

Tribunal meeting number 160 / Case 3

Case reference: 47839
Case: Prohibition of an associated individual

THIS CASE WAS BROUGHT AGAINST THE ASSOCIATED INDIVIDUAL UNDER PARAGRAPH 4.8.6 OF THE CODE

BACKGROUND

i) Summary relating to Mr Dean Adams

The Tribunal was asked to consider imposing a prohibition against Mr Dean Adams pursuant to paragraph 4.8.2(g) of the 12th edition of the PhonepayPlus Code of Practice (the “Code”).

The case related to an adjudication against the Level 2 provider (the “**Level 2 provider**”) Worldwide Websites (26 June 2014, case reference: 42032), which concerned a breach of the sanctions imposed by an earlier Tribunal (14 November 2013, case reference 19887) and non-payment of the associated administrative charge. The case on 14 November 2014 concerned an adult dating and chat service (the “**Service**”).

On 26 June 2014, the Tribunal instructed the Executive to initiate the process which may lead to the prohibition of Mr Dean Adams, (an associated individual) pursuant to paragraph 4.8.2(g) of the Code.

The Tribunal considered the following evidence in full:

- The Tribunal decision against the Level 2 provider dated 14 November 2013;
- The Tribunal decision against the Level 2 provider dated 26 June 2014;
- Incorporation documentation for the Level 2 provider;
- Information regarding ownership of the Level 2 provider;
- A extract from the PhonepayPlus registration database for the Level 2 provider;
- A request for informal representations submitted by the Level 2 provider for the Tribunal of 14 November 2013;
- Correspondence between the Executive and the Level 2 provider between 31 July 2013 and 6 November 2013;
- The Level 2 provider’s breach letter response of 6 November 2013;
- Post 14 November 2013 adjudication correspondence with the Level 2 provider;
- The covering letter and email to the notification of potential prohibition dated 2 October 2014;
- The notification of potential prohibition dated 2 October 2014; and
- Documents confirming delivery of the potential prohibition notification to Mr Dean Adams and the Level 2 provider dated 9 October 2014.

The Executive conducted this matter in accordance with paragraph 4.8.6 of the Code. The Executive sent notification of a potential prohibition to Mr Adams and the Level 2 provider on 9 October 2014 but it did not receive a response. The Tribunal was satisfied that, in accordance with paragraph 4.8.6 of the Code, the Executive had made all reasonable attempts to inform Mr Adams of the prohibition proceedings. On 13 November 2014, the Tribunal reached a decision regarding the imposition of a prohibition on Mr Adams.

ii) Relevant Code provisions

- Paragraph 4.8.2(g) of the Code states:



“The Tribunal can apply a range of sanctions depending upon the seriousness with which it regards the breach(es) upheld. 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:

“(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 premium rate service 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 PhonepayPlus”.

- Paragraph 4.8.6 of the Code states:

“If a Tribunal considers that it may wish to make a prohibition under sub-paragraph 4.8.2(f), 4.8.2(g) or 4.8.2(h) in respect of any named individual, PhonepayPlus shall first make all reasonable attempts to so inform the individual concerned and the relevant party in writing. It shall inform each of them that any of them may request an opportunity to make informal representations to the Tribunal and of the right of any of them (or PhonepayPlus itself) to require an oral hearing”.

SUBMISSIONS AND CONCLUSIONS

1. The Executive submitted that the following evidence indicated that Mr Adams was an associated individual knowingly involved in a serious and/or series of breaches of the Code, in respect of the adjudications of 14 November 2013 and 26 June 2014.

Adjudication on 14 November 2013, case reference: 19887

On 14 November 2013, the Tribunal adjudicated against the adult dating and chat service operated by the Level 2 provider. The Service operated on the premium rate shortcode 79910 and the premium rate number 0909 967 2810. Consumers using the shortcode were charged £10 for seven credits (sending a message to another member cost one credit). Consumers using the premium rate number were charged £1.50 per minute to purchase one credit.

Consumers could engage with the Service by completing a “sign-up” form on the Service website to become a member. Consumers were given the opportunity to browse the member profiles and send messages to other members, which required consumers to purchase credits (each message cost one credit).

The Service commenced operation on the shortcode on 28 July 2011. The premium rate number commenced operation, according to the Network operator’s call records, on 1 July 2009 although the Level 2 provider stated it was July 2011. In July 2013, both elements of the Service were voluntarily suspended by the Level 2 provider following correspondence with PhonepayPlus.



One complainant was a whistleblower, who stated that she had been employed as a text chat operator to respond to fake member profiles. Another complainant made a complaint as a result of the Executive's monitoring which revealed her photograph was being used by the Service without her permission. In addition, PhonepayPlus' monitoring of promotions for the Service gave rise to concerns in relation to consumers being likely to be misled regarding the operation of the Service.

The Executive conducted the matter as a Track 2 investigation against the Level 2 provider. On 14 November 2013, the Tribunal upheld the following breaches of the Code against the Level 2 provider:

- Rule 2.3.2 – Misleading
- Rule 2.2.5 – Pricing prominence and proximity
- Paragraph 3.4.12(a) – Registration of numbers

The Tribunal concluded that the breaches of rule 2.3.2 and paragraph 3.4.12(a) of the Code were serious and the breach of rule 2.2.5 of the Code was moderate. The Tribunal determined that the seriousness of the case overall was serious and imposed the following sanctions:

- a formal reprimand;
- a fine of £75,000;
- a requirement that access to the Service is barred until compliance advice has been implemented to the satisfaction of PhonepayPlus; and
- a requirement to 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 PhonepayPlus that such refunds have been made.

In addition to the above sanctions, the Tribunal recommended that the Level 2 provider pay 90% of the administrative costs incurred by PhonepayPlus.

Adjudication on 26 June 2014, case reference: 42032

On 26 June 2014, the Tribunal adjudicated against the Level 2 provider for the non-compliance with the sanctions imposed by the Tribunal on 14 November 2013 and non-payment of the associated administrative charge.

The Tribunal upheld the following breaches of the Code:

- Paragraph 4.8.4(b) – Failure to comply with a sanction
- Paragraph 4.10.2 – Non-payment of an administrative charge

The Tribunal concluded that both breaches of the Code were very serious. The Tribunal determined that the seriousness of the case overall was very serious and imposed the following sanctions:

- a formal reprimand; and
- a prohibition on the Level 2 provider from providing, or having any involvement in any premium rate service for a period of three years, starting from the date of publication of



the decision, or until payment of the fine and original and instant administrative charges, whichever is the later.

In addition to the above sanctions, the Tribunal recommended that the Level 2 provider pay 100% of the administrative costs incurred by PhonepayPlus.

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

The Executive submitted that Mr Adams was an associated individual, as he was a director of the Level 2 provider at the time breaches of the Code occurred and were upheld by Tribunals on 14 November 2013 and 26 June 2014. A Companies House search conducted on the Level 2 provider revealed that Mr Adams was a director of the Level 2 provider and had been since 1 July 2006. In addition, during the course of the investigation, Mr Adams signed emails that he had sent to the Executive as the Chief Executive Officer.

The Executive submitted that Mr Adams was knowingly involved in the breaches of the Code upheld by the Tribunal on 14 November 2013, as a result of the following:

- As the sole director of the Level 2 provider, Mr Adams was, at the time the breaches of the Code occurred, responsible for the oversight of the Level 2 provider's affairs and ensuring that it was properly managed. Mr Adams had held the position of director in the Level 2 provider from 1 July 2006 until at least the date of the last Companies House search on 29 August 2014.
- As a director, Mr Adams had a fiduciary duty to ensure that all commercial activities, including the operation of the Service were conducted in accordance with the law and the regulatory obligations.
- Mr Adams was identified as the responsible person and the primary contact for the Level 2 provider when the Level 2 provider registered with PhonepayPlus on 26 July 2011. He maintained that position throughout the operation of the Service and when breaches of the Code were upheld by the Tribunals on 14 November 2013 and 26 June 2014.
- Mr Adams was the only individual from the Level 2 provider to correspond with the Executive throughout the investigation and enforcement procedure. He provided detailed responses to requests for information concerning the operation, content and promotion of the Service.
- Mr Adams submitted a detailed response to the breach letter of 22 October 2013.
- On 14 November 2013, Mr Adams attended the Tribunal, with a shareholder of the Level 2 provider company, and provided oral submissions on behalf of the Level 2 provider.

The Executive submitted that Mr Adams was knowingly involved in very serious breaches of the Code, which were upheld by a Tribunal on 26 June 2014, as a result of the following:

- As a director of the Level 2 provider, Mr Adams was, at the time the breaches of the Code occurred, responsible for the oversight of the Level 2 provider's affairs and ensuring that it was properly managed.
- Mr Adams was informed of the sanctions imposed by the Tribunal of 14 November 2013 in a formal notification letter sent on 17 December 2013 to the Level 2 provider and addressed to Mr Adams.
- The Level 2 provider did not acknowledge receipt or respond to the notification. Therefore on 7 January 2014, the Executive contacted Mr Adams and he stated that he



was aware of the Tribunal decision of 14 November 2013, but he strenuously disagreed with the Tribunal's findings, in particular, the level of the fine imposed. Mr Adams corresponded with the Executive between the 10 and 13 January 2014 in relation to an out of time review and suspension of the sanctions application.

- On 10 February 2014, a review application submitted by Mr Adams on behalf of the Level 2 provider was considered by the Chairman but was refused. Mr Adams made contact with the Executive on 17 February 2014 to confirm that he had attempted to contact two complainants to provide them with a refund, but he had not received a response. Following this, Mr Adams did not make any further contact with the Executive and no further communication was received from the Level 2 provider.

The Executive submitted that Mr Adams was fully informed of the sanctions imposed against the Level 2 provider by the Tribunal of 14 November 2013. As the sole director of the Level 2 provider, Mr Adams was responsible for ensuring that the Level 2 provider adhered to the sanctions imposed against it and paid the associated administrative charges. The Executive submitted that Mr Adams was knowingly involved in the non-payment of the fine and administrative charges, which ultimately resulted in two further very serious breaches of the Code being upheld by a Tribunal on 26 June 2014.

Consequently, the Executive submitted that Mr Adams was an associated individual who was knowingly involved in a series of breaches of the Code, most of which were assessed as serious and very serious.

2. Mr Adams did not provide a response to the notification of potential prohibition.
3. The Tribunal considered all the evidence presented to it. The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Mr Adams was an associated individual as he was the sole director of the Level 2 provider at the relevant time. Further, the Tribunal found that that he was knowingly involved in a series of breaches of the Code which were serious and very serious, upheld against the Level 2 provider on 14 November 2013 and 26 June 2014, as a result of his significant involvement in the Level 2 provider's affairs. The Tribunal found Mr Adams' involvement was evident, amongst other factors, because he was the only individual to correspond with the Executive on behalf of the Level 2 provider and he provided detailed responses about the manner in which the Service operated.

In addition, the Tribunal found, on the evidence presented by the Executive, it was clear that Mr Adams was aware of the sanctions imposed and as the sole director of the Level 2 provider it was clear that Mr Adams had responsibility for ensuring that sanctions imposed on 14 November 2013 were complied with and the associated administrative charge was paid.

Consequently, the Tribunal concluded that Mr Adams was knowingly involved in a series of breaches of the Code, which were serious and very serious, as an associated individual.

Sanction

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

In making this decision, the Tribunal found that there had been fundamental non-compliance with Code obligations. It noted that Mr Adams had failed to co-operate with, or acknowledge, the prohibition proceedings. Further, the Tribunal commented that as a director, Mr Adams was the most senior individual within the Level 2 provider and, had overall responsibility for ensuring that the



Level 2 provider was properly managed and that its affairs were conducted in accordance with legal and regulatory obligations.

Accordingly, it was satisfied that, given the need to protect consumers from similar conduct, and in light of Mr Adam's position within the Level 2 provider, three years prohibition was an appropriate period, taking into consideration all the circumstances.