

Tribunal meeting number 300

Case reference: 195092
Case: Prohibition of an associated individual

This case was brought against the associated individual under paragraph 5.8.12 of the 15th edition of the Code of Practice (“the Code”).

Background

1. The Tribunal has been asked to consider imposing a prohibition against Mr Ian Conway pursuant to paragraph 5.8.5(g) of the Code.
2. The case related to a previous adjudication against Numbers Plus Ltd (“the Network operator”) (case reference 179345). The previous adjudication concerned the adequacy of the risk assessment and risk control (DDRAC) measures put in place by the Network operator between April 2015 and 18 February 2022. The case was adjudicated on 7 October 2022. The Tribunal that adjudicated the case on 7 October 2022 indicated that they were minded to prohibit Mr Ian Conway, the primary contact on the PSA’s Registration Scheme and director of the Network operator.
3. The case included over 30 sample providers and it was found that the breaches were systemic across the Network operator’s platform. On 7 October 2022, the Network operator admitted that the following breaches had occurred:
 - Code 13 and Code 14 – 3.1.3 Risk Assessment
 - Code 13 and Code 14 – 3.1.3 Risk Control
4. The Tribunal considered the case to be very serious overall and imposed the following sanctions:
 - a formal reprimand
 - a requirement that the Network operator remedy the breach by ensuring that its DDRAC processes and procedures are in line with the requirements of Code 15, in particular, conducting regular monitoring and ensuring that incidents are responded to
 - a requirement that the Network operator submits some or all categories of its services and/or promotional material to the PSA, or a third party, for compliance advice and for prior permission from the PSA for a period of three and a half years. Any compliance advice given by the PSA must be implemented within a specified period to the satisfaction of the PSA.

- a requirement that the Network operator is prohibited from providing or having any involvement in any premium rate service (“PRS”) or promotion for three years and until the PSA is satisfied that the breaches have been remedied and the compliance advice is fully implemented. The prohibition sanction is suspended for three months in accordance with paragraph 496 of the Supporting Procedures for existing clients only.
 - a requirement that the Network operator is prohibited from contracting with any specified person registered (or who should be registered) in the PSA Register at all, for a period of three years
 - a fine of £400,000.
5. The Tribunal also proposed payment of 100% of the administrative costs by the Network operator.
6. Additionally, the Tribunal proposed the prohibition of Mr Conway. The Tribunal did so after considering the substantive case presented by the PSA and the oral representations provided by Mr Conway on behalf of the Network operator.

Code provisions

7. The relevant provisions of the Code relating to Mr Conway’s potential prohibition include:

Paragraph 5.8.5 of the Code provides:

“Having taken all relevant circumstances into account, the Tribunal or single legally qualified CAP member may impose one or more of the following sanctions in relation to each breach as they consider appropriate and proportionate:

(g) a prohibition on a Relevant Party and/or an associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code, and/or failed to take reasonable steps to prevent such breaches, from providing or having any involvement in any PRS or promotion for a defined period”.

Paragraph 5.8.12 of the Code provides:

“If a Tribunal considers that it may wish to impose a prohibition under sub-paragraphs

5.8.5(f) or 5.8.5(g) in respect of any associated individual, the PSA will first make all reasonable attempts to notify the individual concerned and the Relevant Party in writing. In providing any such notification, the PSA will inform the Relevant Party and the associated individual that either of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of their right to require an oral hearing under paragraph 5.7.9(b) above rather than consideration of the matter relating to the associated individual on the papers.”

Preliminary issue

Service

8. The Tribunal considered whether the PSA had made all reasonable attempts to notify Mr Conway and the Network operator, in writing. The PSA was required to inform both parties of their opportunity to make representations in writing, or in person, to the Tribunal and of their right to request an oral hearing, rather than consideration of the matter on the papers. The Tribunal found that Mr Conway had so been notified.
9. On 7 August 2023 the PSA emailed the formal notification to Mr Conway detailing the Tribunal's decision that it was minded to prohibit him as an associated individual under the Code. Mr Conway confirmed receipt and there was further correspondence between him and the PSA. Mr Conway also confirmed that he would attend the Tribunal hearing to make representations.
10. The Tribunal was satisfied that paragraph 5.8.12 of the Code had been complied.

Submissions

11. The PSA considered the available evidence and applying the relevant provisions of the Code submitted that Mr Conway was an associated individual who was knowingly involved in a series of breaches and should be prohibited.

Associated individual

12. The Tribunal considered whether Mr Conway was an Associated individual. Under paragraph D.2.6 of the Code, an Associated individual is defined as:
 - (a) any sole trader, partner or director or manager of a PRS provider;*
 - (b) any person with significant influence or control over a PRS provider;*
 - (c) any person having day-to-day responsibility for the conduct of a PRS provider's relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act; or*
 - (d) any member of a class of individuals designated and published by the PSA.*
13. The PSA submitted that Mr Conway was an Associated individual as he was a Director with significant control over the Network operator's PRS business and had day to day responsibility for the conduct of the Network operator. This was evidenced by the following:
 - Mr Conway had been a joint director of the Network operator from 20 April 2011 to present – as evidenced on both Companies House records and

Creditsafe information relating to the Network operator

- Mr Conway was a shareholder of 25% of shares and had significant control of the Network operator
- on 18 May 2011, Mr Conway registered the Network operator on the PSA's registration database listing himself as the primary contact. Mr Conway declared his role within the company as Director.
- Mr Conway in his capacity as Director of the Network operator signed the contracts with all Merchant providers to operate PRS with the Network operator
- Mr Conway personally responded to requests made by the PSA at the informal enquiry stage in relation to information regarding 12 Merchants that the PSA had concerns about in relation to the underlying case
- Mr Conway personally responded to both of the PSA's Directions during the investigation of the underlying case
- on 30 January 2020, in response to the PSA's allocation notification Mr Conway personally responded and stated the following;

"I hope that any areas of concern that are highlighted by the investigation will be accompanied by advice and guidance, and that the opportunity to make any recommended procedural changes will be given, should that be considered appropriate. I am all too acutely aware of the high level of fines that have been issued in recent tribunals and I sincerely hope that we can address any issues raised before that becomes a consideration."

- finally, the PSA drew particular attention to the following, which it said demonstrated that Mr Conway was the person with day-to-day responsibility for the conduct of the Network operator's PRS business and that he had a high level of responsibility within the Network operator which gave rise to his knowledge of the breaches:
 - throughout the Network operator's involvement with the PRS market, Mr Conway had personally written to the PSA asking for compliance advice on over 20 occasions.
 - in February 2020, in response to the PSA's first Direction, Mr Conway confirmed the following: *"I personally deal with all PRS. I make sure that I am fully informed of all aspects of the Code and guidance, and keep up to date through the PSA newsletter. I make sure that the knowledge is used to inform Service Providers of their obligations and assist them with making sure their service is compliant, and that all relevant guidance is considered."*

Any consumer complaint is dealt with by me personally. The details of the complaint are passed to the Service Provider who will usually deal directly with the complainant from that point. I always make sure that the complainant has my full contact information and, if they inform me that their complaint was not handled satisfactorily, I will review the case personally. If a refund is deemed appropriate then it is processed promptly by us, usually by BACS transfer the same day, and occasionally by cheque if requested. "

- the Network operator admitted the breaches in writing and proposed settlement offers. Mr Conway confirmed the following: "...As managing director and the main contact for all PRS..." and "For premium rate services I was the single point of contact dealing with all PRS enquiries. I was fully invested in each provider and aware of all interactions, but admit that not all telephone conversations with customers were sufficiently documented."

14. The PSA noted that there was no evidence that any other individual was involved in the day-to-day operation of the PRS side of the Network operator's business.
15. Mr Conway told the Tribunal that he had been a director of the Network operator since its inception. He advised the Tribunal that he had prepared a statement that he wished to read out. The Tribunal agreed to allow this. In the statement Mr Conway stated: "This investigation highlights that I had the main responsibility for all things premium rate and that is the case. As managing director I adopted that role and I had considered that I was acting responsibly."
16. The Tribunal considered the evidence submitted by the PSA and in particular noted that Mr Conway was a director of the Network operator as evidenced on both Companies House records and Creditsafe information. The Tribunal also noted that Mr Conway was registered as the primary contact on the PSA's database and had personally responded to the PSA Directions and correspondence. Mr Conway in his capacity as Director of the Network operator signed the contracts with all Merchant providers to operate PRS with the Network operator and had advised the PSA in correspondence that he was managing director and was responsible for PRS.
17. Overall, the Tribunal was satisfied, on the balance of probabilities, that Mr Conway was an Associated individual.

Knowing involvement

18. The Tribunal next considered whether Mr Conway was knowingly involved in a serious breach or series of breaches of the Code.
19. The PSA relied upon key evidence to make its submissions that Mr Conway was knowingly involved in breaches of the Code.

20. The PSA asserted that there was no evidence that any individual other than Mr Conway was involved in the day-to-day operation of the PRS side of the Network operator's business.
21. The PSA provided evidence that throughout the duration of the underlying investigation (and prior to that) Mr Conway was the only individual to correspond with the PSA in relation to the issues of potential non-compliance. The PSA relied upon key events which evidence that Mr Conway was knowingly involved in the Network operator's non-compliance which led to the breaches of the Code arising:
- as the primary contact and a responsible person, the PSA submitted that Mr Conway was, at the time the breaches of the Code occurred, responsible for the PRS portion of the Network operator's business and ensuring that it was properly managed, including compliance with all applicable regulations. In response to the PSA's first Direction in relation to the underlying case Mr Conway confirmed the following: *"I personally deal with all PRS. I make sure that I am fully informed of all aspects of the Code and guidance, and keep up to date through the PSA newsletter. I make sure that the knowledge is used to inform Service Providers of their obligations and assist them with making sure their service is compliant, and that all relevant guidance is considered."* Mr Conway further explained that he dealt with all consumer complaints *"Any consumer complaint is dealt with by me personally. The details of the complaint are passed to the Service Provider who will usually deal directly with the complainant from that point. I always make sure that the complainant has my full contact information and, if they inform me that their complaint was not handled satisfactorily, I will review the case personally. If a refund is deemed appropriate then it is processed promptly by us, usually by BACS transfer the same day, and occasionally by cheque if requested."* The PSA asserted that Mr Conway was knowingly involved as he personally dealt with the PRS portion of the business.
 - in 2015, the Network operator was subject to an investigation whereby it was found in breach of paragraphs 3.1.1 Due Diligence and 3.1.3 Risk Assessment and Risk Control. Mr Conway was the Director and primary contact at that time and attended the hearing. This investigation was confined to two Merchants and the concerns investigated were limited to those Providers at the time. In 2015, the Tribunal imposed a formal reprimand and a compliance audit sanction. As the investigation into the underlying case progressed, it became apparent that some of the reasons that led to the earlier breaches were mirrored in the underlying case. The Tribunal in the underlying case found this amounted to an aggravating factor.
 - the compliance audit was conducted by Enarpee Services Limited and attended by Mr Conway on behalf of the Network operator on 24 June 2015. The PSA asserted that previous non-compliance and Mr Conway's involvement demonstrated that he was well aware of the standards and requirements that a Network operator must uphold in respect to Risk Assessment and Risk Control.

However, Mr Conway (being the individual responsible for PRS) had failed to put into practice the requirements as advised. Ultimately, this resulted in non-compliance issues and practices continuing, leading to the underlying adjudication.

- the PSA further asserted that had the processes detailed in the compliance audit been adequately followed (and not disregarded), along with a proactive approach to incidents, a large amount of consumer harm could have been prevented. As Mr Conway was the sole individual responsible for all aspects of the PRS part of the Network operator's business, the PSA submitted that he was knowingly involved in the breaches.
- during the hearing for the underlying case, Mr Conway made representations and answered questions from the Tribunal. Mr Conway also provided details of actions undertaken or omissions that directly contributed to the occurrence of the breaches. These decisions and omissions were made by Mr Conway, and the PSA asserted that this amounted to evidence that he was knowingly involved in the breaches.

Breaches

Breach 1 – Risk assessment

22. The Tribunal next considered whether there had been a serious breach or series of breaches in accordance with paragraph 5.8.5 of the Code.
23. The PSA made submissions showing that Mr Conway was knowingly involved in each of the breaches in the underlying case – Breach 1 related to risk assessment and Breach 2 was in relation to risk control:
 - in relation to Breach 1, the PSA relied on the fact that Mr Conway had always maintained that he specifically dealt with the PRS side of the business. Additionally, the DDRAC policy was signed off by Mr Conway. As part of the investigation, the PSA requested the risk assessments that had been undertaken on a variety of the Network operator's Merchants, and Mr Conway supplied this information directly. The PSA noted that the risk assessments which were conducted (and which were insufficient and inadequate) were at all times conducted by Mr Conway and therefore Mr Conway had direct involvement in the breach.
 - given Mr Conway's assertions of personally dealing with all PRS matters and the fact that he conducted inadequate risk assessments on all the 23 sample Merchants in the underlying case, the PSA considered that Mr Conway was directly and therefore knowingly involved in the risk assessment breach and with the full knowledge of the process he should have been following as a result of the first adjudication in 2015 and the subsequent compliance audit. During

the hearing for the underlying case, Mr Conway, on behalf of the Network operator, admitted the breach.

- additionally, Mr Conway stated that when a Merchant joined their network, they were taken through the requirements of the Code and applicable guidance. Mr Conway explained on behalf of the Network operator that they felt they were somewhat duped by the Merchants. As complaints were going directly to the PSA, the Network operator stated that they were presented with a false picture of the Merchants. It was only in May 2020 that the “*penny dropped*” for them, due to an adjudication against Irich Info Technology Ltd. It was at this point that the Network operator paid particular attention to the nature of some of the complaints that were being received about the Service. The PSA submitted that as Mr Conway was responsible for formulating and conducting the risk assessments, this failure is directly attributable to him and therefore demonstrated his knowing involvement in the breach.
- The PSA also asserted that Mr Conway’s involvement in the previous non-compliance should have given rise to his awareness and understanding of what was required in terms of risk assessment. However, despite this Mr Conway failed to address repeated inadequacies. For example, an underlying Merchant involved in the DDRAC case against the Network operator in 2015 misled the Network operator by operating a different service type than that which the Network operator was informed of. Mr Conway was aware that this was a potential risk (and it was one of the reasons why having adequate DDRAC is important). The risk assessment policy introduced after the compliance audit was designed to assess risk adequately, however the PSA asserted that Mr Conway failed to conduct the process thoroughly, leaving gaps that allowed the mischief to be repeated and this ultimately led to consumer harm.
- the PSA submitted that Mr Conway, as the primary person responsible for PRS, had failed to follow the risk assessment process properly despite having full knowledge of what the obligations were, how the process should be followed, and repeatedly failed to take action when he was receiving systematic alerts to do so.

- the PSA also asserted that Mr Conway had admitted to not paying particular attention to the nature of consumer complaints prior to May 2020. The PSA submitted that Mr Conway had full knowledge of his obligations, but chose not to conduct the risk assessments properly or, take complaints seriously and, that this demonstrated his knowing involvement in the breaches.

Breach 2 – Risk control

24. In relation to Breach 2, the PSA submitted in the underlying case that the Network Operator's Risk Control process did not meet the standard the PSA would expect to fully satisfy the requirement for adequate Risk Control measures, and, that a widespread, systemic breach of paragraph 3.1.3 of Code 13 and Code 14 had occurred. The Tribunal upheld this breach against the Network operator and Mr Conway had, throughout the investigation, confirmed that he dealt with the PRS side of the business and that the DDRAC policy was signed off by him. This was further evidenced in regard to risk control where it could be demonstrated that Mr Conway (as the primary person responsible for PRS) dealt inadequately with incidents. For example, in relation to poor complaint handling where Mr Conway had refunded consumers but failed to investigate their concerns adequately, and to put measures in place to stop the issues from recurring. This presented a risk control failure. Another example provided by the PSA, related to the lack of action from Mr Conway when he received A1 revenue retention notices from EE and BT for suspected mischief. Mr Conway failed to properly investigate issues.
25. Mr Conway, on behalf of the Network operator admitted the breach during the hearing of the underlying case. Mr Conway also accepted that monitoring should have been completed and stated that a holistic approach would be adopted moving forward. Mr Conway, on behalf of the Network operator stated that they would now refuse clients if they did not feel they had been provided with sufficient information.
26. The PSA submitted that it was clear from the representations made by Mr Conway that he was the individual who dealt directly with risk control and therefore any failures in that regard were directly attributable to him. Accordingly, the PSA asserted that Mr Conway was knowingly involved in the breach.
27. The PSA asserted that by virtue of holding the position of Director as well as having day-to-day responsibility, for the conduct of the Network operator, Mr Conway was an Associated individual with knowing involvement when both the breaches of Risk Assessment and Risk Control occurred.
28. In relation to Breaches 1 and 2, Mr Conway said that it was only in hindsight and after a full investigation that the situation eventually became clear. The methods used by the Merchants were outside of the normal and anticipated non-compliant behaviour that he had experienced prior to this case.

29. Mr Conway also stated that the 2015 case was a different matter and that the Network operator did not have the policies and procedures in place and was “*rightly taken to task.*” Since then, he said the Network operator had operated with a system that was exceptionally effective, for the majority of situations, and was further adapted to ensure that non-compliant activity highlighted in the underlying case would no longer be a possibility.
30. Mr Conway said he recognised that there were flaws in policies and his way of thinking. In his representations to the Tribunal on 29 September 2023 he stated: “*I am fully aware that firmer actions on my part from the outset could have prevented consumer harm.*” Mr Conway said that both he and the Network operator had adapted accordingly and implemented effective measures ensuring that the onboarding requirements were stricter and more comprehensive. The changes of attitude and procedure would ensure that recurrence would be impossible.
31. The Tribunal considered the evidence submitted by the PSA and Mr Conway and found that it demonstrated Mr Conway’s knowing involvement in a series of breaches of Codes 13 and 14 found to be proven during the hearing which took place on 7 October 2022. The Tribunal found that the evidence presented by the PSA demonstrated that Mr Conway had the requisite knowledge and sole responsibility for risk assessment and risk control in relation to PRS.
32. The Tribunal noted that Mr Conway drafted a DDRAC policy after the Tribunal case in 2015 and following the compliance audit. The Tribunal also noted that Mr Conway’s name was on those policies. The Tribunal was satisfied, on the evidence presented to it, and on the balance of probabilities, that Mr Conway was responsible for the implementation and oversight of DDRAC procedures including risk assessment and risk control. The Tribunal noted that Mr Conway’s correspondence with the PSA also confirmed this.
33. The Tribunal was satisfied, on the balance of probabilities, that Mr Conway was knowingly involved in a series of breaches of Code 13 and Code 14.

Sanction

34. The PSA recommended that Mr Conway should be prohibited from providing, or having any involvement in, any premium rate service in the UK for a period of six years from the date of publication of this decision. The PSA asserted that this was proportionate to the severity of the breaches that had been upheld by the Tribunal of 7 October 2022.
35. The Tribunal considered whether, in all the circumstances, the recommendation from the PSA was appropriate and proportionate.

36. The Tribunal accepted Mr Conway's representations that firmer actions on his part from the outset could have prevented consumer harm, but this was outweighed by other factors. The Tribunal noted the many written representations from Mr Conway such as those in his letter to the PSA on 15 August 2023 in which he accused the Code Adjudication Panel ('CAP') of being "*unfairly prejudiced*". In the same letter, Mr Conway also stated: "*...I still find it hard to understand why Numbers Plus was prohibited...*". The Tribunal also noted Mr Conway's comment that "*...I find it harder still to understand the motivation behind this current case and especially the period of 6 years being considered.*" The Tribunal found that these comments demonstrated a lack of insight and understanding on the part of Mr Conway as to what went wrong with DDRAC processes and the amount of consumer harm caused.
37. The Tribunal noted the level of involvement Mr Conway had in the day-to-day operation of the Network operator's PRS business and his responsibility for DDRAC. The Tribunal also noted the previous non-compliance with the Code that had resulted in the Tribunal case in 2015. The Tribunal considered that this provided Mr Conway with an opportunity to address risk assessment and risk control issues following the compliance audit that was ordered as a result. The Tribunal concluded that Mr Conway had failed to implement compliance advice and improve DDRAC procedures as required.
38. The Tribunal also noted Mr Conway's statement to the Tribunal on 29 September 2023 that he was "*fully and truly remorseful*" and that the Network operator had taken "*every step to make amends*". Notwithstanding this, the Tribunal was mindful that Mr Conway had been given the opportunity to take compliance advice and put risk assessment and risk control measures in place but he had failed to implement the required measures.
39. The Tribunal also considered the character references provided by Mr Conway but these did not assist the Tribunal in deciding issues in hand, although they were no doubt given with good intentions.
40. The Tribunal decided (unanimously) to prohibit Mr Conway from providing, or having any involvement in, any premium rate service in the UK for a period of six years. Before reaching this conclusion, the Tribunal considered whether a shorter or longer period of prohibition would be appropriate and proportionate. The Tribunal concluded that six years was appropriate and proportionate given the severity of the breaches upheld against the Network operator in which Mr Conway was knowingly involved. The Tribunal noted the widespread failings in DDRAC procedures which it considered to be systemic. The Tribunal also noted that the procedures had been devised by Mr Conway and that he had failed to implement them properly. Taking into consideration further factors such as the vulnerability of consumers and the lengthy duration of the breaches, as well as the need to achieve credible deterrence and prevent consumer harm, the Tribunal came to the view that the period of six years was both appropriate and proportionate.

Administrative charge recommendation: 100%