

Tribunal Sitting Number 127 / Case 1

Case Reference: 18486

Level 2 provider	Marcus Foley trading as IT Expects Midlands
Type of service	N/A
Level 1 provider	N/A
Network operator	N/A

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

BACKGROUND

(i) Summary relating to Mr Marcus Foley

The Tribunal was asked to consider a prohibition against Mr Foley 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 Marcus Foley (a sole trader) trading as IT Expects Midlands (21 February 2013, case reference 14282), which concerned a premium rate scam involving classified advertisements for fictitious electronic and white goods.

On 21 February 2013, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Foley, (an associated individual) under paragraph 4.8.2(g) of the Code.

(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 Marcus Foley was knowingly involved in very serious breaches of the Code in respect of an adjudication dated 21 February 2013.

Adjudication dated 21 February 2013: Case reference 14282

On 21 February 2012, the Tribunal adjudicated against the Level 2 provider Marcus Foley, a sole trader, trading as IT Expects Midlands. The adjudication concerned a premium rate scam involving classified advertisements for fictitious electronic and white goods.

Four complainants stated that they had telephoned the number for the Service after seeing it in classified advertisements for discounted electronic or white goods. On calling the number, the complainants were told that the goods were still available and arrangements were made for the complainant to meet the seller for a possible purchase. On arriving at the meeting point, the complainant was forced to call the premium rate number repeatedly to clarify the exact meeting point. After a number of calls, the complainants either gave up trying to find the seller or were subjected to verbal abuse. None of the complainants met the seller and/or saw any evidence that the advertised goods existed.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.2 – Misleading;
- Rule 2.2.5 – Pricing;
- Paragraph 2.2.1(a) – Provision of a non-PRS UK contact number; and
- Paragraph 4.2.5 – Failure to disclose information.

The Tribunal concluded that the seriousness of each breach of the Code was very serious, and that 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 the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund. Refunds should be directly credited to the users’ mobile accounts and the Level 2 provider must provide evidence to PhonepayPlus that the refunds have been made.

The Executive submitted that that Mr Foley was knowingly involved in the breaches upheld in the adjudication dated 21 February 2013 as a result of the following:

- As a sole trader, Mr. Marcus Foley had full responsibility for the operation and promotion of the premium rate scam service in relation to which four very serious breaches of the Code were upheld. There was no evidence to suggest that Mr. Foley acted in concert with any other individuals;
- Mr Foley signed a “Telephony Service Agreement” with the Network operator; and
- Mr Foley registered the service with PhonepayPlus on 8 May 2012 and was the named



contact on the PhonepayPlus Registration Scheme.

2. In accordance with paragraph 4.8.6 of the Code, the Executive submitted its case to Mr Foley seeking his prohibition. No response was received.
3. The Tribunal found that, in accordance with paragraph 4.8.2(g) of the Code, Mr Foley had been knowingly involved in four 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 the underlying adjudication was against Mr Foley as a sole trader, there was no evidence that Mr Foley had acted in concert with any other parties and that Mr Foley had failed to respond to PhonepayPlus (and in particular put forward his own version of events).

Sanction

The Tribunal decided to prohibit Mr Foley 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 Foley had made no effort to co-operate or otherwise engage with PhonepayPlus and appeared to have no regard for the Code or the regulatory process. The Tribunal also highlighted that the underlying Service was a deliberate “scam” that generated revenue by misleading consumers. The Tribunal was satisfied that five years was an appropriate period, taking into account all the circumstances and the nature of the very serious breaches upheld.