

Tribunal meeting number 287

Case reference: 192311
Case: Prohibition of an associated individual

This case was brought against a person alleged to be an 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 [name redacted] (“associated individual”) pursuant to paragraph 4.8.3(g) of the Code.
2. The case related to an Adjudication against the Level 2 provider, Taptronic FZC (“the Level 2 provider”), which was heard on 17 August 2021 (case reference: 152741) (“the Adjudication”). The Adjudication concerned subscription-based Fitness Service, Fitguru. 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 the associated individual pursuant to paragraph 4.8.3 (g) of the Code.
3. The Level 2 provider operated a subscription alerts service called Fitguru, which provided consumers with fitness training and nutritional videos (“the Service”). The Service operated via direct carrier billing using two value chains and two shortcodes: 64055 and 80206.
4. The Executive received a total of 410 complaints concerning the Service between May 2018 and February 2020. Complainants variously alleged that they had not signed up to, nor agreed to be charged by the Level 2 provider and that they were unable to successfully complain to the Level 2 provider.
5. On 17 August 2021, the Tribunal adjudicated against the Service operated by the Level 2 provider. The Tribunal upheld the following breaches of the Code against the Level 2 provider:
 - Fairness – Rule 2.3.1
 - Consent to charge – Rule 2.3.3
 - Complaint handling – Rule 2.6.1
 - Registration – Paragraph 3.4.14
 - False and misleading – Paragraph 4.2.2
 - False and misleading – Paragraph 4.2.2

6. The Executive raised three breaches of Paragraph 4.2.2 however, one breach was not proved.
7. The Tribunal considered the overall case to be very serious and imposed the following sanctions:
 - formal reprimand
 - a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of six years, starting from the date of publication of the Tribunal decision, or until all sanctions imposed have been complied with, whichever is the later
 - a requirement that the access to the Fitguru service is barred for a period of six years
 - 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 £1,250,000.
8. The Tribunal that heard the case on 17 August 2021 also recommended that the Level 2 provider pay 100% of the administrative cost that totalled £11,315.
9. The relevant Code Provisions for relating to the associated individual's potential prohibition include:
 - 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

10. The hearing was held remotely via Microsoft Teams due to the ongoing Covid-19 situation. The associated individual attended the hearing with his solicitor who confirmed that she would be merely observing the hearing. The PSA’s investigator was also in attendance on behalf of the Executive.
11. The Tribunal expressed its concerns that the associated individual had submitted a document entitled *“Response to the Reply to the PSA’s recommendation to impose a prohibition pursuant to paragraph 4.8.3(g) of the 14th edition of the Code of Practice 2016”* (“Response Document”) as it appeared to be a witness statement. The Tribunal was concerned by the factual assertions that the associated individual had made in this document, particularly as the Tribunal believed that this gave rise to a crucial issue of credibility. It stated that the usual way to deal with the issue of credibility was through the giving of oral evidence, however, the hearing was due to take place as a paper-based hearing, which was limited to hearing brief oral submissions that clarified matters and did not extend to giving evidence. It inquired whether the associated individual was aware of his right to request an oral hearing. The associated individual responded that he did not believe that this had been fully explained to him, adding that his solicitors were not PSA specialists.
12. The Tribunal asked the Executive to demonstrate the associated individual had been made aware of his right to request an oral hearing. The Executive produced a letter that had been issued to the associated individual and his solicitors on 7 October 2021. The Tribunal noted that this document stated the following:

“As an alternative to this standard process, either you, the Level 2 provider, or the Phone-paid Services Authority may choose to request an “oral hearing.” This is a forum in which the matter is considered by a Tribunal in a more formal setting, usually with the parties being represented by lawyers, and legal arguments being advanced. Witnesses for you and the Executive appear in person and may be formally questioned and cross examined. An oral hearing is likely to take longer to resolve than the standard process and may result in much higher costs. We recommend that you seek legal advice prior to initiating an oral hearing. If you do wish to proceed through an oral hearing, an application should be made within 10 working days of receipt of this letter. Further details of the oral hearing procedure are set out in the attached FAQ.”
13. The Tribunal indicated that it considered the associated individual’s credibility to be a crucial issue in the case. It highlighted paragraphs 145 and 159 in the Supporting

Procedures. Paragraph 145 of the Supporting Procedures states that: “Members of the Panel have an obligation, in conjunction with other members, to ensure that CAT hearings are conducted properly, fairly and in accordance with good practice and the relevant law. Each case must therefore be dealt with in the most expeditious manner compatible with the interests of justice and in accordance with the provisions of the Human Rights Act 1998”. Paragraph 159 states that: “Where a CAT has been designated to undertake a paper-based adjudication, the Chair of the CAT may notify the Executive that an oral hearing is preferred, setting out the reasons. If the Executive agrees, it will immediately notify the relevant party and begin the process of arranging such a hearing.”

14. The Chair of the Tribunal considered that the associated individual, or the Executive itself, should have asked for an oral hearing. The Tribunal questioned the Executive about whether it agreed that the associated individual had asserted some facts in the document he had submitted as a response to the Warning Notice and that perhaps it was best tested by way of an oral hearing, but one had not been requested. In response to questioning, the Executive agreed that the associated individual had made factual assertions in the document but emphasised that it was within the associated individual’s right to seek an oral hearing, but he did not request one.
15. The Chair invited the parties to consider whether they wished to ask for an oral hearing or not. When the Tribunal resumed, the associated individual requested an oral hearing. The Executive informed the Tribunal that it would not have requested an oral hearing for this matter given the unique ability for providers to make oral representations at paper-based hearings. The Executive outlined that the Tribunal could decide how much weight to attribute to the evidence and that an oral hearing would lead to a significant delay and significant costs.
16. The Tribunal adjourned the hearing, having formed the view that in order for justice to be done, the evidence needed to be heard properly and fully tested through the oral hearing process. The Tribunal did not consider that the evidence could be fairly and properly determined on the papers. It adjourned the case in order to give the Executive sufficient time to consider the Tribunal’s preference that an oral hearing should be arranged. The Executive agreed that it would notify the Tribunal and the associated individual of its decision within 14 days.
17. The Tribunal did not consider the issue of administrative costs which were incurred in respect of the investigation and the hearing. The issue of administrative costs will be dealt with at a future hearing.
18. The Executive considered the Tribunal’s view, and the Executive notified the Tribunal and the associated individual on the 3 December 2021 that it did not agree that an oral hearing was appropriate for the following reasons:
 - the Code is the legal instrument for the regulation of the phone-paid services. Annex three of the Code clearly states that an oral hearing must be applied for within ten working days, by the relevant party, upon receipt of a Warning Notice

unless an extension has been requested. The Code does not confer on a Tribunal any discretion or power to elect an oral hearing. The Supporting Procedures have no statutory force and the discretion provided for within Paragraph 159 of the Supporting Procedures is still confined to the requirements within the Code.

- the associated individual and his legal representative did not request an oral hearing within the timeframe permitted by the Code
- the paper-based hearing provides the associated individual the opportunity to make oral representations to clarify matters for the Tribunal
- if the Tribunal were to prohibit the associated individual in accordance with paragraph 4.8.3 (g), the associated individual has the right to request a review of that decision, which could be convened as an oral hearing
- the Response Document submitted by the associated individual can be considered in the same way written responses by individuals have been considered in the past, within the paper-based hearing
- the associated individual's ability to provide oral representations, coupled with his legal representation precludes any unfairness or evidential detriment with proceeding with a paper-based hearing. The Tribunal has the discretion to attribute as much weight as it considers is warranted to the oral representations and documents put forward.
- arranging an oral hearing would potentially lead to a significant delay, resulting in the case not being dealt with in the most expeditious manner. It is crucial for consumer protection for the case into the associated individual's potential prohibition to be considered by a Tribunal at the earliest opportunity.
- the cost that are likely to be incurred for reconvening as an oral hearing are likely to be significantly higher than those incurred for a paper-based hearing.

19. The associated individual's legal representative sent a letter to the Executive dated 3 December 2021 in which they:

- disputed that the Response Document amounted to witness evidence
- stated that it remained unclear as to what type of response could be considered at a paper-based hearing
- confirmed that that a paper-based hearing was sufficient and that the associated individual had not previously requested an oral hearing because of the cost, absence of witness evidence, absence of expert evidence and absence of legal submissions
- requested further information on the procedure to be followed
- repeated the request for the proceeding against the associated individual to be withdrawn.

20. The Executive responded informing the legal representative that the case will not be withdrawn and offered further explanation regarding the procedural issues.

21. The Executive received further correspondence from the associated individual's legal representative on 10 December 2021 which stated the following:
- the letters of 3 December 2021 crossed paths
 - the Executive should have proscribed what form the response from the associated individual should have taken
 - that the associated individual now did not agree that the matter should proceed by way of paper-based hearing, as he did not want limited weight placed on his response to the Warning Notice
 - that the proceedings have placed the associated individual "*in a position of significant prejudice*" and it would therefore be unjust to continue with a paper-based hearing.
22. The Executive continued to correspond with those representing the associated individual regarding the procedural issues that had arisen, providing clarity and further explanation where appropriate. The associated individual's representative continued to raise ongoing concerns regarding the weight that would be attached to the associated individual's response, the procedural issues that had arisen and the prejudice that the associated individual now faced in proceeding with a paper-based hearing.
23. The Executive went on to schedule the paper-based hearing which reconvened on 28 January 2022. The associated individual and his solicitor were in attendance to make oral representations to the Tribunal.
24. During the hearing on the 28 January 2022, the Tribunal considered the issues raised within the correspondence between the associated individual's legal representatives and the Executive. The Tribunal noted that those representing the associated individual had previously agreed to the paper-based hearing in their letter dated 3 December 2021. The Tribunal also noted that the issue of prejudice had been raised, but there was no detail as to the real prejudice that proceeding with a paper-based hearing would cause to the associated individual.
25. The Tribunal invited those representing the associated individual to make any further representations regarding the real prejudice that the associated individual would suffer in proceeding with a paper-based hearing. The representative reiterated that that there had been a procedural irregularity that the Code does not provide for. It was suggested that it was unclear as to where, within the Code, the Executive was permitted to proceed in the way it had.
26. Those representing the associated individual confirmed that the Response Document was not intended to be viewed as witness evidence. Therefore, the direction taken by the previous Tribunal was cause for concern and that the prejudice had arisen from the unusual way the proceedings had progressed, causing the associated individual to be singled out, with emphasis now placed on these proceedings.

27. The Tribunal took account of the oral representations that could be made during the paper-based hearing by both the associated individual and his legal representative, providing clarity to help the Tribunal determine whether the Executive had met the applicable test.
28. While acknowledging the procedural issues and chronology of the case, the Tribunal were of the view that the Code was the starting point as it has the statutory foundation, unlike the Supporting Procedures. The Tribunal confirmed the Code complies with human right requirements, including the right to a fair trial. The individual's representative had not been able to provide evidence of real prejudice to the individual by adopting the paper-based hearing given that both the individual and the representative could make further oral representations at the hearing. The Tribunal reminded all parties that the burden of proof remained with the Executive.
29. After considering the representations made, the Tribunal unanimously confirmed that the matter would proceed to a paper-based hearing. The Tribunal was satisfied that the hearing could proceed in the paper-based format without causing any prejudice to the associated individual. The Tribunal confirmed that the Executive's decision to proceed with a paper-based hearing could not be overruled. The Tribunal had no power to review that decision.

Associated individual

The Executive's case

30. The Executive asserted that the associated individual fell within the definition of Paragraph 5.3.9 of the Code as he had day-to-day responsibility for the conduct of the Level 2 provider.
31. The Executive submitted in writing that this was evidenced by the following:
 - a. The CreditSafe reports ordered on 15 June 2020 and 11 May 2021 detailed the associated individual's position in the Level 2 provider company.
 - b. The associated individual had been listed as a primary contact for the Level 2 provider on the PSA registration database since the Level 2 provider first registered.
 - c. The associated individual's contact information on the PSA Registration Scheme stated his job title, which was of seniority within the company.
 - d. On 7 March 2018, the associated individual signed a due diligence and risk control form, on behalf of the Level 2 provider, which was required by the Level 1 provider.
 - e. In the DDRAC forms, the associated individual signed declarations showing his job title.

- f. While there was no reference to the Level 2 provider on the associated individual's LinkedIn profile at the time the Executive reviewed it, on the Level 1 provider's DDRAC document it was noted that his LinkedIn profile showed his position within the company. Also when the Executive performed a Google search, the results indicated that the associated individual was previously listed within a senior position in the Level 2 provider company.
- g. On 4 May 2017, the associated individual, in his role in the Level 2 provider company signed a number of contracts with third parties where the title ascribed to him was that of a senior position. This included contracts:
- to operate premium rate services with the Level 1 provider
 - to carry out mobile and internet market value-added services
 - for a third-party to provide compliance and monitoring services to the Level 2 provider
 - transfer services between a third-party and the Level 2 provider.
- h. On 21 June 2018, the associated individual sent a meeting request to the Executive in order to provide an overview of the Level 2 provider's services in the UK and its marketing practices.
- i. On 8 July 2021, the Director of the Level 2 provider company referred to the associated individual as having *"regulatory and legal oversight for the business."*
- j. On 21 July 2021, the Director stated that the associated individual's role *"was to grow the Taptronic business in Asian markets, primarily India. He also oversaw administration for the business and helping [redacted] with compliance and regulations."*
- k. On 12 July 2021, the associated individual's legal representative provided a copy of the associated individual's contract of employment and it stated that he held a senior position which differed to the position he had declared to the Executive and signed contracts as. The contract also declared his schedule of responsibilities to include administrative services (banking and company administration), business services (negotiate partner contracts and customer support), business growth (Asian market growth and to identify markets and partners in Asia, build and execute strategy for these markets).
- l. A Creditsafe report ordered by the Executive on 16 September 2021 listed the associated individual as holding a senior position within the Level 2 provider company.
32. The Executive submitted that the associated individual fell within the definition of Paragraph 5.3.9 based upon his registration as a primary contact for the Level 2 Provider, information within the Creditsafe reports and multiple contracts that the

associated individual signed, which all evidenced his senior position within the Level 2 provider company.

33. However, the Executive asserted that the distinction between the associated individual's role as he accepted it or as the Executive asserted was somewhat artificial because even if he was to be regarded as per his contract of employment, he was nonetheless, an associated individual within the meaning of the Code. The Executive relied on the evidence that the associated individual had of day-to-day responsibility for the conduct of the Level 2 provider. Paragraph 5.3.9 of the Code provides that an associated individual includes individuals who are responsible for the day-to-day running of the business, not just those within the most senior positions.

34. The Executive asserted that the associated individual held the position when the breaches of Rules 2.3.1, 2.3.3, 2.6.1, Paragraphs 3.4.14 and two counts of 4.2.2 were committed. These breaches were upheld and considered to be 'very serious' in the Adjudication.

The associated individual's representative's submissions at the hearing

35. The solicitor representing the associated individual largely repeated submissions which were set out in detail in the parties' correspondence regarding the procedures adopted previously and issues of prejudice. Further submissions were made on the associated individual's factual position, his role and the distinction between that and others running the business. The Tribunal were referred to the individual's written response which dealt with his lack of knowledge of the breaches of the code.

The associated individual's response

36. In the Response Document the associated individual stated the following:

- a. He did not hold the Senior position which the Executive asserted, he was merely an employee, as he was a local resident, which was a requirement of United Arab Emirates ("UAE") corporate governance. It was only in this capacity that he was able to execute and finalise contracts on behalf of the Level 2 provider.
- b. The information on the Creditsafe reports was factually incorrect.
- c. In retrospect he should have made amendments to the signature pages of the relevant contracts.
- d. The Director was responsible for all operational matters relating to the Service being provided in the UK. The only support provided by the associated individual was of an administrative nature.
- e. He was not an associated individual in connection with the UK market. The Director was responsible for those activities.

37. During the hearing the associated individual stated the following to the Tribunal:

- a. He was the local manager for the Level 2 provider. His role included monitoring compliance with UAE licences, executing contracts, developing the market in Asia and being the local point of contact, as he was based in the UAE.
- b. He did not hold a senior position when considering UK company law and regulation.
- c. He accepted he signed documents with a senior title, but it was just a title given to assist with the execution of the contracts in the local market. It was a title used to add weight to his position in meetings with local third parties.
- d. The Director was responsible for the Level 2 provider's activities in the UK and had other companies operating in the market.
- e. The Director provided the financing for the Level 2 provider company, in its entirety.
- f. He reiterated that he was not an associated individual, he was the on the ground representative, as required by UAE company practices, procedures and regulation.

Conclusions

38. The Tribunal considered all the evidence before it and concluded, on the balance of probabilities, that the Executive had shown that the associated individual fell within the definition provided in Paragraph 5.3.9 of the Code.
39. The Tribunal considered both the oral and written representations made by the associated individual. The Tribunal found that the title he adopted led him to be an associated individual. The use of the title may have been a position that the associated individual used loosely, but within his representations he accepted that he was a senior manager within the Level 2 provider company, acting out a senior role that had regional importance. He was senior enough to sign contracts on behalf of the company. The Tribunal unanimously found that he was an associated individual.

Knowing involvement

The Executive's case

40. The Executive submitted that the associated individual was one of the primary contacts at the time that the very serious breaches of the Code occurred. He had oversight of the company affairs and was responsible for ensuring that the company was properly managed, including complying with the Code and sanctions.
41. The Executive asserted that key events occurred, which would have alerted the associated individual to the potential breaches of the Code and that the Level 2 provider was operating non-compliantly.
42. The Executive relied on the following:

- a. On 14 June 2018, the Executive sent a registration notification regarding the Service to the associated individual and shortly afterward he registered the Service.
- b. The Executive received 410 complaints regarding the Service, during the time the associated individual held a senior position within the Level 2 provider company. At the time the complaints were made, information requests were sent to the associated individual and while he did not respond directly, he did forward the request to an employee (“associated individual 2”) and was copied into the response she sent to the Executive. This demonstrated the associated individual’s awareness of the complaints made regarding the Service.
- c. On 12 March 2019, the Executive sent a monitoring notification to the associated individual and while he did not respond directly, he forwarded the request to associated individual 2 and was copied into the response she sent to the Executive.
- d. The associated individual discussed the monitoring notification via telephone with the Executive which demonstrated the associated individual’s awareness of the Service acting non-compliantly.
- e. The Executive sent an informal enquiry to the associated individual on 6 July 2018 and although the director responded, the associated individual would have known about it, as his was the only email address the informal enquiry was sent to.
- f. The associated individual corresponded with the Executive regarding the operation and promotion of the Service, responding to two of the Executive’s directions for information.
- g. The Executive sent and received correspondence from the associated individual’s email address, the last correspondence being sent on 20 September 2019. Correspondence received and responded to the associated individual was as follows:
 - Informal Enquiry sent to the associated individual on 6 July 2018, within which the Executive outlined its initial concerns regarding the Service. These were listed as:
 - consumers have reported receiving unsolicited texts from the service ‘Fitguru’
 - consumers variously alleged the service was not requested
 - consumers have also raised concerns with the services complaint handling process
 - various consumers have reported no response to their complaint about the service.
 - on 12 March 2019, the Executive sent a monitoring notification to the associated individual confirming that one of the Executives monitoring

MSISDNs was automatically opted into the Service without consent. The Executive also confirmed that the issue was likely to cause consumer harm.

- the Level 2 provider responded to the monitoring notification with its investigation and submitted evidence that it had refunded affected consumers, the associated individual was copied into this response
- in response to the Executive's first direction for financial information dated 27 August 2019, the associated individual called and left a message for the Executive. The Executive returned the call and the associated individual confirmed the date that audited accounts were to be available and stated he could make a special request to his accountant to bring them up-to-date early. The associated individual also confirmed that he had responded to the monitoring concerns raised and sought to address this and that they self-suspended marketing prior to this occurring. He stated they did not work with affiliates and that even where they had taken the best precautions, which they could demonstrate, this had occurred, and he did not understand how. The associated individual agreed to provide further evidence and the Executive emphasised that he was not limited to only supplying the information requested in the direction.
- the associated individual formally responded to the Executive's first direction for information on 4 September 2019, the response included financial information, additional revenue streams and information about business in other jurisdictions. The associated individual also included further information surrounding the Level 2 provider's engagement with its compliance partners, the operation and promotion of the Service and any issues of malpractice identified and addressed since May 2018.
- the associated individual formally responded to the Executive's second direction for information on 20 September 2019, the response included detailed financial documentation
- the associated individual formally responded to the Executive's third direction for information on 30 October 2019, the response included detailed financial documentation
- the associated individual was also sent five further directions which he received and tasked associated individual 2 to responded to
- the Executive called the associated individual on 10 June 2021 and 14 June 2021. The associated individual confirmed that the business had not been operating in the UK for a long time and he was unable to give any further information on MSISDNs, as the company was in liquidation. (The Executive noted that according to a Creditsafe report on the Level 2 provider ordered on 16 September 2021, the company was active and not in liquidation). The associated individual was interested in the outcome of the investigation and

the Executive explained that it believed that the service had breached the Code and that the next steps would be to bring the matter to a Tribunal. The Executive further explained that the Level 2 provider would have the opportunity to respond to the breaches or provide more evidence. The associated individual provided further contact details for the Level 2 provider. The expectation was that the Level 2 provider would properly investigate the issues.

43. The Executive submitted that the evidence showed that the associated individual was knowingly involved in the series of breaches or one of the serious breaches committed by the Level 2 provider.

44. During the Hearing the Executive stated the following:

- The associated individual was the primary contact and demonstrated he had knowledge of the business.
- The associated individual was responsible for compliance and had knowledge of the breaches.

The associated individual's Response

45. In the Response Document, the associated individual stated the following:

- a. He responded to the correspondence that was sent to his email address and spoke to the Executive only because he was office based and able to gather the information requested, passing it on in an administrative capacity.
- b. 80% of the Level 2 provider's revenue stream came from other countries within which the company operated and that was his main focus. That side of the business attracted no regulatory or compliance issues.
- c. The Service was registered by the associated individual as he was the only office-based party. He disputed that the service should have been registered earlier.
- d. He attended the presentation with the director to assist, as the director had language difficulties.
- e. On 6 July 2018, requests were sent from the Executive to the Level 2 provider, but there was no mention of the 410 complaints, no issue was raised regarding unsolicited text message and no issue raised regarding the complaints' procedure.
- f. It was not until August 2019, in the first direction, that the Level 2 provider was informed of the 410 complaints and the associate individual immediately engaged with the Executive to explain how it had occurred.
- g. The additional requests for information were handled by associate individual 2 as he was receiving complex medical treatment.

- h. The evidence produced by the Executive did not show knowing involvement in the breaches. The evidence is of correspondence between the Executive and the Level 2 provider.
 - i. The associated individual believed that the Service was acting compliantly and had no reason to believe that there was anything questionable taking place.
 - j. He was not involved in extracting the data that was ultimately sent to the Executive. He lacked the technical ability to decipher any inaccuracies within the data provided.
46. During the hearing the associated individual made the following representations orally:
- a. He was not knowingly involved in the breaches and the Executive had failed to provide any evidence to the contrary.
 - b. He was not focused on the UK market. He was primarily responsible for the day-to-day activities in the UAE, expanding the business into the local market.
 - c. He responded to the Executive's request for information because it was the reasonable, helpful thing to do. He was the voice of reason. He saw the complaints and gathered the information requested by the Executive.
 - d. There were three people involved in the company and compliance did fall within his remit. He set up the call centre, but the director dealt with the processes involved in the UK market.
 - e. He cooperated fully with the investigation and took steps to avoid any delay with the proceedings.
 - f. The director was the responsible for the Service and the breaches of the Code.

Conclusions

47. The Tribunal had to decide whether it was satisfied, on the evidence before it, that the associated individual was knowingly involved in a serious breach or a series of breaches of the Code, on the balance of probabilities.
48. The Tribunal carefully considered the evidence provided by the Executive and found that the Executive had relied upon the nuances of the associated individual's behaviour, which suggested that he was knowingly involved in the breaches committed by the Level 2 provider.
49. The Tribunal noted that in signing documents, the associated individual should have recognised the consequences of said actions, in terms of demonstrating the level of involvement in the activities governed by the Code.
50. However, the Tribunal found the associated individual's account plausible and persuasive. The associated individual had explained, in detail, the background that led

to the actions he had undertaken, the areas of the business that he was employed to focus on and others where he had had little or no involvement. The Tribunal noted that the associated individual was adamant that one of the areas he had little involvement in were the activities that led to the breaches of the Code. His involvement was limited to tasks of an administrative nature, which did not amount to knowingly involvement in the breaches occurring, at the relevant time.

51. The Tribunal considered the representations made by the associated individual regarding the actions of the director and associated individual 2 which demonstrated that he took no action that met the bar of knowing involvement in the breaches.
52. The Tribunal found that the associated individual's account was credible and had responded to the evidence presented by the Executive with a coherent explanation. While the Tribunal was concerned that the associated individual may have turned a blind eye to the breaches, the test required cogent evidence of knowing involvement in serious breaches, which was not present here.
53. The Tribunal unanimously concluded that, on the balance of probabilities, that there was insufficient evidence of the associated individual's knowing involvement in the commission of the serious breaches of the code. Therefore, the Executive's request to prohibit the associated individual from providing, or having any involvement in, any premium rate services in the UK was refused.