

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS
TRIBUNAL DECISION**

**Thursday 30 August 2012
TRIBUNAL SITTING No. 107 / CASE 1
CASE REFERENCE: 07211**

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

BACKGROUND

(i) Summary relating to Mr Andrew Price

The Tribunal was asked to consider a prohibition against Mr Andrew Price under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “Code”). The case related to four previous adjudications, two dated 29 September 2011 (case reference 01220, against John Hamilton & Company and case reference 01225, against Phillip Marshall & Company), one dated 21 June 2012 (case reference 04321, against Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company)), and one dated 29 March 2012 (case reference 07571, against Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company)). The decisions of 29 September 2011 and 29 March 2012 each found that employees of companies had been misled into unknowingly incurring high premium rate charges. The decision of the Tribunal on 21 June 2012 related to a failure to comply with the sanctions imposed by the Tribunal on 29 March 2012. On 29 March 2012, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Price, (an associated individual) under paragraph 4.8.2(g)

(ii) Relevant Code Provisions

- 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.”

- 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...“prohibit a relevant party and/or an associated individual found to have been knowingly involved in a serious breach or a series of breaches of the Code from providing, or having any involvement in, any premium rate service or promotion for a defined period.”

- An associated individual is defined at paragraph 5.3.9 of the Code,

“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.”

SUBMISSIONS AND CONCLUSIONS

Knowing involvement in a serious breach or series of breaches of the Code

1. The Executive submitted that the following evidence indicated that Mr Price was knowingly involved in a series of very serious breaches of the Code in respect of four adjudications, dated 29 September 2011, 29 March 2012 and 21 June 2012.

Adjudication 1 (29/9/11): Case reference 01220- John Hamilton & Company (Code 11)

On 29 September 2011, the Tribunal adjudicated against John Hamilton & Company, a Service provider (a Level 2 provider under the 12th Code).

The investigation was initiated after PhonepayPlus received one complaint. It transpired that the premium rate number, 0906 6331 688, which was allocated to a person calling himself John Hamilton, had been misused to generate revenue by misleading unsuspecting employees of UK businesses into dialling it. The complainant (a UK private limited company) had received a telephone call from someone who introduced himself as "Thomas Harris" and claimed to be calling on behalf of "Amanda Bryant Holdings". The caller then requested that a copy of the company's annual report be faxed to the premium rate number 0906 6331 668. The complainant faxed the 40 page document and incurred a charge of £347.96. The complaint received by PhonepayPlus indicated that the premium rate number was not used to provide any service and had been misused by the provider to generate revenue.

The provider did not respond to the alleged breaches and the Tribunal upheld the following breaches of the Code:

- Paragraph 3.2.2 - Provision of Information;
- Paragraph 5.4.1(a) - Fairness;
- Paragraph 5.7.1 - Pricing information; and
- Paragraph 5.8 - Contact information.

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious** and imposed the following sanctions:

- A formal reprimand;
- A fine of £3,250;
- A prohibition on the Service provider from involvement in, or contracting for, any premium rate services for a period of twelve months, starting from the date of publication of this decision; and
- Payment of all claims made by users for refunds of the full amount spent by them for the service, save where there is good cause to believe that such claims are not valid.

In this case, the Executive submitted that Mr Andrew Price had used the name John Hamilton and was thereby knowingly involved in the breaches of the Code for the following reasons:

- The bank account details in Slovakia provided to the Network operator as being the bank account for John Hamilton for outpayments to be made into were the same as the bank account details of Andrew Price; and
- During the investigation the Executive dialled the contact number provided for John Hamilton. The Executive asked to speak to Mr Price and the recipient of the call confirmed that it he was Mr Price.

The Executive submitted that there was good reason to believe that the Service provider, John Hamilton, was being used as an alias for Andrew Price. However, the

original Tribunal, which was not aware of the facts of the later adjudications against Mr Price, did not make a finding of fact in relation to John Hamilton's identity.

Adjudication 2 (29/9/2011): Case reference 01225- Phillip Marshall & Company (Code 11)

On 29 September 2011, the Tribunal adjudicated against Philip Marshall & Company, a Service provider (a Level 2 provider under the 12th Code).

The case was initiated after PhonepayPlus received one complaint. It transpired that the premium rate number range, 0911 6128 750 – 0911 6128 759, which was allocated to a person calling himself Phillip Marshall, had been misused to generate revenue by misleading unsuspecting employees of UK businesses into dialling them. The complainant (a UK private limited company) received a telephone call from someone claiming to be from a firm of solicitors and asking, "on behalf of a shareholder", to obtain a fax copy of the complainant company's annual report. The caller provided a geographic fax number 0203 3710 652. The complainant faxed the annual report to the geographic number and shortly thereafter received a further telephone call in which the caller informed the complainant that the fax could not be read. The caller provided an alternative, premium rate number to re-fax the annual report. The complaint received by PhonepayPlus indicated that the premium rate number(s) were not used to provide any service and had been misused by the provider to generate revenue.

The provider did not respond to the alleged breaches and the Tribunal upheld the following breaches of the Code:

- Paragraph 3.2.2 - Provision of Information;
- Paragraph 5.4.1(a) - Fairness;
- Paragraph 5.7.1 - Pricing information; and
- Paragraph 5.8 - Contact information.

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious** and imposed the following sanctions:

- A formal reprimand;
- A fine of £1,500;
- A prohibition on the Service provider from involvement in, or contracting for, any premium rate services for a period of twelve months, starting from the date of publication of this decision; and
- Payment of all claims made by users for refunds of the full amount spent by them for the service, save where there is good cause to believe that such claims are not valid.

The Executive again submitted that Mr Andrew Price had used the name Phillip Marshall and was thereby knowingly involved in the breaches of the Code for the following reasons:

- The bank account details in Slovakia provided to the Network operator as being the bank account for Phillip Marshall for outpayments to be made into were the same as the bank account details of Andrew Price; and
- The same Slovakian phone number that had been given as the contact number for John Hamilton was given as the contact number for Phillip Marshall. During the investigation the Executive dialled this contact number and asked to speak to Mr Price. The recipient of the call confirmed that he was Mr Price.

The Executive submitted that there was good reason to believe that the Service provider, Philip Marshall, was being used as an alias for Mr Andrew Price. However, the original Tribunal, which was not aware of the facts of the later adjudications against Mr Price, did not make a finding of fact in relation to Philip Marshall's identity.

Adjudication 3 (29/3/2012): Case reference 04321- Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company) (Code 12)

On 29 March 2012, the Tribunal adjudicated against the Level 2 provider, Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company).

The case was initiated after PhonepayPlus received two complaints. It transpired that the premium rate numbers, 0911 7657 650 and 0911 7657 561, which were allocated to Thomas Ferguson & Company, had been misused to generate revenue by misleading unsuspecting employees of UK Businesses into dialling them. The complaints received by PhonepayPlus highlighted that callers to the premium rate number had been misled into dialling the numbers after receiving an initial incoming telephone call from an individual stating that his name was “John Flowers” calling from a company called “Alex James Holdings”. The complainants reported that “John Flowers” had posed as a potential client and enquired about services that the businesses may be able to provide. During the telephone conversations, “John Flowers” allegedly informed the recipients of his telephone calls that he could not hear them and then made a request for the recipients to call him back. The number which he asked the recipients to call him back on was one of the premium rate numbers. Once the recipients had called back they were kept on the call for as long as possible to generate revenue.

The provider did not respond to the alleged breaches and the Tribunal upheld the following breaches of the Code:

- Rule 3.1.1(c) – General Responsibilities;
- Rule 3.4.12(a) – Registration;
- Rule 2.2.1(a) – Transparency and Pricing;
- Rule 2.2.5 – Transparency and Pricing;
- Rule 2.3.2 – Fairness;
- Rule 2.4.2 – Privacy; and
- Rule 3.1.4 – General Responsibilities.

The Tribunal found that,

“The trading name of “Thomas Ferguson & Co” and the contact name, “Thomas Ferguson” on the PhonepayPlus registration database were collectively an alias for the individual named Andrew Price. This finding was based on the fact that the proceeds of the service were paid into a Slovakian bank account in the name of Mr Andrew Price. The Tribunal concluded that it was entitled to assume that the Slovakian bank had carried out adequate due diligence at the time of opening the account, and therefore, Mr Andrew Price was the individual who was responsible for the scam service at the centre of this case.”

All the alleged breaches were accordingly upheld against Mr Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company).

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious** and imposed the following sanctions:

- A Formal reprimand;
- A fine of £10,000; and
- A requirement that refunds be paid to all consumers who claim a refund, for the full amount spent by them for the service, 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.

The Tribunal further concluded that, as the same bank account (in the name of 'A Price') had been used for the proceeds of two similar "scam services" run by Phillip Marshall and John Hamilton, which came before the Tribunal on 29 September 2011, Mr Andrew Price had apparently been involved in very serious previous breaches of the Code. As a result the Tribunal recommended that the Executive initiate the process which may lead to the prohibition of an associated individual under paragraph 4.8.2(g) of the Code.

The Executive submitted that Andrew Price was knowingly involved in the breaches of the Code for the following reasons:

- The Tribunal made the finding of fact that Andrew Price had used the contact name 'Thomas Ferguson' and trading name 'Thomas Ferguson & Company' as aliases;
- According to the contract provided, other than Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company), there were no other parties involved in the provision (promotion and operation) of the premium rate service;
- Andrew Price had contacted the Network operator directly in conjunction with setting the premium rate service up;
- Andrew Price was copied into all correspondence regarding the investigation that was sent to the provider, and failed to provide a response; and
- Mr A Price's bank account details, in Slovakia, were provided to the Network operator for outpayments to be made.

Adjudication 4 (21/6/2012): Case reference 07571- Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company) (Code 12)

On 21 June 2012 the Tribunal adjudicated against the Level 2 provider, Andrew Price (also known as Thomas Ferguson, trading as Thomas Ferguson & Company). This adjudication was limited to the failure of the provider to comply with both the sanctions and the payment terms of the administrative charge that were imposed by the Tribunal on 29 March 2012 (case reference 04321). The sanctions imposed by the Tribunal on 29 March 2012 included a fine of £10,000 and a requirement that refunds be paid to all consumers who claimed a refund, for the full amount spent by them for the service, save where there is good cause to believe that such claims are not valid. The unpaid administrative charge was for the sum of £6,501.60.

As a result of the non compliance with sanctions and failure to pay the administrative charge, the Executive raised further breaches. The provider did not respond to the alleged further breaches and the Tribunal upheld the following breaches of the Code:

- Paragraph 4.8.4 (b) – Failure to comply with any sanction; and
- Paragraph 4.10.2 – Non payment of Administrative charge.

The Tribunal concluded that the seriousness of the case should be regarded overall as **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 services for a period of 5 years (starting from the date of publication of this decision), or until the breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later.
2. In respect of the present case, the Executive did not receive any response from Mr Price.
 3. The Tribunal found that, in accordance with paragraph 4.8.2(g) or the Code, Andrew Price had been knowingly involved in a series of serious breaches of the Code, as a relevant party and/or as an associated individual.

Decision: UPHELD**Sanction**

Taking into account all the circumstances, the Tribunal was satisfied that it was appropriate to prohibit Mr Price from providing, or having any involvement in, any premium rate service for a period of five years from the date of publication of this decision. The Tribunal noted that Mr Price had failed to engage with PhonepayPlus, that the “services” in the underlying cases had no value and were scams and that Mr Price had repeatedly changed his identity. In addition, the Tribunal found that there was no evidence of Mr Price engaging in legitimate premium rate service business activities. The Tribunal considered that in order to maintain confidence in the premium rate industry it was both necessary and proportionate to prohibit Mr Price for a significant period. The Tribunal was satisfied that five years was an appropriate period, taking into account the nature of the very serious breaches upheld and the amount of the outstanding fines and administrative costs.