

Tribunal meeting number 275

Case reference: 185065
Case: Prohibition of an associated individual

This case was brought against the associated individual under paragraph 4.8.8 of the 14th edition of the Code of Practice (“the Code”).

Background

Summary relating to Mr Richard Howard

The Tribunal was asked to consider imposing a prohibition against Mr Richard Howard pursuant to paragraph 4.8.3(g) of the Code.

The case related to an adjudication against the Level 2 provider, Premier Ventures Ltd, ‘the **Level 2 provider**’, which was heard on 13 November 2019 (case reference: 141951). The adjudication concerned a call-connection service operating on premium rate numbers 09055952952 and 09055958958 (“the Service”). As part of the adjudication against the Level 2 provider, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Howard pursuant to paragraph 4.8.3(g) of the Code.

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 – jurisdiction

The Tribunal noted that Mr Howard had made various representations stating that the underlying adjudication against the Level 2 provider was flawed because it related to a separate company and legal entity that he was the director of, namely Umbrella Support Limited. Mr Howard emphasised that Umbrella Support Limited never operated the call connection service operating on premium rate numbers 09055952952 and 09055958958, which was agreed by the Executive.

After being notified about the Executive’s intention to apply for a prohibition under subparagraph 4.8.3(g), Mr Howard applied for a review of the underlying Tribunal decision, which concerned the Level 2 provider. The review was considered and rejected by a legally qualified member of the CAP for being out of time. As the merits of the appeal had not been considered by the CAP member, the Tribunal wished to clarify why the two separate company names had been used interchangeably within the investigation documents and why both names were referred to in the underlying adjudication decision. The Tribunal wished to satisfy itself that the company Premier Ventures Ltd had been the target of the adjudication to ensure that it had jurisdiction to hear the case against Mr Howard. Accordingly, the Tribunal requested that the investigator and the Head of Investigations and Enforcement attend to provide oral representations regarding this issue.

The Tribunal made it clear to the Executive that it was not reviewing the original decision, as this was not its purpose today, but it wanted clarity in respect of the confusion of the names used in the documentation and the points raised by Mr Howard in his request for a review.

In response to the Tribunal’s questioning about when and why both Premier Ventures Ltd and Umbrella Support Limited had been used, and what had determined the use of these names, the investigator and the Head of Investigations and Enforcement explained that the company operating premium rate numbers 09055952952 and 09055958958 was the company registered with Companies House with the registered number 06882822. The Executive explained that throughout the underlying investigation, the registered number for that company did not change and this company was Premier Ventures Limited. The registration records held by the PSA, however, did not correlate to the information that was held on Companies House in relation to the name of company 06882822.

The Executive explained that on the PSA registration database, the name of the company Premier Ventures Limited (registered as 06882822 with Companies House) had been changed several times and the Executive referred the Tribunal to the documents in the bundle and an audit trail demonstrated by the PSA’s internal registration records, namely:

- In September 2018 the database was updated (presumably by Mr Howard). The name of the organisation was listed as ‘Umbrella Support Ltd’. However, the details of the

registered company remained unaltered. The company providing the Service was still recorded as Premier Mobile Phone. Other trading names were listed as Raptor Telecom, UK Services and Support and Premier Mobile Phones.

- In March 2019 another update was made to the record. The name of the organisation was changed from 'UmbrellaSupportLtd' to 'PremierMobilePhonesLtd' and the company registration details were changed from Premier Mobile Phone to 6882822. The name of the company was also changed from Umbrella Support to Premier Mobile Phones Ltd. Trading names were listed as Passport Advice and Services, UK Services and Support and Umbrella Support.
- There was another update made to the record in May 2019. The name of the organisation was changed from 'PremierMobilePhonesLtd' to 'PremierVenturesLtd'. The company registration details of 6882822 remained the same but the company name was changed from Premier Mobile Phones Ltd to Premier Ventures Ltd. The listed trading names were Passport Advice and Services, UK Services & Support and Umbrella Support.
- In July 2019 there was a further update to the record. No changes were made to the name of the organisation which remained as 'PremierVenturesLtd' or the company registration details that remained listed as 6882822. The company name remained as Premier Ventures Ltd but the trading names were altered to include an additional name of Submission Support in addition to the previous trading names as noted in the May 2019 update.
- In August 2019 a number of updates were made. PremierVenturesLtd remained as the organisation name with Companies House registration number 6882822. Following payment of the registration fee, the record was amended to remove 'Umbrella Support' as a trading name.

The Executive also took the Tribunal through an audit trail of the PSA's records concerning the company Umbrella Support Ltd which was registered with Companies House with registration number 6882854. The Executive stated that the audit trail for this company showed the following information:

- in September 2017 there was an entry entitled "account opened". The name of the organisation was given as Umbrella Support and the company registration details were given as 6882854. The trading names were listed as Premier Mobile Phones, Passport Information Line and UK service.
- In November 2017 this record was merged with the record for Premier Ventures Ltd and ceased to exist.

The Executive clarified that the company it investigated was registered with Companies House with registration number 06882822, which did not change throughout. The same registration number 06882822 appeared on the contract with the Level 1 provider. Although correspondence had been sent by the Executive to Umbrella Support Ltd, the investigator clarified that correspondence had been sent to Umbrella Support Ltd because it was listed on the PSA's registration database as one of the trading names for company 06882822. The Executive stressed that it was important to note that the information on the PSA's registration system did not accord with the name of the companies and in particular Mr Howard had

registered company 06882822, which is Premier Ventures Ltd, as Umbrella Support Limited on the PSA's database.

The Tribunal accepted the Executive's explanation and was satisfied that the underlying investigation and adjudication related to the company Premier Ventures Ltd with Companies House registration number 06882822, which the Executive had clarified had used the trading name of Umbrella Support Limited. It was noted that Mr Howard was also the sole director of a company called Umbrella Support Limited, number 06882854, which was registered with Companies House on the same day as Premier Ventures Ltd. Mr Howard had used Umbrella Support as a trading name for the Level 2 provider on the PSA database, but the Level 2 provider remained Premier Ventures Ltd throughout.

While the two companies remained at all times distinct and separate legal entities, the name of Umbrella Support Limited was used interchangeably, presumably by Mr Howard, on the PSA's database for Premier Ventures Ltd. The Tribunal noted that the Level 2 provider had never sought to re-engage contracts with the Level 1 provider and so there had never been a change of contract with the Level 1 provider. The contract between the Level 2 provider and the Level 1 provider concerned Premier Ventures Ltd with Companies House registration number 06882822.

The Tribunal was satisfied that while the legal entity had not changed, the names that were associated with it had been presumably changed by Mr Howard. As the company had always been Premier Ventures Ltd throughout the Executive's investigation, but the trading names on the PSA's registration database varied over time, the Tribunal felt it could continue with its purpose today, namely to determine whether or not Mr Howard was an associated individual of Premier Ventures Ltd and whether he was knowingly involved in the series of breaches found upheld by the earlier Tribunal or not.

Preliminary issue – service

The Tribunal observed that the Executive had brought the case in accordance with paragraph 4.8.8 of the Code which meant that there was a duty on the Executive to ensure that Mr Howard was informed of the proceedings and provided with an opportunity to request an oral hearing and/or make informal representations to the Tribunal. The Tribunal was satisfied that there had been proper service, having seen proof that the Warning Notice had been issued, and it was confident in this regard as Mr Howard had responded. The Tribunal was therefore satisfied that service was effective in accordance with paragraph 4.8.8 of the Code.

Proceeding in absence

The Tribunal considered in particular the correspondence between the Executive and Mr Howard following the service of the Warning Notice. The Tribunal observed that while Mr Howard was not in attendance, he had responded to the Warning Notice, and the Tribunal would consider his written responses. The Tribunal was also of the view that there was nothing to suggest that an adjournment would secure Mr Howard's future attendance given that Mr

Howard had not indicated in any of his correspondence with the Executive that he wished to attend the hearing to provide informal representations. The Tribunal was of the view that it was both fair and in the interests of justice for it to proceed.

Submissions and conclusions

1. The Executive submitted the following evidence in support of its assertion that Mr Howard was an associated individual knowingly involved in a serious and/or series of breaches of the Code in respect of the adjudication of 13 November 2019:

Adjudication of 13 November 2019 (case reference: 141951)

The provider for the Service was Premier Ventures Ltd which was registered on the PSA database as trading as Umbrella Support Limited and other names as discussed above. The provider had been registered with the PSA since 18 July 2011. The Service was a call-connection service that offered a connection to HM Passport Office. The Service cost £1.50 for the first minute and £1.50 for each additional minute, plus network access charges. The Service is said to have commenced operating on 4 August 2015. The Executive received no complaints about the Service. The investigation was initiated as a result of internal monitoring conducted by the Executive on the Service.

On 13 November 2019, the Tribunal upheld the following breaches of the Code raised against the Level 2 provider (as outlined below):

- Rule 2.2.2 – Transparency and pricing
- Rule 2.2.7 – Transparency and pricing
- Rule 2.3.2 – Fairness
- Rule 2.6.1 – Contact handling
- Paragraph 3.4.8 – Registration renewal
- Paragraph 3.11.3 – Special conditions, ICSS 2
- Paragraph 3.11.3 – Special conditions ICSS 3

The Tribunal considered the overall case to be “Very serious” and imposed the following sanctions:

- a formal reprimand
- a requirement that the Level 2 provider seeks compliance advice regarding the Service promotions by ensuring that it addresses issues around transparency, pricing, misleading promotions and the Special conditions for ICSSs. Such compliance advice must be implemented to the satisfaction of PSA before customers are charged
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, starting from the date of publication of the Tribunal decision, or until compliance advice has been implemented to the satisfaction of PSA and payment of the fine and the administrative charges in full, whichever is the later

- 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
- a fine of £200,000.

The Tribunal also recommended that the provider pay 100% of the administrative costs which totalled £7,797.95.

Associated individual knowingly involved in a serious/series of breaches of the Code

The Executive considered that Mr Howard was an associated individual for the purpose of paragraph 5.3.9 of the Code as he had day-to-day responsibility for the conduct of the Level 2 provider. The Executive stated that this was evidenced by the following:

- Mr Howard had been the sole director of the Level 2 provider since 21 April 2009 and currently remains registered as the sole director according to CreditSafe and Companies House
- Mr Howard was also the sole shareholder (100%) of the Level 2 provider;
- Mr Howard had been listed as the sole and primary contact for the Level 2 provider company on the PSA registration database since the Level 2 provider first registered on 18 July 2011
- Mr Howard registered himself as a 'responsible party' by the title of 'director' on the PSA Registration Scheme
- on 19 August 2011, in his capacity as director of the Level 2 provider, Mr Howard signed a contract to operate premium rate services with the Network operator under the company name Raptor SMS Limited
- on 18 October 2012, in his capacity as director of the Level 2 provider, Mr Howard signed a contract to operate premium rate services with the Network operator.

The Executive asserted that the above demonstrated that Mr Howard had day-to-day responsibility for the conduct of the Level 2 provider's business and was an associated individual under paragraph 5.3.9 of the Code when the breach of rules 2.2.2, 2.3.2, 2.6.1 and 2.2.7 of the Code were being carried out. In addition, breaches of paragraphs 3.4.8, 3.11.3 – ICSS 2 and 3.11.3 – ICSS 3 of the Code were upheld and considered to be 'Very Serious' by the Tribunal of 13 November 2019.

The Executive also noted that key events occurred which would have alerted Mr Howard to the potential Code breaches and the fact that the Level 2 provider was operating non-compliantly. As the PSA's primary contact and holding the position of company director, the Executive submitted that Mr Howard was, at the time the very serious breaches of the Code occurred, responsible for the oversight of the company affairs and ensuring that the company was properly managed, including complying with the Code and sanctions.

The Executive also relied on the following evidence to demonstrate that Mr Howard was made aware that the Level 2 provider was operating non-compliantly:

- Mr Howard's response of 16 April 2018 to the Executive's email of 4 April 2018 regarding the Level 2 provider's case, where Mr Howard enquired about the progress of the investigation and provided his thoughts about the investigation as well as supplying an explanation for the use of premium rate numbers for the Service
- Mr Howard corresponded with the Executive in relation to the operation and promotion of the Service and responded to five of the Executive's directions for information in relation to the Service, as well as commenting on each of the apparent breaches of the Code raised against the Level 2 provider in the Warning Notice issued by the Executive on 20 September 2019.

The Executive further asserted that Mr Howard was aware that the Level 2 provider was operating non-compliantly and had thorough knowledge of the requirements of the sanctions imposed. However, in his position of responsibility, Mr Howard failed to take steps to comply with the Code and the sanctions.

The Executive stated that throughout the investigation, which was conducted between February 2018 and December 2018, Mr Howard corresponded with the Executive in relation to the operation and promotion of the Service. The correspondence received and responded to by Mr Howard included the following:

- the response to investigation update email sent to the Level 2 provider
- the response to the first direction for information including financial information dated 25 April 2018
- the response to the second direction for information dated 22 May 2018
- the response to the third direction for information dated 11 July 2018
- the email sent by Mr Howard stating his view on the investigation so far dated 18 July 2018
- the response to the fourth direction for information dated 3 October 2018
- the response to the fifth direction for information dated 27 November 2018
- the provider's response to the apparent breaches of the Code which were raised against the Level 2 provider dated 4 October 2019 in the Warning Notice issued on 20 September 2019.

The Executive further relied on the following information which it stated demonstrated that Mr Howard had a high level of responsibility within the Level 2 provider company, and this showed his knowledge of the investigation and awareness of the financial sanctions that were being proposed by the Executive at the time and which the Level 2 provider later failed to comply with:

- on 31 March 2019, Mr Howard in his capacity as director officially signed and filed company Micro-entity Accounts on behalf of the Level 2 provider on Companies House

- on 3 May 2019, Mr Howard, in his capacity as director, filed a certificate of incorporation on change of name on behalf of the Level 2 provider
- the email correspondence between the Level 1 provider and Mr Howard on behalf of the Level 2 provider discussing and clarifying the Level 2 provider's name changes
- the request for financial information on 23 April 2018 in which Mr Howard provided a month-by-month breakdown of the amount the Level 2 provider received for the Service.

The Executive stated that the evidence above clearly indicated that Mr Howard was knowingly involved in a series of breaches of the Code as he had been made fully aware of the non-compliance of the Level 2 provider throughout the Executive's investigation.

The Executive concluded its submissions by stating that the evidence taken as a whole clearly supported the assertion that Mr Howard was an associated individual and that he was knowingly involved in a series of breaches of the Code.

2. Mr Howard responded to the Warning Notice and submitted a request for a review in relation to the underlying adjudication against the Level 2 provider. Although Mr Howard provided considerable correspondence in response to the Executive's notification that it wished to apply for a prohibition under subparagraph 4.8.3(g), Mr Howard's responses did not address the issue of prohibition directly, focusing instead on the validity of the underlying adjudication and his intention to seek legal redress around this. However, from the responses received, Mr Howard appeared to accept that he was an associated individual for the Level 2 provider and had the authority to make decisions for the Level 2 provider, including seeking a review on its behalf and contemplating other legal action.
3. The Tribunal carefully considered all of the evidence before it including the written representations made by Mr Howard.

The Tribunal considered Mr Howard's representations in relation to what he submitted was a flawed investigation and an invalid adjudication. The Tribunal went to lengths to understand which company the underlying investigation and adjudication applied to, as set out in the preliminary issue of jurisdiction, as recorded above. After hearing from the Executive, it concluded that Premier Ventures Ltd was the adjudicated party.

The Tribunal also noted that the Level 2 provider was described in the original adjudication as '*Premier Ventures Ltd formally (sic) known as Umbrella Support Limited and Raptor Telecom Limited... Its trading name was UK Services & Support (the "Level 2 provider")*'. The Level 2 provider has been registered with the Phone-paid Services Authority (the "PSA") since the 18 July 2011'.

The Tribunal was mindful that its role was not to review the original decision or seek to go behind the previous adjudication since there was a separate review process under paragraph 4.10 of the Code which Mr Howard had utilised, as well as other routes of challenge that Mr Howard had alluded to in his responses. As the previous proceedings

had not been the subject of any successful review or any Court proceedings and the Tribunal was satisfied that the underlying adjudication related to Premier Ventures Ltd, the Tribunal was of the view that it should proceed on the basis that the previous adjudication was sound.

The Tribunal therefore went on to consider whether Mr Howard was an “associated individual” in accordance with paragraph 5.3.9 of the Code. The Tribunal noted that the Code defined associated individuals as being “*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...*”. The Tribunal was of the view that the evidence presented by the Executive was compelling, as it clearly showed that Mr Howard was listed as director as well as the sole shareholder and named contact for the Level 2 provider.

The Tribunal noted that Mr Howard had accepted that he was the owner and was in control of the Service in responses he had given to the Executive previously. For instance, when responding to the Executive’s enquiry dated 10 November 2017 regarding the Service operating on number range 09055952952, Mr Howard had provided the website on which the Service was promoted and stated that the website was hosted and owned by a company that he owned and controlled.

The Tribunal further noted that in his response to the Warning Notice issued in the underlying case (response dated 4 October 2019), Mr Howard stated: “*I am the solo owner and director of a number of companies providing a range of different products and services to UK businesses and consumers. These include mobile phone sales, print and post services for small companies, passport lodging services, a caller connection service operating on a premium rate phone line to name a few.*”

The Tribunal was persuaded on the balance of probabilities that Mr Howard exercised day-to-day responsibility for the Level 2 provider by the documentation relied upon by the Executive and by the responses given by Mr Howard as part of the underlying case into the Level 2 provider. In particular, the Tribunal noted that the Executive’s evidence demonstrated that it was Mr Howard who had signed the contract with the Level 1 provider and that it was Mr Howard who was the Level 2 provider’s sole director and shareholder.

The Tribunal was also satisfied on the balance of probabilities that Mr Howard had been knowingly involved in a series of breaches of the Code. The Tribunal noted that the previous adjudication in relation to the Level 2 provider was given an overall severity rating of very serious.

In relation to “knowing involvement”, the Tribunal considered that the Executive’s evidence clearly demonstrated that Mr Howard had been made aware that the Service was non-compliant. The Tribunal further noted that Mr Howard had responded to communications sent by the Executive such as enquiries about the Service and formal directions and the Warning Notices. The Tribunal was of the view that there was strong

evidence of Mr Howard's sole association with the Level 2 provider company and that he was the controlling mind. There was no evidence to suggest that anyone else had been involved in the management of the company; all the evidence, including the correspondence from Mr Howard, demonstrated that he had been running the company and the Service and as such had knowing involvement.

The Tribunal considered that while Mr Howard had engaged with the PSA process in terms of responding to enquiries, directions and the Warning Notices, there was little evidence of Mr Howard responding cooperatively as his responses appeared to be somewhat combative in nature. In addition, Mr Howard appeared not to have taken any actions to address the issues relating to the Service or to comply with the sanctions imposed on the Level 2 provider.

As a result of all of the above, the Tribunal was satisfied on the balance of probabilities that Mr Howard was an associated individual who was knowingly involved in a serious or series of breaches of the Code.

Sanctions imposed

The Executive recommended that Mr Howard should be prohibited from providing or having any involvement in any premium rate service in the UK for a period of five years from the date of publication of this decision. The Executive asserted that this was a proportionate outcome due to the severity of the breaches that had been upheld in the earlier adjudication.

The Tribunal noted that Mr Howard had not directly provided his view on the sanction and how it might impact on him but noted that Mr Howard had stated in correspondence about the validity of the underlying adjudication that *"being banned from the industry will cost me at least £24,000 per year in revenue based on the previous performance of premium rate services that have been run and this loss will be directly related to your unjust actions"*.

After carefully considering all of the facts of the case and Mr Howard's written representations, the Tribunal decided that a five-year prohibition was both proportionate and appropriate despite the potential impact it could have on Mr Howard. The Tribunal was of this view given the severity of the breaches that had been upheld by the previous Tribunal and as a result of the need to ensure that any sanction served as a credible deterrent. It did not consider that a prohibition of less than five years would be sufficient given the conduct of the Level 2 provider and Mr Howard's apparent attempts to mislead and confuse the PSA's investigation process. While the Tribunal noted that Mr Howard had engaged with the Executive, it considered that Mr Howard had not engaged to constructively seek to resolve the issues with the Service to ensure it was compliant. and that he had made no efforts to ensure that the sanctions imposed on the Level 2 provider had been complied with.

Accordingly, the Tribunal decided to prohibit Mr Howard from providing, or having any involvement in, any premium rate service in the UK for a period of five years from the date of publication of this decision.

Administrative charge recommendation: 100%