirement that the provider remedy the breaches
- a formal reprimand
- 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 the PSA that such refunds have been made
- access to the Service be barred until the Level 2 provider has sought and implemented compliance advice on the Service and its promotions to the satisfaction of the PSA, and remedied the breaches to the satisfaction of the PSA
- a requirement of a compliance audit of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the provider with rules governing pricing transparency, misleading promotions, undue delay in service delivery and complaints handling.

The Tribunal also recommended payment of 100% of the administrative charge: £8,825.11. The Level 2 provider was notified of the Tribunal's decision on 24 October 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 had been sent to all known email and postal addresses for the Level 2 provider. The Executive further advised that a reminder had been sent by email which reiterated the fact that if the Level 2 provider did not respond to the Warning Notice, the Executive would proceed on the assumption that the Level 2 provider did not wish to respond to it. The Executive's emails to the primary email address for the Level 2 provider had been delivered. The Executive's email to the alternative email address had not been delivered and postal delivery service UPS had returned the hard copy of the Warning Notice. The Executive clarified that the last correspondence it had received from the Level 2 provider was on 08 January 2019. The Executive further submitted that it had attempted to contact the Level 2 provider by telephone on 09 July 2019 and had left a voice message on one number and found that a second number was not in service.

The Tribunal was satisfied on the balance of probabilities that the Warning Notice 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 10 October 2018.

On 10 October 2018, the following breaches of the Code were upheld against the Service (case reference: 133839):

- Rule 2.2.7 – Pricing information
- Rule 2.3.2 – Misleading
- Rule 2.3.4 – Undue delay
- Rule 2.6.1 – Complaint handling

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

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- a requirement that the provider remedy the breaches
- a formal reprimand
- 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 a good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made
- access to the Service be barred until the Level 2 provider has sought and implemented compliance advice on the Service and its promotions to the satisfaction of the PSA
- a requirement of a compliance audit of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the provider with rules governing pricing transparency, misleading promotions, undue delay in service delivery and complaints handling.

On 24 October 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 02 November 2018.

In response to the formal notification of the Tribunal outcome sent on 24 October 2018, the Level 2 provider stated in an email dated 29 October 2018:

"We are writing to request a review of the "Tribunal" decision by a differently constituted Tribunal. We request that the Tribunal is an independent Tribunal and not merely an in-house meeting which is obviously not impartial. A Tribunal should represent openness, fairness and impartiality which yours clearly do not.

Our principal reason for this is because it is evident that the so-called "Tribunal" came to a decision that no reasonable or legitimate Tribunal could have reached. However, all four grounds for review in the Code of Practice apply.

We shall await the outcome of the next Tribunal before deciding whether it is necessary to escalate our case against PSA…… to the High Court.

For avoidance of doubt, any invoices received from PSA at this stage will be disputed".

On 30 October 2018, the Executive advised the Level 2 provider they needed to complete the review application form previously provided and pay the fee.

On 30 October 2018, the Level 2 provider advised it did not support the 'Thru' file sharing service the Executive had used to send email attachments securely and that it did not accept the fee and wished for it to be waived.

On 31 October 2018, the Executive advised the Level 2 provider that it would resend the documents previously sent by hardcopy in the post again with an extended deadline of 08 November 2018.

On 09 November 2018, a payment reminder was sent to the Level 2 provider. The Level 2 provider responded:

"As previously advised, your invoice is in dispute and we do not accept any liability whatsoever.

Furthermore, we are currently appealing the outcome of the 'tribunal'.

To conclude, no payments will made made at this stage.

We trust you understand our position on the matter." [SIC]

The Executive replied on the same day, 09 November 2018, and advised that the deadline of 08 November 2018 had passed, it had not received an application of review and that the fine and administrative charges remained outstanding.

On 21 December 2018, the Executive sent a further review application form to the Level 2 provider and requested that the form be completed and returned by 04 January 2019 should the Level 2 provider still wish to appeal the Tribunal's decision. The Level 2 provider did not respond and did not complete the review application form.

On 08 January 2019, the Executive advised the Level 2 provider that a breach of sanctions case had been raised against it.

On 08 January 2019, the Level 2 provider stated in an email that:

"*The sanctions imposed by the "Tribunal" are in dispute and an appeal has been requested.*"

On 14 January 2019, notwithstanding that the appropriate procedure had not been complied with for the purpose of seeking a review, the Executive informed the Level 2 provider that it would put the matter before the Chair of the Code Adjudication Panel in

accordance with 4.10.4 (a) in order for the Chair to decide whether there were reasonable grounds to conclude that a review was merited.

On 25 January 2019, the Executive provided the Chair of the Code Adjudication's decision to the Level 2 provider which concluded that there were no reasonable grounds to conclude that a review of the Tribunal's decision was merited.

On 24 June 2019, the Executive sent its case report and Warning Notice to the Level 2 provider but received no further correspondence from the Level 2 provider.

On 09 July 2019, the Executive sent a reminder to the Level 2 provider by email and attempted to telephone the Level 2 provider, but its telephone attempts were unsuccessful.

2. The Level 2 provider did not make representations or respond to the Warning Notice of 24 June 2019.

3. The Tribunal considered the Code and all the evidence before it, in particular the correspondence exchanged between the Executive and the Level 2 provider post the adjudication of 10 October 2018.

The Tribunal was satisfied that the Level 2 provider had not made any attempt to pay the fine, noting that the Level 2 provider had stated in its correspondence to the Executive that it disputed the Tribunal's decision and would not make any payments at that stage. The Tribunal considered that a reasonable amount of time had passed since the Chair of the Code Adjudication Panel reviewed the Tribunal's decision of 10 October 2018 and the Chair's decision was conveyed to the Level 2 provider.

The Tribunal was satisfied on a balance of probabilities that the Level 2 provider had not complied with the fine sanction within a reasonable time period. Accordingly, the Tribunal upheld a breach of paragraph 4.8.6(b) of the Code.

Decision: UPHELD

Alleged breach 2

Paragraph 4.11.2 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 the Level 2 provider had acted in breach of paragraph 4.11.2 of the Code as the full administrative charge of £8,825.11 remained outstanding.

As stated above, the Executive stated that it had sent a formal notification of the Tribunal outcome to the Level 2 provider on 24 October 2018. This included a separate invoice in respect of the administrative charge of £8,825.11.

On 09 November 2018, a payment reminder was sent to the Level 2 provider.

On 24 June 2019, the Executive sent its case report and Warning Notice to the Level 2 provider.

2. The Level 2 provider did not make representations or respond to the Warning Notice of 24 June 2019.

3. Having considered the Code and the evidence before it, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had not paid the administrative charge within the specified period of time. Accordingly, the Tribunal upheld a breach of paragraph 4.11.2 of the Code.

Decision: UPHELD

Breach severity – initial assessment

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 was satisfied that the breach was intentional and demonstrated a disregard for the finding of the earlier Tribunal.

The Tribunal further considered that the breach of 4.11.2 was '**very serious'**, for the reasons advanced by the Executive. The Tribunal considered that the breach was deliberate and noted that the Level 2 provider had not demonstrated any intention to pay the charges. The Tribunal concluded that the Level 2 provider had demonstrated a disregard for the finding of the earlier Tribunal as well as a fundamental disregard for the requirements of the Code of Practice.

The Tribunal considered that the overall severity of this case was '**very serious'**.

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 5 years or until all sanctions imposed by the Tribunal of 10 October 2018 have been complied with, whichever is the later.

The Level 2 provider did not make representations on the recommended sanctions, as it did not make representations or respond to the Warning Notice dated 24 June 2019.

The Tribunal was in agreement with the Executive's recommended initial sanctions, save that the Tribunal considered that the prohibition should not expire until all sanctions had been complied with and both administrative charges had been paid in full.

The Tribunal considered whether other sanctions would be appropriate in the circumstances, in particular whether to impose a fine in respect of the additional breach, given the very serious and intentional nature of the breach. After careful consideration, the Tribunal decided that imposing a further financial penalty would not be warranted in this case. Additional revenue had not been generated, following the findings of breaches by the earlier Tribunal which had imposed a sanction to bar access to the Service. The Tribunal considered that credible deterrence in this case would be achieved by prohibiting the Level 2 provider from re-entering the premium rate service market. This would restrict the business operations of the Level 2 provider ensuring that future non-compliant activity is deterred thus protecting consumers from future harm.

Mitigating factors applying as a whole

The Executive submitted that there were no mitigating factors.

The Tribunal did not find any mitigating factors.

Aggravating factors applying as a whole

The Executive submitted that there were no aggravating factors.

The Tribunal noted that the Executive had stated in its Warning Notice that the breaches had not continued after the provider became aware of them. The Tribunal did not agree with the Executive's submission and instead found that the breaches (non-payment of the fine and non-payment of the administrative charge) did continue after the provider had become aware of them. The Tribunal considered that the Level 2 provider's failure to fully engage with the Executive and respond to its Warning Notice of 24 June 2019 was an aggravating 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. It was satisfied that there was a clear need to deter the Level 2 provider and the wider industry from the commission of similar breaches. The Tribunal regarded the breaches to be '**very serious'** and noted that compliance with sanctions was essential to the effectiveness of the regulator and the broader protection of consumers. 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:

- formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, or until all sanctions imposed by the Tribunal of 10 October 2018 have been complied with and both administrative charges have been paid in full, whichever is the later.

Administrative charge recommendation: 100%