

| Tribunal Sitting, Case Number and Date | Case Ref | Network operator | Level 1 Provider | Level 2 Provider | Associated individual | Case Type | Procedure |
|--|----------|------------------|------------------|---|-----------------------|-----------------------|-----------------|
| No. 121 Case 2 7/3/13 | 14114 | N/A | N/A | London and Southern Housing Limited/ Horizon Housing | Keith Mark Waller | Associated individual | Paragraph 4.8.6 |

The Tribunal was asked to consider a prohibition against Mr Waller under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to an adjudication against London and Southern Housing Limited (10 May 2012, case reference 04891), which concerned a premium rate housing helpline that claimed to offer housing assistance to people on benefits, and two adjudications against Horizon Housing, a registered charity (30 August 2012, case reference 07922 and 22 November 2012, case reference 13317). The first adjudication against Horizon Housing concerned a premium rate housing helpline that claimed to offer housing assistance to people on benefits. The second adjudication arose as a result of the non-payment of the fine and administrative charges that arose as a result of the first adjudication.

On 30 August 2012, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Waller, (an associated individual) under paragraph 4.8.2(g) of the Code.

The Executive provided evidence which indicated that Mr Waller was an associated individual and was knowingly involved in a number of very serious breaches of the Code.

The Tribunal concluded that Mr Waller was an associated individual in each of the cases cited by the Executive and was knowingly involved in a number of very serious breaches of the Code.

Taking into account all the circumstances, the Tribunal decided to prohibit Mr Waller 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 CODE COMPLIANCE PANEL OF PHONEPAYPLUS
TRIBUNAL DECISION**

**Thursday 7 March 2013
TRIBUNAL SITTING No. 121 / CASE 2
CASE REFERENCE: 14114**

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

BACKGROUND

(i) Summary relating to Mr Keith Waller

The Tribunal was asked to consider a prohibition against Mr Waller under paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to breaches that were found to be very serious in an adjudication against London and Southern Housing Limited (10 May 2012, case reference 04891), which concerned a premium rate housing helpline that claimed to offer housing assistance to people on benefits, and two adjudications against Horizon Housing, a registered charity (30 August 2012, case reference 07922 and 22 November 2012, case reference 13317). The first adjudication against Horizon Housing concerned a premium rate housing helpline that claimed to offer housing assistance to people on benefits. The second adjudication arose as a result of the non-payment of the fine and administrative charges that arose as a result of the first adjudication.

(ii) Relevant Code Provisions

- 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...

(g) 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.”

- 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.”

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 Waller was knowingly involved in very serious breaches of the Code in respect of three adjudications dated 10 May 2012, 30 August 2012 and 22 November 2012.

Adjudication dated 10 May 2012: Case reference 04891

On 10 May 2012, the Tribunal adjudicated against the Level 2 provider London and Southern Housing Limited. The investigation related to a “housing support line”, which purported to assist those on benefits obtain rented accommodation.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.10 – Vulnerable groups;
- Rule 2.3.2 – Misleading;
- Rule 2.3.4 – Undue delay;
- Rule 2.2.5 – Pricing;
- Paragraph 3.1.4 – Responsibilities of Level 2 providers; and
- Paragraph 3.9.1 – Substantiating factual claims.

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 £100,000;
- a requirement that the Level 2 provider seek prior permission for the operation of any premium rate service for a period of 12 months; and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the service, within 28 days of their claim, 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.

In addition to the above sanctions, the Tribunal recommended that London and Southern Housing Limited be required to pay the administration costs.

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

- Mr Keith Waller was a director of London and Southern Housing Limited between June and July 2010.
- On 9 January 2012, Mr Waller responded to the Executive’s 4.2.3 request for further information, which identified concerns about the service.
- On 23 May 2012, Mr Waller was a recipient of the decision of the Tribunal along with invoices for the fine and administrative charge.
- On 7 June 2012, Mr Waller was sent the overdue payment reminder, for which payment was not made.
- Mr Waller was a recipient of various emails from the Network operator in relation to complaints about the service, PhonepayPlus’ concerns about the service and suspension of service and withheld revenue issues.

Adjudication dated 30 August 2012: Case reference 07922

On 30 August 2012, the Tribunal adjudicated against the Level 2 provider Horizon Housing (a registered charity). The investigation related to a “housing support line”,

which purported to assist those on benefits obtain rented accommodation. The Level 2 provider did not provide any response to the breach letter.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.10 – Vulnerable groups
- Rule 2.3.2 – Misleading
- Rule 2.3.4 – Undue delay
- Rule 2.2.5 – Pricing transparency
- Rule 2.2.1(a) – Provision of contact details
- Paragraph 3.4.12(a) – Registration of numbers
- Paragraph 3.9.1 – Substantiating factual claims
- Paragraph 4.2.4 – Concealing or falsifying information
- Paragraph 4.2.5 – Failure to disclose information

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;
- a requirement that the Level 2 provider seek prior permission for the operation of any premium rate service for a period of 12 months; and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the service, within 28 days of their claim, 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.

In addition, the Tribunal recommended that Horizon Housing be required to pay administration costs.

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

- Mr Waller was a trustee of Horizon Housing and as such was responsible for the management of the affairs of the charity and delivery of the charitable outcomes at the time the above breaches of the Code occurred;
- Mr Waller was the signatory of the contract between Horizon Housing and the Network operator for the provision of the 118 175 premium rate number that was used by the service found in breach;
- On 29 May 2012, Mr Waller was a recipient of correspondence with the Network operator in relation its decision to suspend the service following concerns raised by PhonepayPlus;
- On 13 August 2012, Mr Waller was a recipient of a 'Notice of Termination of Service' from the Network Operator following its decision to suspend the service;
- On 12 September 2012, Mr Waller was a recipient of the decision of the Tribunal along with invoices for the fine and administrative charges; and
- On 24 September 2012, Mr Waller was a recipient of the overdue payment reminder. No payment was made.

Adjudication dated 22 November 2012: Case reference 13317

On 22 November 2012, the Tribunal adjudicated against the Level 2 provider Horizon Housing (a registered charity). 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 Level 2 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.

In addition, the Tribunal recommended that Horizon Housing be required to pay administration costs.

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

- Mr Waller was a trustee of Horizon Housing and as such was responsible for the management of the affairs of the charity and delivering the charitable outcomes of the charity during the time the breaches occurred;
 - On 3 December 2012, Mr Waller was a recipient of the informal notification of the Tribunal's decision; and
 - On 5 December 2012, Mr Waller was sent the decision of the Tribunal along with invoices for the administrative charge.
2. In accordance with paragraph 4.8.6 of the Code, the Executive submitted its case to Mr Waller seeking his prohibition but did not receive any response from him.
 3. The Tribunal found that, in accordance with paragraph 4.8.2(g) of the Code, Mr Waller had been knowingly involved in a series of very serious breaches of the Code, as an associated individual. The Tribunal concluded this as a result of all the evidence before it, but noted in particular that:

London and Southern Housing Limited

- i. Mr Waller had a continuing relationship with London and Southern Housing Limited for an extended period of time that included the relevant period. The Tribunal noted that Mr Waller was a director in June/July 2010 and later described himself as “administrator”. Mr Waller’s role was such that he was able to threaten legal action on behalf of London and Southern Housing Limited and correspond with PhonepayPlus on behalf of London and Southern Housing Limited’s in relation to complaints against it.
- ii. Mr Waller had a London and Southern Housing email address.
- iii. Mr Waller was copied into important correspondence with PhonepayPlus by Mr Martin Andrews during the relevant period.
- iv. Mr Waller failed to rebut the evidence submitted by the Executive.

Horizon Housing

- i. Mr Waller was a trustee at the relevant time.
- ii. Mr Waller failed to rebut the evidence submitted by the Executive.

Decision: UPHELD

Sanction

The Tribunal decided to prohibit Mr Waller 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 Waller had failed to engage with PhonepayPlus, that all three underlying cases were very serious and that the two substantive underlying cases concerned a service that took advantage of vulnerable people. Further, and as noted by the Tribunal on 30 August 2012, the Tribunal held that there had been a deliberate attempt to circumvent the Code and the protection it offers to consumers. The Tribunal was satisfied that five years was an appropriate period, taking into account the nature of the very serious breaches upheld.