

## THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 11 October 2012  
TRIBUNAL SITTING No. 111 / CASE 3  
CASE REFERENCE: 08346

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

### BACKGROUND

#### (i) Summary relating to Mr Chris Syston

The Tribunal was asked to consider a prohibition against Mr Syston under paragraph 4.8.2(g) of the 12<sup>th</sup> Edition of the PhonepayPlus Code of Practice (the “Code”). The case related to two previous adjudications against Alpha-Telecom Limited, one dated 26 April 2012 (case reference 08346) 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 Syston (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 Syston 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 Alpha-Telecom Limited, together with another Level 2 provider, Adrian Richards trading as 'Excelsior International'. 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 Adrian Richards, trading as 'Excelsior International'); 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 Alpha-Telecom Limited, together with another Level 2 provider, Adrian Richards trading as 'Excelsior International'. 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 provider 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 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 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 Syston was knowingly involved in the breaches as a result of the following:

- Mr Syston is, and was at all relevant times, the sole director of Alpha-Telecom Limited, and as such, was the only individual responsible for the corporate decisions of Alpha-Telecom Limited.
- Mr Syston signed the contract with the Network operator, 2communications Limited, and was the primary contact.
- On 21 May 2012, Mr Syston was sent the overdue payment reminder, and yet payment was not made.
- As a result of the actions of Alpha-Telecom Limited, under the control of Mr Syston, the sum of £28,782.70 remains unrecovered.

The Executive submitted that Mr Syston was knowingly involved in the very serious breaches of the Code found by the Tribunal on 26 April 2012 and/or 5 July 2012.

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

**Decision: UPHELD**

**Sanction**

The Tribunal decided to prohibit Mr Syston 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 Syston 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.