

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

**Thursday 11 October 2012
TRIBUNAL SITTING No. 111 / CASE 4
CASE REFERENCE: 08350**

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

BACKGROUND

(i) Summary relating to Mr Adrian Richards

The Tribunal was asked to consider a prohibition against Mr Richards under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to two previous adjudications against Adrian Richards trading as ‘Excelsior International’, one dated 26 April 2012 (case reference 08350) that involved an 070 missed call scam and one dated 5 July 2012 (case reference 03379). The decision of the Tribunal on 5 July 2012 related to a failure to comply with the sanctions imposed by the Tribunal on 26 April 2012. On 5 July 2012, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Richards, as 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 Richards was knowingly involved in very serious breaches of the Code in respect of two adjudications dated 26 April 2012 and 5 July 2012.

Adjudication dated 26 April 2012: Case reference 03379

On 26 April 2012, the Tribunal adjudicated against the Level 2 provider Adrian Richards trading as 'Excelsior International' together with another Level 2 provider, Alpha-Telecom Limited. The investigation related to a 070 missed call scam.

The Tribunal upheld the following breaches of the Code:

- Rule 2.1.1 – Legality
- Rule 2.2.1(a) – Provision of the name of the Level 2 provider
- Rule 2.2.5 – Pricing
- Rule 2.3.2 – Misleading
- Rule 2.4.2 – Privacy
- Paragraph 3.9.2 – Designated number ranges

All the alleged breaches were upheld against both Level 2 providers.

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

The Tribunal imposed the following sanctions:

- a formal reprimand;
- a fine of £25,000 (imposed jointly and severally with Alpha Telecom Limited); and,
- a prohibition on each Level 2 provider from providing or having any involvement in, any premium rate service for a period of 12 months from the date of publication of the Tribunal's decision.

Adjudication dated 5 July 2012: Case reference 08346

On 5 July 2012, the Tribunal adjudicated against the Level 2 provider, Adrian Richards trading as 'Excelsior International', together with another Level 2 provider Alpha-Telecom Limited. The adjudication was limited to the failure of the providers to comply with both the outstanding fine sanctions and the administrative charge that were imposed by the previous Tribunal. The Level 2 providers did not provide any response to the breach letter.

As a result of the non compliance with sanctions and failure to pay the administrative charge, the Executive raised further breaches. The providers 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 a formal reprimand and a prohibition on the Level 2 providers from providing, or having any involvement in, any premium rate services for a period of five years (starting from the date of publication of the decision), or until the

breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later.

The Executive submitted that that Mr Richards was knowingly involved in the breaches as a result of the following:

- During the preliminary assessment of the complaints, the Executive observed that the 'Excelsior International Limited' appeared to be a registered company. However, the company was found not to be registered in the United Kingdom or Jersey. An email was sent to Adrian Richards, the primary contact, and a phone conversation was also held between the Executive and a man claiming to be Adrian Richards. It was claimed that an error had been made by Mr Richards when registering the organisation and it was acknowledged that he operated as a sole trader. On 4 November 2011, PhonepayPlus' records were amended accordingly.
- The contract between the Network operator, 2communications Limited, and the Level 2 provider was signed by Adrian Richards. The contract was made in the name of Excelsior International Limited, which appears to repeat the "error" mentioned above.
- Although a sole trader, Adrian Richards held out that his business was a limited liability company when obtaining the 070 numbers from the Network operator. Furthermore, he was the primary contact for both the Network operator, as seen in the formal direction responses, and PhonepayPlus throughout the operation of the "service".

Accordingly, the Executive submitted that Adrian Richards was knowingly involved in the very serious breaches of the Code found by the Tribunal on 26 April 2012 and/or 5 July 2012 as an associated individual.

2. The Executive did not receive any response from Mr Richards.
3. The Tribunal found that, in accordance with paragraph 4.8.2(g) of the Code, Adrian Richards had been knowingly involved in very serious breaches of the Code, as an associated individual.

Decision: UPHELD

Sanction

The Tribunal decided to prohibit Mr Richards 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.

In making this decision the Tribunal noted that Mr Richards had failed to engage with PhonepayPlus and that the "service" in the underlying case was a scam, having no value. 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.