

Tribunal meeting number 288

Case reference: 182458
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

1. The Tribunal was asked to consider imposing a prohibition against Mr Stoyancho Mitev pursuant to paragraph 4.8.3(g) of the Code.
2. The case related to an adjudication against the Level 2 provider, Webdata Ltd, (**'the Level 2 provider'**), which was heard on 11 October 2019 (case reference: 154913). The adjudication concerned a subscription-based alert service, 'Lotto Alerts' (**'the Service'**) operated by the Level 2 provider. 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 Mitev pursuant to paragraph 4.8.3(g) of the Code.
3. The Service provided consumers with lottery results to their telephone. The Service commenced operation on 22 June 2018 and the PSA received 99 complaints about the Service.
4. On 11 October 2019, the Tribunal adjudicated against the Service operated by the Level 2 provider. The Tribunal upheld the following breaches of the Code raised against the Level 2 provider:
 - Rule 2.3.3 – Consent to charge
 - Rule 2.3.2 – Misleading
 - Rule 2.6.1 – Complaint-handling.
5. The Tribunal considered the overall case to be 'very serious' and imposed 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 five years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges, 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 £250,000.

The Tribunal also recommended that the Level 2 provider pay 100% of the administrative costs, which totalled £5,045.

6. The relevant Code Provisions for this matter relating to Mr Mitev's potential prohibition included:

Paragraph 4.8.8 of the Code which 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 which 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 which 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

7. The hearing was held remotely via Microsoft Teams due to the ongoing Covid-19 situation. As the Level 2 provider was not in attendance at the Tribunal, the Tribunal considered as a preliminary issue the issues of service and proceeding in absence.
8. The Tribunal wanted to be certain that the Executive had complied with Code paragraph 4.8.8 and had made all reasonable attempts to notify Mr Mitev and the Level 2 provider in writing. The Tribunal considered, as a preliminary issue, whether the Executive had made reasonable efforts to properly serve the Warning Notice (**'the Notice'**) on Mr Mitev.
9. The Tribunal further considered whether Mr Mitev had been properly notified about the proceedings.
10. The Tribunal questioned the Executive on these issues in order to satisfy itself that all reasonable attempts to notify Mr Mitev and the Level 2 provider had been made.
11. In response to questioning by the Tribunal, the Executive referred the Tribunal to pages 125 to 127 in the annex. It explained that this related to the Executive's attempts to serve hard copies of the Notice on Mr Mitev's registered postal address. The Executive advised the Tribunal that the delivery was unsuccessful because the package was 'refused' by the recipient. The Executive read out the wording from UPS on annex page 127, which stated that *'the package was refused and will be returned to the sender'*. The Tribunal questioned the Executive about the wording 'refused' and wondered if the word 'refused' had been used correctly. The Executive could not provide any further clarification on this point, however, it added that it had written to Mr Mitev using Royal Mail as well. The Tribunal asked whether there was any information on whether the package sent by Royal Mail was delivered or refused. The Executive stated that the delivery had been attempted by Royal Mail but there had been no answer.
12. The Tribunal questioned whether the Executive had issued the Notice on the liquidator and the Executive confirmed that it had.
13. The Tribunal then went on to consider whether the Executive had notified Mr Mitev about the date and time of the hearing and asked the Executive about its attempts to telephone the individual concerned.
14. The Executive explained that it did not have a telephone number for Mr Mitev because no telephone number for the Level 2 provider had been registered with the PSA. The Executive confirmed that the date of the Tribunal hearing was sent to Mr Mitev by email on 26 November 2021 and it had not received a response from Mr Mitev. On the same day, the Executive also issued a hard copy notification of the date and time of the hearing using the Royal Mail 'track and sign' service and UPS courier.

15. The Tribunal asked the Executive whether it had requested a delivery receipt for the electronic communication it had sent to Mr Mitev. The Executive confirmed that it had requested both read and delivery receipts, however, these were not received. The Tribunal asked whether the Executive had received any error message or any bounce back email. The Executive confirmed that it had not received any error messages or bounce back emails. The Executive stated that it was of the view that the email address previously used by Mr Mitev was no longer active.
16. In response to further questioning by the Tribunal about the postal address that the Executive had written to, the Executive confirmed that Mr Mitev's postal address was obtained from the liquidators. The Executive explained that during the underlying case it had used the Level 2 provider's company address that was published on the Companies House website. The Executive confirmed that it had not sent any correspondence to that address because the Level 2 provider's address had changed to that of the liquidator's.
17. The Executive submitted that it considered that all reasonable steps had been taken to notify Mr Mitev about the proceedings and the date and time of the Tribunal. The Executive reiterated that it had obtained other known addresses for the director from the liquidators and had written to these addresses by Royal Mail 'track and sign' service and by UPS. The Executive believed that no other reasonable steps could have been taken in light of (i) the apparent refusal of the UPS package, (ii) Mr Mitev's email address being inactive, (iii) and the absence of any telephone number for Mr Mitev on the PSA Registration Scheme Database.
18. The Tribunal took the view that, in the circumstances, the Executive had made all reasonable attempts to notify Mr Mitev.
19. The Tribunal noted that the Level 2 provider was now in liquidation and its registered address was that of its liquidators. The Tribunal considered that the Executive had issued the Notice on the liquidators and had made all reasonable attempts to issue the Notice on Mr Mitev as required by the Code.
20. The Tribunal noted in particular that the Executive had contacted liquidators for the Level 2 provider to obtain Mr Mitev's up-to-date contact information. The Tribunal also noted that in addition to the Royal Mail 'track and sign' service, the Executive had sent the notification by UPS, which was returned as acceptance at the address refused. The Tribunal further noted that all the correspondence was also sent to the email address on the PSA Registration Scheme database. Furthermore, the Tribunal was satisfied that Mr Mitev had been aware of the outcome of the underlying case, which contained the naming recommendation. Accordingly, the Tribunal was satisfied that the Executive had made all reasonable efforts to serve the Notice and had complied with paragraph 4.8.8 of the Code.

21. In all the circumstances, the Tribunal was satisfied that it ought to proceed with the hearing in the absence of Mr Mitev. It did not consider that there would be any sufficient benefit in adjourning the matter, as it appeared unlikely that any such adjournment would secure Mr Mitev's attendance at a future hearing.

Associated individual

The Executive's submissions

22. The Executive considered that Mr Mitev 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 Mitev was the sole director of the Level 2 provider from 15 July 2018. The Executive noted that the Service commenced on 22 June 2018 and was eventually suspended by the Level 1 provider in November 2018. The first complaint was received on 29 June 2018. The Executive continued to receive complaints for the Service up until 4 March 2019.
 - on 21 February 2019, Mr Mitev, in his capacity of director for the Level 2 provider, signed documents to liquidate the Level 2 provider (Statement of Affairs)
 - on 4 March 2019, Mr Mitev in his capacity as director of the Level 2 provider signed liquidation documents (Notice of Special Resolution)
 - Mr Mitev provided a written statement in response to the Executive's Notice issued against the Level 2 provider.
23. The Executive noted that Mr Mitev was not the director of the Level 2 provider at the time the Service commenced but took over this role subsequently. In his capacity, as the director of the Level 2 provider, Mr Mitev signed the necessary documentation to have the Level 2 provider liquidated. Mr Mitev provided a written statement in response to the Executive's Notice in the underlying case. Furthermore, Mr Mitev was the director of the Level 2 provider at a time when consumers continued to be charged without their consent in breach of the Code. The Executive submitted that Mr Mitev had a shared responsibility with the previous director for the conduct of the Level 2 provider.
24. The Executive asserted that the above demonstrated that Mr Mitev had day-to-day responsibility for the conduct of the Level 2 provider and was an associated individual under paragraph 5.3.9 of the Code when breaches of Rules 2.3.3, 2.3.2 and 2.6.1 of the Code were being carried out.

Mr Mitev's response

25. Mr Mitev did not respond to the Executive's Notice and did not attend the paper-based hearing.

26. The Level 2 provider was in liquidation and its liquidators informed the Executive that:
“Given that the Company is in liquidation, and the fact that the proceedings are against the former directors personally, neither the Company nor the liquidators intend to take any part in the proceedings...”

Conclusions

27. The Tribunal considered all of the evidence before it and came to the conclusion, on the balance of probabilities, that Mr Mitev was an associated individual, within the meaning of paragraph 5.3.9 of the Code.
28. The Tribunal noted the Executive’s submissions in particular that the Statement of Affairs and Notice of Special Resolution were signed by Mr Mitev in his capacity as a director on 21 February 2019 and 04 March 2019 respectively.
29. The Tribunal accepted the Executive’s submission that Mr Mitev was not a director at the commencement of the service, and he took on the role subsequently. However, the Tribunal was of the view that Mr Mitev was the sole director from 15 July 2018.
30. The Tribunal also noted that Mr Mitev responded in writing to the Notice issued by the Executive in the previous case which was confirmed by the liquidator of the Level 2 provider. In the written statement Mr Mitev said the following:
“It was myself, as Director who provided the statement. I sought some advice regarding the response from our Level 1 provider Veoo and it appears they made a typo error in some information they supplied which I failed to notice when compiling my response prior to sending. Of course the reference should only be to my company, Webdata Ltd.”
31. The Tribunal was satisfied with the Executive’s evidence, which demonstrated that Mr Mitev fulfilled the requirements of being an associated individual of a premium rate service provider, falling within the broad definition of Code paragraph 5.3.9.
32. The Tribunal therefore concluded, on a balance of probabilities, that Mr Mitev was an associated individual of the Level 2 provider.

Knowing involvement

The Executive’s submissions

33. The Executive submitted that Mr Mitev was, at the time that the series of breaches occurred, responsible for the oversight of the company affairs and ensuring that the company was properly managed, including complying with the Code and sanctions.
34. The Executive noted that key events occurred which would have alerted Mr Mitev to the potential Code breaches and the fact that the Level 2 provider was operating non-compliantly. The Executive relied on the following:

- on 21 December 2018, an Interim Warning Notice was sent to the Level 2 provider
- on 2 August 2019, the Executive sent the Warning Notice to the Level 2 provider.

35. During the Executive's investigation which was conducted between 15 November 2018 and 4 March 2019, Mr Mitev corresponded with the Executive in relation to the breaches of the Code. The correspondence received and responded to by Mr Mitev included:

- an Interim Warning Notice was sent to the Level 2 provider outlining apparent breaches of the Code
- in response to the Interim Warning Notice, the Executive received an email from the email address registered to Mr Mitev on the PSA Registration Scheme. The email requested the date for the Tribunal.
- on 4 January 2019, the Executive sent the Level 2 provider an email notifying it of the Tribunal decision on Interim Measures. A response was received from the email registered to Mr Mitev stating that the Level 2 provider intended to review the Interim Measure decision.
- on 2 August 2019, the Executive sent the Warning Notice to the Liquidators of the Level 2 provider at the conclusion of its case. The Notice alleged three breaches of the Code:

Rule 2.3.3 – Consent to charge

Rule 2.3.2 – Misleading

Rule 2.6.1 – Complaint handling

- on 16 August 2019, a response to the Notice was received from the liquidator of the Level 2 provider. This response included a written statement from Mr Mitev.

36. The Executive asserted that the evidence outlined above and contained within the annexes to the Notice demonstrated that Mr Mitev received and responded to crucial correspondence on behalf of the Level 2 provider during the Executive's investigation. The Executive asserted that Mr Mitev was therefore aware of potential breaches of the Code and fully aware of the Executive's investigation.

37. The Executive submitted that Mr Mitev was an associated individual with knowledge in a series of breaches of the Code that were upheld and considered overall to be 'very serious' by an earlier Tribunal, and was knowingly involved in the non-compliant conduct at the relevant times.

Mr Mitev's response

38. Mr Mitev did not respond to the Executive's Notice and did not attend the paper-based hearing.
39. The Level 2 provider was in liquidation and its liquidators informed the Executive that they would not be taking any part in the proceedings.

Conclusions

40. The Tribunal considered whether Mr Mitev was knowingly involved in a serious breach or a series of breaches of the Code.
41. The Tribunal had regard to the submissions and evidence relied on by the Executive.
42. The Tribunal noted that the previous adjudication in relation to the Level 2 provider was given an overall severity rating as 'very serious'.
43. The Tribunal considered that the Executive's evidence clearly demonstrated that Mr Mitev was responsible for the management and the oversight of the company affairs, and that he had been aware by the Executive that the service was non-compliant throughout the relevant time.
44. In relation to 'knowing involvement', the Tribunal considered that the Executive's evidence clearly demonstrated that Mr Mitev had been made aware by the Executive that the Service was operating non-compliantly throughout the relevant time. It further noted that Mr Mitev had responded to communications sent by the Executive such as the Interim Warning Notice and the Notice in the underlying matter.
45. The Tribunal was of the view that Mr Mitev was sufficiently involved in the running and conduct of the Level 2 provider company. The Tribunal was satisfied that Mr Mitev was knowingly involved in a serious breach and/or a series of breaches of the Code. It was satisfied that Mr Mitev was knowingly involved in the breaches of Rule 2.3.3, Rule 2.3.2 and Rule 2.6.1.

Sanctions

46. The Executive recommended that Mr Mitev 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 previous adjudication.
47. The Tribunal noted that Mr Mitev had not responded to the Executive's Notice and had chosen not to attend the paper-based hearing. In the absence of any submissions by Mr Mitev, either in writing or in person, the Tribunal carefully considered the likely impact of the prohibition on Mr Mitev.

48. The Tribunal decided to prohibit Mr Mitev 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 Tribunal did note that some minor refunds were made in the underlying case. The Tribunal did not identify that this amounted to sufficient mitigation to reduce the duration of the sanction. It considered that the impact of Mr Mitev's prohibition was justified to ensure public protection and confidence in premium rate services.
49. Considering all the facts of the case, including the severity of the breaches that had been upheld by the previous Tribunal, the Tribunal decided that a five-year prohibition was both proportionate and appropriate and would protect consumers from similar conduct by serving as an appropriate deterrence against the adoption of non-compliant service models.

Administrative charge recommendation: 100%