

COMPLIANCE UPDATE 29/03/2012

FOR THE ATTENTION OF ALL THOSE INVOLVED IN THE PROVISION OF PREMIUM RATE SERVICES FOR THE PURPOSES OF SUBSECTIONS 120(9)(a)-(d), 120(10) AND 120(11) OF THE COMMUNICATIONS ACT 2003 ("the Act")

This update is to inform all those who provide premium rate services ("PRS") for the purposes of subsections 120(9)(a)-(d), 120(10) and 120(11) of the Act, that, in accordance with Paragraph 4.8.2(g) of the PhonepayPlus Code of Practice (12th Edition) ("the Code"), a PhonepayPlus Tribunal has prohibited the individuals named below from providing or having any involvement in, any PRS or promotion.

Those involved in providing PRS should take full note of the following information:

Prohibition sanction against Mr Kevin Swayne and Mr Barry Peak

PhonepayPlus today issues this compliance update to inform all providers of PRS that Mr Kevin Swayne and Mr Barry Peak were both found by a Tribunal on 15 March 2012 to have been associated individuals of TGH Management Limited (now in liquidation) who were knowingly involved in a very serious breach of the Code. In accordance with paragraph 4.8.2(g) of the Code, the Tribunal has prohibited Mr Swayne and Mr Peak, who were formerly directors of TGH Management Limited from providing or having any involvement in, any PRS or promotion for a period of three years from the date of publication of the Tribunal's decision.

Network operators, Level 1 and Level 2 providers are strongly reminded that, in accordance with their due diligence responsibilities under paragraph 3.1.5 of the Code, they must not engage or permit the involvement in the provision of PRS of either Mr Swayne or Mr Peak while they remain prohibited. All Network operators, Level 1 and Level 2 providers should in any event have undertaken effective due diligence measures, to fully identify (i) the parties with whom they engage commercially and (ii) the individuals associated with those parties. If any Network operator, Level 1 or Level 2 provider believes that Mr Swayne or Mr Peak are likely to be involved with any party with whom they engage commercially, they should consider whether any further due diligence measures are now required. Network operators, Level 1 and Level 2 providers should also continue to retain comprehensive records of such due diligence undertaken.

"Involvement" as an "associated individual".

"Involvement" of an individual in the provision of PRS is to be judged on a case by case basis. However, for the avoidance of doubt, "involvement" includes circumstances where the individual is an "associated individual" in accordance with paragraph 5.3.9 of the Code:

"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."

Other activities that may constitute “involvement”.

Mr Swayne and/or Mr Peak may also have “involvement” in PRS in other instances where they are not associated individuals, but are otherwise involved, for example through consultancy, shadow directorships and/or significant shareholdings that may be sufficient to give them practical control or substantial influence over a company providing PRS.

PhonepayPlus appreciates that it may be difficult to identify activities that may constitute “involvement” but do not fall under the heading of “associated individual”. In such instances PhonepayPlus will endeavour to provide as much assistance as possible, and support on a case by case basis.

For further information please send enquiries to: compliance@phonepayplus.org.uk