

Tribunal meeting number 299

Case reference: 195457

Case: Prohibition of an associated individual

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

The Tribunal was asked to consider imposing a prohibition against Mr Ben Dewhurst pursuant to paragraph 5.8.5(g) of the Code.

Background

1. The case related to a previous adjudication against Connect You Limited (the “Merchant provider”) (case reference 188306). The case related to an Information, Connection and Signposting Service (“ICSS”) provided by the Merchant (“the Service”) and was adjudicated on 17 March 2023. The Tribunal that considered the case on 17 March 2023 recommended consideration of a prohibition of Mr Dewhurst, a director of the Merchant provider and contact on the Phone-paid Services Authority’s (“PSA”) Registration Scheme for the Merchant provider since it registered on 16 December 2019.
2. The Merchant provider operated a Type 1 ICSS which connects consumers to 29 different organisations, including HMRC, DVLA, British Gas, O2 and Apple. The calls to the Service cost £3.60 per minute plus the network’s access charge. The PSA received 408 complaints regarding the Service. The first complaint was received on 6 August 2020. The main complaint period was between September 2020 and May 2021. However, the most recent complaint was received on 11 October 2022.
3. The complainants alleged that they did not see pricing on the promotional material and landing page for the Service. They also alleged that they thought they were contacting the advertised organisation directly.
4. The Merchant has been registered with the PSA since 16 December 2019. The terminating Network operator for the service is Telecom 2 Limited (“Telecom 2”), who have been registered with the PSA since 20 July 2011. The Service was advertised through Google Ads and could be accessed via searching for one of the 29 organisations the Service connects to. The Service was registered with the PSA on 18 December 2019. The Service commenced operating on 2 January 2020.
5. On 17 March 2023 the Tribunal considered whether the Service operated by the Merchant provider breached the Code. The Tribunal upheld the following breaches:
 - Rule 2.2.7 (Code 14) and 3.2.1 (Code 15) – Pricing
 - Rule 2.3.2 (Code 14) and 3.3.2 (Code15) – Misleading
 - ICSS special condition 3, under Code 14 and requirement 3.2.2 (g) under Code 15 - failure to clearly and prominently state that the information was

available at a lower cost.

6. The Tribunal considered the case to be very serious overall and imposed the following sanctions:
 - a formal reprimand
 - a requirement that the Merchant seeks compliance advice from the PSA and implements it to the satisfaction of the PSA in relation to the operation and promotion of this Service and any future Services, for a period of five years from the publication date
 - the prohibition of the Merchant from any involvement in any PRS or promotion of PRS for a period of three years starting from the date of publication
 - a requirement that the Merchant 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 such claims are not valid, and provide evidence to the PSA that such refunds have been made
 - a fine of £750,000.

The Tribunal also proposed payment of 100% of the administrative costs by the Merchant provider and the prohibition of Mr Dewhurst.

Code provisions

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

Paragraph 5.8.5 of the Code provides:

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

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

Paragraph 5.8.12 of the Code provides:

“If a Tribunal considers that it may wish to impose a prohibition under sub-paragraphs 5.8.5(f) or 5.8.5(g) in respect of any associated individual, the PSA will first make all reasonable attempts to notify the individual concerned and the Relevant Party in writing. In providing any such notification, the PSA will inform the Relevant Party and the associated individual that either of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of their right to require an oral

hearing under paragraph 5.7.9(b) above rather than consideration of the matter relating to the associated individual on the papers.”

Preliminary issues

Service of notice

8. The Tribunal considered whether the PSA had made all reasonable attempts to notify Mr Dewhurst and the Merchant, in writing. The PSA was required to inform both parties of their opportunity to make representations in writing, or in person, to the Tribunal and of their right to require an oral hearing, rather than the consideration of the matter on the papers. The Tribunal was satisfied, on the evidence presented to it, that Mr Dewhurst had been notified of the date and nature of the hearing, being conducted remotely.
9. The Tribunal noted that the notification was sent to Mr Dewhurst on 2 June 2023. On 23 June 2023 the PSA spoke to Mr Dewhurst via telephone regarding the recommended prohibition and invited him to attend the Hearing.
10. The Tribunal was satisfied that the that paragraph 5.8.12 of the Code had been complied with.

Proceeding in absence

11. In light of the evidence provided, namely that Mr Dewhurst had not indicated that he wished to attend the hearing, the Tribunal was satisfied that, in all the circumstances, Mr Dewhurst had voluntarily absented himself and that it was fair to proceed with the hearing in the absence of Mr Dewhurst.

Submissions

12. The PSA considered the available evidence and applying the relevant provisions of the Code, submitted that Mr Dewhurst was an associated individual who was knowingly involved in a series of breaches and had failed to take steps and therefore should be prohibited.

Associated individual

13. The PSA submitted that Mr Dewhurst was an associated individual as he was a director of the company and had day to day responsibility for the conduct of the Merchant provider. This was evidenced by the following:
 - Mr Dewhurst was the sole director of the Merchant since 10 December 2019 and remains registered as a current director according to the Creditsafe report and Companies House
 - Mr Dewhurst was the sole shareholder of the Merchant with 100% of the shares and was the sole shareholder

- Mr Dewhurst was listed as the sole primary contact on the PSA registration database since the Merchant first registered on 16 December 2019. The PSA also noted that within the responsible person list Mr Dewhurst stated his contact role as being the Director of the Provide.
 - in his capacity as a director of the Merchant, Mr Dewhurst signed a contract to operate the Service with Telecom 2 on 18 December 2019.
14. The Tribunal considered the evidence and submissions provided by the PSA. The Tribunal considered Mr Dewhurst's position and noted that he was a Director of the Merchant. The Tribunal also noted that Mr Dewhurst appeared to be the only individual involved in the operation of the Merchant and how heavily involved he was in the day-to-day tasks, such as responding to correspondence and entering into agreements on behalf of the Merchant.
15. The Tribunal was therefore satisfied, on the balance of probabilities, that Mr Dewhurst was an associated individual.

Knowing involvement

16. The PSA relied upon key events which evidenced that Mr Dewhurst was knowingly involved when the Merchant provider was operating non-compliantly and the breaches of the Code arose.
17. The PSA submitted that Mr Dewhurst had knowing involvement in the day-to-day operations and management of Connect You Ltd which would have alerted him to the potential breaches of the Code being committed for the following reasons:
- Mr Dewhurst has been the only person who corresponded with the PSA in relation to the operation and promotion of the Service. Mr Dewhurst has responded to all six of the PSA's directions concerning the Service from the beginning of the investigation until now.
 - Mr Dewhurst also corresponded with the PSA's regarding the ongoing investigation into the substantive case, responding to and requesting updates.
 - Mr Dewhurst also attended the Tribunal on behalf of the Merchant provider.
 - on 30 July 2022 Mr Dewhurst emailed the PSA to inform them that the Merchant intended to make changes to the landing page of the Service and on 24 August 2021 provided details of what those changes were to be
 - from 9 September 2021 to 11 November 2021 Mr Dewhurst corresponded with the Compliance team to seek advice on the Merchants landing page
 - on 13 April 2022 Mr Dewhurst responded to an email the PSA sent the Merchant regarding aspects of the Service landing page which had still not incorporated all the advice of the compliance team and

- on 9 May 2022 Mr Dewhurst emailed the PSA to inform them that the Merchant intended to make further changes to the landing page of the Service
18. During Mr Dewhurst's oral representations at the Tribunal on 17 March 2023, he addressed the breaches raised by the PSA and what action he took and failed to take in response to the compliance advice. He explained to the Tribunal on that occasion, the reasoning behind his failure to adopt the compliance advice provided by the PSA, the failure of which contributed to the breaches that were found.
 19. The Tribunal considered the evidence and submissions provided by the PSA. The Tribunal acknowledged the efforts made by Mr Dewhurst, in particular the voluntary suspension of the Service. However, the Tribunal had regard for the explanation put forward by Mr Dewhurst for his failure to adopt the compliance advice provided. The Tribunal carefully considered the impact this had, in terms of the non-compliance, and breaches of the Code that occurred.
 20. The Tribunal concluded that the breaches were committed deliberately and therefore that Mr Dewhurst had the level of knowledge and involvement required to satisfy the test.
 21. The Tribunal was satisfied, on the balance of probabilities, that Mr Dewhurst was knowingly involved in a series of breaches.

Failed to take reasonable steps

22. The PSA asserted that Mr Dewhurst failed to take reasonable steps to prevent the breaches demonstrated by the following evidence:
 - Mr Dewhurst's response to the PSA's informal enquiry letter on 29 October 2020
 - Mr Dewhurst's response to the first direction on 11 May 2021
 - Mr Dewhurst's response to the second direction on 3 June 2021
 - Mr Dewhurst's response to the third direction on 27 July 2021
 - Mr Dewhurst's response to the fourth direction on 17 November 2021
 - Mr Dewhurst's response to the fifth direction on 2 December 2021
 - Mr Dewhurst's response to the sixth direction on 31 October 2022.
23. The responses to the PSA's numerous directions for information demonstrates Mr Dewhurst's failure to take reasonable steps to prevent the breaches because within the directions and other correspondence Mr Dewhurst was informed of the details surrounding the non-compliance but failed to take any steps regarding the non-compliance.
24. Furthermore, Mr Dewhurst's decision to only implement part of the compliance advice he received from the PSA, evidences failure on his part. The advice was

provided to minimise consumer harm and prevent the non-compliance from continuing, but Mr Dewhurst failed take appropriate action.

Sanction

25. The PSA recommended that Mr Dewhurst 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 PSA asserted that this was proportionate taking into consideration the severity of the breaches that had been upheld.
26. The Tribunal considered whether, in all the circumstances, the recommendation from the PSA was appropriate and proportionate. The Tribunal found that the length of time that the breaches occurred over, the seriousness of the breaches, the level of involvement Mr Dewhurst had in the Service, coupled with the findings that the breaches were committed deliberately led it to being appropriate to impose the prohibition.
27. The Tribunal decided to prohibit Mr Dewhurst from providing, or having any involvement in, any premium rate service in the UK. However, the Tribunal determined that a period of three years was an appropriate and proportionate length for the prohibition taking into consideration the sanction imposed on 17 March 2023 in relation to the prohibition imposed on the Merchant and the actions of Mr Dewhurst. The Tribunal accepted that during the course of the investigation he had, at times, attempted to achieve compliance, albeit incompletely, and engaged with the PSA to this end. This had to be balanced against the severity of the breaches and the limited value the Service offered to consumers.

Administrative charge recommendation: 100%.