

Tribunal Sitting, Case Number and Date	Case Ref	Network operator	Level 1 Provider	Level 2 Provider	Associated individual	Case Type	Procedure
No. 111 Case 2 11/10/12	09531	Starcomm Limited	N/A	N/A	Clive Aldred	Associated individual	Paragraph 4.8.6

The Tribunal was asked to consider a prohibition against Clive Aldred under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to three previous adjudications against the Network operator Starcomm Limited (“**Starcomm**”) (case reference 827372, dated 15 April 2010; case reference 844739, dated 2 September 2010; and, case reference 04292, dated 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 Aldred under paragraph 4.8.2(g).

The Tribunal concluded that Mr Aldred was an associated individual in each of the cases cited by the Executive and had been knowingly involved in a series of breaches of the Code.

Taking into account all the circumstances, the Tribunal decided to prohibit Clive Aldred from providing, or having any involvement in, any premium rate service for a period of three years. The prohibition is suspended for 12 months to allow for full payment of all monies outstanding to PhonepayPlus as set out in Mr Aldred's letter to PhonepayPlus dated 5 September 2012 (the “**letter**”). The Tribunal further ordered that, if there is any default in respect of any of the payments due under the terms of the letter, the prohibition will come into immediate effect from the date of such default. If the outstanding monies are fully paid in accordance with the terms of the letter, the prohibition is to be lifted.

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

**Thursday 11 October 2012
TRIBUNAL SITTING No. 111 / CASE 2
CASE REFERENCE: 09531**

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

BACKGROUND

(i) Summary relating to Mr Clive Aldred

The Tribunal was asked to consider a prohibition against Mr Aldred under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to three previous adjudications against the Network operator Starcomm Limited (“**Starcomm**”) (case reference 827372, dated 15 April 2010; case reference 844739, dated 2 September 2010; and, case reference 04292, dated 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 Aldred 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 Aldred was knowingly involved in a series of breaches of the Code in respect of three adjudications, dated 15 April 2010, 2 September 2010 and 29 March 2012.

Adjudication dated 15 April 2010: Case reference 827372 (Code 11)

On 8 January 2009, a case was brought against the Service Provider, Mr Jaswinder Singh. The Network operator was Starcomm Limited. The adjudication related to an abuse of an 070 number (a missed call scam). Mr Singh was found to be in breach of the PhonepayPlus Code of Practice (11th Edition amended April 2008) (“**Code 11**”). One of the sanctions imposed by the Tribunal was a fine of £45,000 which Mr Singh failed to pay.

As a result of a formal direction from PhonepayPlus, Starcomm had withheld £3,945.90 in relation to the service operated by Mr Singh. Confirmation of the amount withheld was signed by the director of Starcomm, Mr Aldred. Starcomm failed to pay to PhonepayPlus a sum equivalent to the amount withheld

On 15 April 2010, the Tribunal adjudicated against Starcomm for due diligence failures in relation to the adjudication concerning Mr Singh. Overall the breaches were found to be **serious**. The Tribunal instructed Starcomm to pay the outstanding fine of £45,000 imposed on Mr Singh and imposed a fine of £25,000. All correspondence in relation to the investigation and adjudication was signed by Mr Aldred. On 18 May 2010, Starcomm requested a Review of the decision made by the Tribunal sitting on 15 April 2010. On 4 June 2011, the Chair of the Code Compliance Panel rejected the application as Starcomm had failed to produce any new evidence. The administrative charge in relation to these due diligence breaches was paid on 10 September 2010.

Adjudication dated 2 September 2010: Case reference 844739 (Code 11)

On 2 September 2010, the Tribunal upheld a breach of paragraph 2.1.3 of Code 11 for failure to supply premium rate outpayments for the period from 1 October 2009 to 31 December 2009 (Quarter Three Report); as required by the Code 11. Overall the breaches were found to be **significant**. The sanctions imposed were a formal reprimand and a fine of £500. Following this adjudication, Starcomm was sent invoices in respect of the fine of £500 and the administrative charges in the sum of £2,623.78.

Oral hearing dated 4 April 2011 (in respect of case references 827372 and 844739)

On 4 April 2011, an oral hearing in respect of both of the above detailed cases was held at Starcomm’s request. Mr Aldred attended the hearing on behalf of Starcomm. In respect of case reference 827372, the Tribunal removed the instruction to pay the £45,000 outstanding from Mr Singh and imposed the following sanctions:

- A formal reprimand;
- A fine of £25,000;
- A 12 month bar on providing its network or services for the carriage of any category of premium rate services, suspended for a period of 42 days. The bar will come into effect on expiry of that period unless Starcomm (i) puts in place suitable systems, to enable it to comply with any future direction under paragraph 2.5.1(b) of the Code, and provides evidence of such systems, to the satisfaction of the Executive (“Condition 1”); and (ii) pays to PhonepayPlus the withheld sum of £3,945.50. (“Condition 2”)

In respect of case reference 844739, the oral hearing Tribunal imposed the same sanctions as had been imposed by the original Tribunal. Mr Aldred was also required to pay administrative charges of £37,596.

On 11 May 2012, Mr Aldred, acting on behalf of Starcomm, requested a hearing before the Independent Appeals Body (“IAB”). The Chair of the IAB issued a direction that Starcomm pay the outstanding fine, administrative charges and the withheld sum of £3945.50 (in total £69,655.68). The monies were not paid and, as a result, the proceedings were struck out.

Subsequently Mr Aldred on behalf of Starcomm, paid the withheld sum of £3945.90 and, on 1 December 2011, the Executive confirmed it was satisfied that Starcomm had suitable systems which would enable it to comply with any future directions issued by PhonepayPlus

Adjudication dated 29 March 2012: Case reference 04292

On 29 March 2012 the Tribunal adjudicated against Starcomm in relation to its failure to comply with both the outstanding fine sanctions and the administrative charge that had been imposed by the previous Tribunals. As a result of the non compliance with sanctions and failure to pay the administrative charge, the Executive raised the following further breaches which were upheld.

- 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**. It imposed a formal reprimand and a requirement to remedy the breach.

Having made the withheld payment of £3,945.50, the total outstanding monies were £65,719.78. On 5 September 2012, Mr Aldred, the managing and sole director of Starcomm, agreed to pay £60,000 of the outstanding monies in monthly instalments of £5,000.

SUBMISSIONS

The Executive noted that:

- Mr Aldred was the sole director of Starcomm, at the time of the above investigations and adjudications;
- All correspondence was sent and/or signed by Mr Aldred;
- Mr Aldred attended as the sole representative of Starcomm for the purposes of informal representations, at the oral hearing and at meetings with the Executive.

In the above circumstances, the Executive submitted that all relevant decisions made in relation to the business of Starcomm had been made exclusively and independently by Mr Aldred. Accordingly, the Executive asserted that Mr Aldred is an associated individual who was knowingly involved in the breaches upheld at the above adjudications, and was therefore knowingly involved in a series of breaches, two of which were deemed serious or above. In light of the above, the Executive submitted that Mr Aldred should be prohibited from providing or having any involvement in the premium rate industry.

2. Mr Aldred provided a written response and made informal representations by conference call. Mr Aldred made a number of submissions, which included the following:
 - i. Mr Singh was prohibited in 2009, it would therefore be unfair to replicate the same sanction against a second individual, who was not the perpetrator of the initial breach.
 - ii. On 5 September 2012, Mr Aldred signed an agreement to pay £60,000 of the outstanding monies owed to PhonepayPlus by monthly instalments of £5,000. Mr Aldred submitted that if an immediate prohibition was imposed, Starcomm would not be able to operate as he is the only director and over 99% of Starcomm's business relates to premium rate services. As a result, Starcomm would not be able to honour the monthly payments to PhonepayPlus.
 - iii. Between August and September 2012, Mr Aldred had paid £9,000 costs to PhonepayPlus in relation to a separate High Court claim.
 - iv. Mr Aldred had co-operated with PhonepayPlus and agreed to a generous payment plan given the difficulties Starcomm is facing.
3. The Tribunal concluded that Mr Aldred was an associated individual in each of the cases cited by the Executive and that he had been knowingly involved in a series of breaches of the Code, some of which were serious or above, as provided for in paragraph 4.8.2(g) of the Code.

Decision: UPHELD

Sanction

Taking into account all the circumstances, the Tribunal decided to prohibit Clive Aldred from providing, or having any involvement in, any premium rate service for a period of three years. The prohibition is suspended for 12 months to allow for full payment of all monies outstanding to PhonepayPlus as set out in Mr Aldred's letter to PhonepayPlus dated 5 September 2012 (the "**letter**"). The Tribunal further ordered that, if there is any default in respect of any of the payments due under the terms of the letter, the prohibition will come into immediate effect from the date of such default. If the outstanding monies are fully paid in accordance with the terms of the letter, the prohibition is