

Tribunal meeting number: 248
Case reference: 168254
Case: Prohibition of an associated individual

This case was brought against the named individual provider under Paragraph 4.8.8 of the Code of Practice.

Background

Summary relating to Mr Simon Boyle

The Tribunal was asked to consider imposing a prohibition against Mr Simon Boyle pursuant to paragraph 4.8.3(g) of the 14th edition of the Phone-paid Services Authority Code of Practice (the “Code”).

The case related to an adjudication against the Level 2 provider Flipcove Limited dated 03 December 2018 (case reference: 142651). This case concerned the Level 2 provider intentionally charging consumers when it knew that it did not hold robust evidence of consent to charge.

Relevant Code provisions

- Paragraph 4.8.8 of the Code states:

“(a) If a Tribunal considers that it may wish to make a prohibition under sub-paragraph 4.8.3(f), 4.8.3(g) or 4.8.3(h) in respect of any associated individual, the PSA shall first make all reasonable attempts to notify the individual concerned and the relevant party in writing.

(b) It shall inform each of them that any of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of the right of any of them (or the PSA itself) to instead require an oral hearing.”

- Paragraph 4.8.3(g) of the Code states:

“Having taken all relevant circumstances into account, the Tribunal may impose any of the following sanctions singularly or in any combination in relation to each breach as it deems to be appropriate and proportionate:

(g) prohibit 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 from providing, or having any involvement in, any PRS or promotion for a defined period.”

- Paragraph 5.3.9 of the Code states:

“Associated individual’ is any sole trader, partner or director or manager of a Premium rate service provider, anyone having day to day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act, or

any member of a class of individuals designated by the PSA.”

Preliminary issue – Service

The Tribunal noted that the Executive had sent the Warning Notice and case report to Mr Boyle, the Level 2 provider, and the liquidator appointed for the Level 2 provider by email and by post on 14 June 2019. Although emails to Mr Boyle and the Level 2 provider were not delivered, the Panel noted that the email to the liquidator had been delivered and that the documents had been successfully delivered to two out of three postal addresses that had been provided for Mr Boyle.

The Tribunal further noted that the Executive subsequently sent notice of the Tribunal hearing date and a copy of the bundle to Mr Boyle, the Level 2 provider and the liquidator by email and by post on 11 July 2019. Although emails to Mr Boyle and the Level 2 provider were not delivered, the emails to the liquidator had been delivered and the documents were successfully delivered to two addresses that had been provided for Mr Boyle.

The Tribunal also noted that the Executive had attempted to contact Mr Boyle on 11 July 2019 by telephone via two numbers that had been provided to the PSA and in due diligence forms; however, both numbers appeared to be out of service.

Having considered the above information, the Tribunal was satisfied that all reasonable attempts had been made to notify Mr Boyle about the date of the hearing and its purpose.

Submissions and conclusions

Knowing involvement in a serious breach or a series of breaches of the Code

1. The Executive submitted that Mr Boyle was an associated individual for the purpose of paragraph 5.3.9 of the Code because as a director of the Level 2 provider, he was responsible for the management of the company at the time the very serious breach of the Code occurred.

The Executive submitted that the following evidence indicated that Mr Simon Boyle was knowingly involved in a serious breach of the Code in respect of an adjudication dated 03 December 2018.

Adjudication dated 03 December 2018, Case reference: 142651

On 03 December 2018, the Tribunal adjudicated against the Level 2 provider Flipcove Limited. The adjudication concerned a glamour subscription service (the “Service”).

Phone-paid Services Authority received 6 complaints regarding the Service. Complainants stated that they had been charged for a Service they had not signed up to or otherwise given their consent to be charged. Complainants relating to the case had been migrated onto the Level 2 provider’s database from that of another Level 2 provider.

The Tribunal upheld the following breach of the Code:

Rule 2.3.3 – Consent to charge

The Tribunal concluded that the breach of rule 2.3.3 was very serious. The Tribunal determined that the seriousness of the case overall was **very serious** and imposed the following sanctions:

- a formal reprimand
- prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of 3 years from the date of publication of this decision
- general refunds
- a fine of £250,000.

In addition to the above sanctions, the Tribunal recommended that the Level 2 provider pay 100% of the administrative costs incurred by Phone-paid Services Authority.

The Executive submitted that Mr Boyle was knowingly involved in the breach as a result of the following:

The Executive asserted that Mr Boyle was the sole director of the Level 2 provider from the date of incorporation of the company to the date that he voluntarily appointed a liquidator for the company. The Executive further submitted that Mr Boyle was also the sole shareholder of 100% of the Level 2 provider company.

The Executive also relied on documentation that showed that:

- The Level 2 provider named Mr Boyle as the sole responsible person and primary contact when it registered with the Phone-paid Services Authority;
- Correspondence received from Mr Boyle during the investigation against the Level 2 provider Flipcove Limited such as Mr Boyle's responses to PSA enquiries, directions and the Warning Notice;
- Mr Boyle was named as the responsible party and customer service contact on the Level 1 provider's "Due Diligence Report";
- Mr Boyle had signed an agreement with a third-party verifier and listed his position as director of the Level 2 provider;
- Mr Boyle had signed an agreement with the Level 1 provider to operate services on their platform and was named as the director of the Level 2 provider;
- Mr Boyle signed an agreement with the third-party verification for the Service, recording his position as director of the Level 2 provider;
- Mr Boyle, as a responsible person of the Level 2 provider, signed a novation agreement with another Level 2 provider, which was executed as a deed;
- On 30 October 2018, Mr Boyle in his capacity as director concluded that the Level 2 provider company could not carry on its business and signed liquidation forms which began voluntary liquidation proceedings.

Accordingly, the Executive submitted that Simon Boyle was knowingly involved in the very serious breach of the Code found by the Tribunal on 03 December 2018 as an associated individual.

2. The Executive did not receive any representations from Mr Boyle in respect of whether he was an associated individual of a Premium rate service provider and/or whether he was knowingly involved in the very serious breach of the Code.
3. The Tribunal found that, in accordance with paragraph 5.3.9, Simon Boyle was an associated individual. The Tribunal agreed with the submissions made by the Executive in this regard and concluded that Mr Boyle was personally responsible for the management of the company at the time that the very serious breach of the Code occurred.

The Tribunal further concluded that, in accordance with paragraph 4.8.2(g) of the Code, Mr Boyle had been knowingly involved in a very serious breach of the Code. The Tribunal commented that the evidence was clear that Mr Boyle was the sole director of the Level 2 provider and accordingly the Tribunal was satisfied that, on a balance of probabilities, Mr Boyle had knowledge of the very serious breach and was knowingly involved in the non-compliant conduct at the relevant time. The Tribunal agreed with the submissions that had been put forward by the Executive.

Decision: UPHELD

Sanction

The Tribunal decided to prohibit Mr Boyle from providing, or having any involvement in, any premium rate service for a period of 5 years from the date of publication of this decision.

In making this decision, the Tribunal noted that that Mr Boyle's behaviour and involvement in the very serious breach of the Code merited a prohibition of 5 years' duration in order to achieve the objective of deterring both poor practice within the industry and to prevent the individual from continuing to engage in such non-compliant behaviour.

The Tribunal was satisfied that five years was an appropriate period, taking into account the nature of the very serious breach upheld by the earlier Tribunal and the amount of the outstanding fines and administrative costs.

Administrative charge recommendation 100%