Tribunal meeting number: 243

Case reference: 160966

Level 2 provider: Pro Money Holdings Ltd. (UK)

Type of service: Competition Service

Level 1 provider: Veoo Ltd. (UK)

Network operator: All Mobile Network operators

This case was brought against the Level 2 provider under Paragraph 4.8.6 (b) and Paragraph 4.11.2 (b) of the 14th Edition of the Code of Practice.

Background and Investigation

This case concerns the non-payment of financial sanctions and administrative charges imposed by an earlier Tribunal on 20 March 2018 (case reference: 133553). The case concerned the Comphouse Competition service ("**the Service")** operated by Pro Money Holdings Ltd (the "**Level 2 provider**"). The Level 1 provider for the Service was Veoo Ltd (the "**Level 1 provider**").

The Executive had received 46 complaints concerning the Service between 19 April 2017 and 16 August 2017. However, since the Tribunal adjudication of 20 March 2018, no further complaints from consumers had been received.

The Service was charged at £4.50 per month and commenced operation on 20 March 2017. The Level 2 provider described the Service as a call centre running live consumer surveys. It stated that at the end of each survey, the consumer would be diverted to an Interactive Voice Response system ("IVR") by which the Service would be explained. The consumer was then said to have had the option to subscribe to the Service by pressing a key on their mobile phone, following which, they would be sent a free message confirming their subscription. A billed message would then be sent to the consumer. The consumers would thereafter receive a billed message every 10 days and a monthly "spend reminder". The Level 2 provider asserted that consumers were able to unsubscribe from the Service by replying "stop" to any of the information messages. The consumer would only be unsubscribed once they had received a free message stating that "all services on shortcode are now stopped".

The IVR, (which the Level 2 provider stated followed the survey) was 36 seconds long and said:

> *"Thank you for entering our weekly competition, you are joining a subscription service costing £4.50 per month until you send STOP to 82225. In order to choose the prize you could have a chance to win please click 2, to join a subscription Service and you'll be able to choose between the latest iPhone or £250 of Marks and Spencer's vouchers. All winners are picked randomly, and winners will be notified once the draw has taken place."*

The Service ceased operation on 29 June 2017.

On 20 March 2018, the Tribunal dealt with the case by way of an adjudication by consent and a Consent Order was approved by the Tribunal. The Level 2 provider accepted that the following breaches of the Code had occurred:

- 2.3.3 (consent to charge)
- 2.4.2 (consent to market)
- 4.2.3 (failure to disclose information)
- 2.6.1 (inadequate complaint handling)
- 2.6.4 (inadequate consumer refund process) and
- 4.2.2 (provision of false and/or misleading information).

The overall assessment of the case was agreed to be '**very serious**' and the Level 2 provider agreed to the imposition of the following sanctions;

- a formal reprimand
- that the Level 2 provider is prohibited from providing, or having involvement in, any premium rate service for a period of five years
- that the Level 2 provider pays refunds, for the full amount spent, to all consumers who have used the service, regardless of whether they have claimed a refund
- a fine of £50,000.

The Level 2 provider agreed to pay 100% of the administrative charges incurred in the sum of £9,858.25 within 28 days of the Consent Order. The Level 2 provider was formally notified of the adjudication by consent on 20 March 2018.

The Executive stated that the Level 2 provider had made no attempt to comply with the refunds sanction and had made no attempt to pay either the fine or the administrative charges. Therefore, the Executive believed that breaches of paragraph 4.8.6 (b) and paragraph 4.11.2 of the Code had occurred.

Submissions and conclusions

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 argued that a breach of 4.8.6(b) had occurred because the Level 2 provider had made no attempt to comply with the agreed sanctions, as approved by the Tribunal of 20 March 2018.

Within the Consent Order, the Level 2 provider had accepted the following breaches of the Code:

- Rule 2.3.3 – consent to charge
- Rule 2.4.2 – consent to market
- Paragraph 4.2.3 - failure to disclose
- Rules 2.6.1 - inadequate complaint handling
- Rules 2.6.4 - inadequate consumer refund process
- Paragraph 4.2.2 - provision false and/or misleading information.

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

- a formal reprimand
- a prohibition on Pro Money Holdings Ltd from involvement in premium rate services for a period of 5 years
- that Pro Money Holdings Ltd pays refunds, for the full amount spent, to all consumers who have used the service, regardless of whether they have claimed a refund
- a fine of £50,000.00.

On 20 March 2018, a formal notification of the adjudication by consent was sent to the Level 2 provider by email and post. This included an invoice for the fine and administrative charge with a deadline for payment of 7 working days and a form requesting contact details for consumer refunds with a deadline of 2 working days. The Level 2 provider confirmed receipt of the formal notification on the same day. The Executive also received successful delivery reports and notifications to confirm the Level 2 provider had received the email and downloaded all the attachments.

On 22 March 2018, the Level 2 provider completed and returned the contact details form to the Executive. The Level 2 provider sent a photograph of the completed form which listed the Level 1 provider as the point of contact for customers seeking refunds.

On 26 March 2018, the Level 2 provider emailed the Executive regarding the fine, stating the following;

"*I have been told to contact you by Miss* [redacted] *regarding the fine for the above company.*

As discussed with Miss [redacted]*, the only thing the company did in the last two years was to run this service and has made heavy losses, plus now a fine.*

The company will never trade again and has no ability to pay such a fine. " [sic]

As no payment had been received, a reminder for the payment of the outstanding fine and administrative charge was issued to the Level 2 provider on 4 April 2018 with a deadline of 2 working days. The Level 2 provider responded to the payment reminder reiterating that it had no funds and that it was not trading:

"I have also written stating that the company has no funds, isn't trading and is not going to trade again.

We still believe that our actions were correct in this matter, but as funds were stopped from us receiving, we simply ran out of money.

I am not really sure what we can do about this."

Upon receiving the contact details form, the Executive contacted the Level 1 provider to confirm that it had agreed to handle refunds on behalf of the Level 2 provider. The Level 1 provider stated it was unaware of any arrangement with the Level 2 provider to administer the refunds. The Executive informed the Level 2 provider that the Level 1 provider had not agreed to administer the refunds on its behalf. The Executive asked the Level 2 provider to supply details as to how it intended to comply with the refund sanction.

The Level 2 provider responded as follows:

"I met with Veoo, who confirmed they would be speaking to yourselves to see the best way to refund, anyone who hasn't been already.

However in order for us to do this, Veoo would have to send us the withheld payments, we would then contact all the relevant people who have not been refunded and issue the refund via PayPal or postal order depending on which they prefer to receive."

The Executive responded to the Level 2 provider, reminding it of the contents of paragraph 4.9.1(a) of the Code of Practice, which states:

"Where a Tribunal has directed a relevant party to pay refunds to consumers, either under paragraph 4.8.3(i) or 4.8.3(j) and the relevant party can satisfy the PSA that it cannot do so without recourse to money which has been retained by a Network Operator or Level 1 provider in response to a PSA direction ('a retention'), then it may pass a list of consumers to whom refunds are due to the party which holds a retention, which will then make the payments due from the retention."

The Executive suggested that the Level 2 provider reach an agreement in principle with the Level 1 provider to administer refunds from the withheld funds. The Level 2 provider continued to exchange correspondence with the Executive regarding the agreement in principle until 10 May 2018.

On 26 June 2018, the Executive received confirmation from the Level 1 provider that an agreement had been made. With confirmation of an agreement in principle, the Executive issued a direction to the Level 1 provider to administer refunds from the withheld revenue. The Level 1 provider confirmed the total amount withheld was £39,515.05. The Executive noted that the total consumer spend for the service was £129,465.00, leaving a shortfall of £89,949.95 in respect of refunds owed to consumers.

On 9 July 2018, a further payment reminder for the fine and administrative charge was sent to the Level 2 provider with a deadline of 2 working days. A delivery receipt was received by the Executive, however the Level 2 provider failed to respond.

The Executive sent a second email to the registered email address of the Level 2 provider regarding the shortfall in available funds for refunds, however the delivery report declared that delivery to the Level 2 provider was unsuccessful.

On 9 October 2018, a final payment reminder was sent to the Level 2 provider with a deadline of 2 working days. A delivery receipt was received by the Executive, however

no further communication regarding the outstanding fine was received from the Level 2 provider.

The Executive noted that all email correspondences with the Level 2 provider had been successfully delivered, with the exception of one email on 9 July 2018, which had not been successfully delivered.

The Executive stated that, since 10 May 2018, it had received no further communication from the Level 2 provider and the outstanding amount owing to the PSA for the fine totalled £50,000.00.

In respect of the refunds sanction, the Executive stated that, as a result of the agreement in principle between the Level 2 provider and the Level 1 provider that refunds could be carried out by the Level 1 provider, the Executive had directed the Level 1 provider to begin issuing refunds to consumers. These refunds were to be paid using the withheld revenues.

The Executive noted that there was a shortfall in the withheld funds which would mean that not all consumers could be refunded in respect of the full amount spent by them on the service. The Executive noted that the formal notification sent to the Level 2 provider in respect of the sanctions imposed by consent, made clear the requirements of the refunds sanction and the consequences of a further breach being raised should the sanction not be complied with. The Executive stated that the compliance with this sanction was the responsibility of the Level 2 provider and that it was for the Level 2 provider to ensure that the refunds were paid in full.

The Executive stated that the process of issuing refunds was still ongoing by the Level 1 provider; but that the withheld funds would not be sufficient to provide all who used the Service receive a full refund. In light of this, the Executive submitted that the Level 2 provider was in breach of paragraph 4.8.6 (b) of the Code in relation to the universal refunds sanction, as it had failed to actively comply with the sanction.

The Executive further stated that the Level 2 provider had agreed to the imposition of sanctions (by way of the Consent Order) that it had no intention of complying with. The Level 2 provider had agreed to the imposition of sanctions, yet within six days of the adjudication, it had stated that it was unable to pay the fine as it had ceased trading, and it had directed that refund requests be sent to the Level 1 provider.

It was the Executive's view that the Level 2 provider would have been aware of its financial status at all times and, as such, the Executive considered that the Level 2 provider had agreed to sanctions that it knew it could not meet. The Executive submitted that this demonstrated that the Level 2 provider had shown a complete disregard for the earlier adjudication.

2. The Level 2 provider did not make representations. However, the Level 2 provider had informed the Executive in a call on 14 February 2019, that it had ceased operations.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal was satisfied that the Level 2 provider had failed to comply with the sanctions imposed, noting that there was no evidence to suggest that the Level 2 provider had made any attempts to comply. The Tribunal noted that, following the imposition of the sanctions

the only telephone conversation between the Executive and the Level 2 provider, demonstrated that the Level 2 provider was not motivated to comply with the sanctions.

The Tribunal was satisfied that the Level 2 provider had agreed to the imposition of the sanctions by way of the Consent Order, in the knowledge that it was not going to comply with the sanctions imposed.

For the reasons set out by The Executive, the Tribunal was satisfied that the Level 2 provider had failed to comply with the sanctions imposed, in breach of paragraph 4.8.6 of the Code.

Decision: 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 the Level 2 provider had agreed to pay 100% of the administrative charges in respect of the earlier case. The Executive formally notified the Level 2 provider of the administrative charge on 20 March 2018 and sent three further payment reminders on 4 April, 9 July and 9 October 2018. The Executive stated that the Level 2 provider had made no attempt to pay the administrative charges.

The Executive relied upon correspondence from the Level 2 provider stating the company had no funds and had ceased trading, after the Level 2 provider stopped corresponding with the Executive.

The Executive stated that every reasonable attempt to inform the Level 2 provider of the administrative charge had been made. Despite this, the Level 2 provider had not made payment and the full administrative charge of £9,858.25 remained outstanding.

2. The Level 2 provider did not make representations. However, the Level 2 provider had informed the Executive in a call on 14 February 2019, that it had ceased operations.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal was satisfied that the Level 2 provider had not paid the administrative charge within the time specified by the PSA. For the reasons set out by The Executive, the Tribunal was satisfied that the Level 2 provider had failed to comply to pay the administrative charge, in breach of paragraph 4.11.2 (b) of the Code.

Decision: **UPHELD**

Sanctions

Initial assessment of sanctions

The Tribunal's initial assessment was that the breaches of paragraphs 4.8.6(b) and 4.11.2 of the Code were both **very serious**. In making this assessment, the Tribunal found the following:

- intentional non-compliance with the sanctions imposed by the earlier Tribunal represented a fundamental non-compliance with the Code and undermined the PSA's regulation.

The Executive submitted that the following sanctions were appropriate:

- a formal reprimand
- a prohibition on the Level 2 provider for a period of 8 years, starting from the date of publication of the Tribunal decision or until payment of the outstanding fine and administrative charges, whichever is the later.

The Tribunal agreed with the Executive's initial assessment of sanctions

Overall case and proportionality assessments

1. The Executive submitted that there were no mitigating factors. The Executive noted that, although some refunds had been provided to consumers, these were issued by the Network and Level 1 providers from withheld revenues, without the involvement of the Level 2 provider.

   The Executive submitted that it was an aggravating factor that the Level 2 provider had not acknowledged or responded to the payment reminders and that, barring one email from the Level 2 provider's instructed solicitor querying the date for payment of the fine, no other contact in respect of the sanctions had been received. The Executive further submitted that there was a need to deter the Level 2 provider and the wider industry from failing to comply with sanctions imposed by the PSA Tribunal.

2. The Level 2 provider did not make representations.

3. The Tribunal found that there were no mitigating factors. The Tribunal considered it to be an aggravating factor that the Level 2 provider had agreed to a consent order and the imposition of sanctions when it knew that it would not comply.

   The Tribunal was of the view that the Level 2 provider had demonstrated a fundamental disregard for the regulatory process of the PSA. The Tribunal was satisfied to the requisite standard that there was a need in this case for deterrence, both to the Level 2 provider and the wider industry.

Sanctions adjustment

1. The Executive recommended that the initial sanctions recommendation was not adjusted as it was at the appropriate level to achieve the sanctioning objective of credible deterrence. The Executive noted that the lengthy prohibition it had recommended would result in an extension of the time period the Level 2 provider would be prohibited from operating in the premium rate industry but argued that this was justified when balancing against the sanctioning objectives.

2. The Level 2 provider did not make any submissions on this issue.

3. The Tribunal balanced this against the need for the sanctioning objective of credible deterrence. The Tribunal was satisfied that it was entirely appropriate to increase the prohibition imposed on the Level 2 provider in respect of the original case, from one of 5 years duration to one of 8 years duration. The Tribunal considered this to a proportionate measure in light of the intentional non-compliance with previously imposed sanctions. The Tribunal considered the likely impact of the 8-year prohibition on the Level 2 provider, noting that the impact would be likely to be minimal given that it had already ceased trading. The Tribunal therefore did not consider it necessary to adjust its initial sanctions.

Final overall assessment

Sanctions imposed

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

- a formal reprimand
- a prohibition on the Level 2 provider from providing or having any involvement in any premium rate service for a period of 8 years from the date of the Tribunal decision or until payment of the fine and administrative charges, whichever is the later.

Administrative charge recommendation: 100%