



Tribunal Sitting Number 133 / Case 2

Case Reference: 16809

Case: Prohibition of an associated individual

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

BACKGROUND

(i) Summary relating to Mr Tajinderpal Singh Ratta

The Tribunal was asked to consider a prohibition against Mr Tajinderpal Singh Ratta pursuant to paragraph 4.8.2(g) of the 12th Edition of the PhonepayPlus Code of Practice (the “**Code**”). The case related to an adjudication against the Level 2 provider So Much Cheaper.com Limited (24 January 2013, case reference: 11083), which concerned a premium rate virtual chat service.

On 24 January 2013, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Ratta, (an associated individual) pursuant to 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 singularly or in any combination in relation to each breach:

(g) prohibit a relevant party and/or an associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from providing, or having any involvement in, any premium rate service or promotion for a defined period.”

- Paragraph 5.3.9 of the Code states:

“‘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 a series of breaches of the Code



1. The Executive submitted that the following evidence indicated that Mr Tajinderpal Singh Ratta was knowingly involved in a number of serious and very serious breaches of the Code in respect of an adjudication dated 24 January 2013.

Adjudication dated 24 January 2013, Case reference: 11083

On 24 January 2013, the Tribunal adjudicated against the Level 2 provider So Much Cheaper.com Limited. The adjudication concerned a premium rate virtual chat service (the “**Service**”).

PhonepayPlus received 38 complaints regarding the Service. The majority of complainants stated that they had received text messages that were unsolicited. Certain consumers stated that they did not know what the Service was or what they had been charged for, and that they had not entered into an adult chat service. A number of complainants stated that they had texted STOP, but had continued to receive chargeable messages. There also appeared to be issues with the Level 2 provider’s customer service line, as consumers were not able to speak to an operator or request a call back. One complainant was a vulnerable person with learning difficulties, who incurred £8,598.14 in charges.

The Tribunal upheld the following breaches of the Code:

- Rule 2.4.2 – Consent to market
- Rule 2.3.3 – Consent to charge
- Rule 2.3.11 – Means of termination (Stop)
- Rule 2.3.12(c) – Spend reminder messages
- Rule 2.6.2 – Complaints process
- Paragraph 4.2.5 – Provision of information

The Tribunal concluded that the breaches of rules 2.3.3 and 2.3.11 and paragraph 4.2.5 were very serious, the breaches of rules 2.4.2 and 2.6.2 were serious and the breach of rule 2.3.12(c) was significant. The Tribunal determined that the seriousness of the case overall was **very serious** and imposed the following sanctions:

- a formal reprimand;
- a fine of £250,000; 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 the Level 2 provider pay 100% of the administrative costs incurred by PhonepayPlus.

The Executive submitted that Mr Ratta was knowingly involved in the breaches upheld in the adjudication dated 24 January 2013 as a result of the following:

- As a director of the Level 2 provider, Mr Tajinderpal Singh Ratta was responsible for the management of the company at the time the serious and very serious breaches of the Code occurred;
- The Level 2 provider named Mr Tajinderpal Singh Ratta as a responsible party when it registered with PhonepayPlus;
- Mr Tajinderpal Singh Ratta was named as the responsible party on the Level 1 provider’s “Due Diligence Report”; and



- Mr Tajinderpal Singh Ratta would have been aware that significant financial sanctions and costs were likely to be imposed on the Level 2 provider from the outcome of four previous adjudications against FTXT Limited, a company of which he was also a director.

On 20 December 2012, the Executive received notification that arrangements were being made to place the Level 2 provider into liquidation. On 6 February 2013 PhonepayPlus sent invoices for the fine and administrative costs to the liquidator but no payments were received. PhonepayPlus received partial payment of the outstanding fine and administrative costs from monies withheld by the Level 1 provider. Accordingly, the Executive submitted that as a result of the actions of the Level 2 provider and its directors, the sum of £233,223.46 was outstanding.

2. Mr Ratta strongly contested the Executive's application for a prohibition and provided comprehensive written and oral representations.

By way of background, Mr Ratta stated that he had operated successful premium rate businesses since January 2002 and that he was an innovator of new products and services. Mr Ratta also stated that he wished to continue providing innovation in the premium rate industry and, if allowed to do so, aimed to work with the regulator, mobile networks and aggregators to shape the industry's future. He asserted he was a fit and proper person to continue working in the premium rate industry and was willing to submit future services to PhonepayPlus for approval prior to operation.

At the outset, Mr Ratta stated that he did not intend to minimise his responsibility, as he fully accepted that he was a director with a 50% shareholding and the registered compliance officer of the Level 2 provider at the time of the breaches. However, Mr Ratta submitted that he did not have access to relevant documents as a result of the current status of the Level 2 provider company.

Mr Ratta stated that during 2012, he did not spend a great deal of time overseeing the day-to-day running of the business and was therefore not able to exercise as much control over the management of the business as he would normally have done. This was for a number of reasons which included: involvement in a number of other business projects and a focus on the development of new products for the Level 2 provider's business; the fellow director relocating overseas on a permanent basis in July 2012, leaving Mr Ratta with an increased workload; and, a personal matter which resulted in legal proceedings between November 2012 and April 2013.

Mr Ratta stated he had an experienced and trusted team (approximately five employees), who he believed were capable and competent, to run the Service. The team had proper systems and controls in place to assist in the smooth running of the Service. The team was well equipped to deal with all aspects of the business including advertising, refunds, stop requests, consumer enquiries and the regulator. Therefore Mr Ratta had not anticipated any problems. Mr Ratta stated that the Service was "non-core and not central to the future of the company because of the imminent launch of a new app".

In relation to the Executive's investigation against the Level 2 provider, Mr Ratta stated he received the initial request for information from PhonepayPlus in August 2012 and responded to the enquiry in full in September 2012. As a result of PhonepayPlus' concerns, he stated that he had decided to suspend the Service to end any potential non-compliance and to enable him to concentrate on other matters. The app projects that Mr Ratta had been working on did not come to fruition. As a result, the business experienced financial difficulties and in November 2012 could not meet its financial obligations. In early December 2012, the Level 2 provider was placed into liquidation, the staff were made redundant and Mr Ratta ceased to have control of the company or access to company documentation.

Mr Ratta stated the decision to cease the company was a difficult one, as members of staff were made redundant, and he personally lost a substantial amount of money.



With specific reference to the adjudication, Mr Ratta stated he had not envisaged that PhonepayPlus would pursue the investigation after the Level 2 provider had gone into liquidation, that there would be a financial penalty of such magnitude or that there could be serious personal ramifications. Mr Ratta asserted that, had the Level 2 provider not gone into liquidation, he would have continued to cooperate with the investigation and made informal representations on behalf of the Level 2 provider, as he had done successfully in the past.

Mr Ratta assumed that the liquidator must have been of the opinion that there was no benefit in providing representation at the Tribunal hearing. Mr Ratta stressed that whatever the liquidator chose to do, Mr Ratta was not in control of the company at the material time and therefore not in a position to represent the Level 2 provider. Mr Ratta strongly asserted that the original Tribunal would not have concluded that the case was very serious and/or would have imposed less onerous sanctions if he had been able to respond to the breach letter and conduct informal representations.

Mr Ratta urged the Tribunal to consider his reputation in the industry and sought to distinguish himself from other high profile individuals who had been named and prohibited under the same provision of the Code.

During the informal representations, Mr Ratta reiterated and expanded upon his written submissions. In addition to the reasons listed above, which explained why Mr Ratta had not exercised full control over the Level 2 provider, Mr Ratta stated that in January 2012, he launched a new restaurant business and his existing restaurant businesses experienced financial difficulties which led to its closure in late September 2012.

Mr Ratta asserted that the suggestion that the Level 2 provider was put into liquidation to circumvent the regulatory process was completely untrue. He asserted that, as outlined in his written submissions, there were sound and unavoidable reasons for the decision and that he had suffered personal financial loss.

Mr Ratta stated that he understood the original adjudication of 24 January 2013 could not be revisited but he deeply regretted not being able to contest the alleged breaches at the time, as he believed he would have been able to correct some misunderstandings and provide clarification in the hope that the breaches would not have been upheld or, if the breaches had been upheld, the sanctions would have been less severe. Mr Ratta asserted that he was now faced with the ramifications of an uncontested adjudication, which he asserted was unfair as he had not been in control of the Level 2 provider at the time.

Mr Ratta stated that he had previously conducted informal representations on behalf of a separate company and, while he did not wish for those adjudications to be taken into consideration in determining whether a prohibition was appropriate, he submitted that he had previously been able to provide clarification and ultimately affect the outcome of the adjudication. Mr Ratta took issue with the Executive's assertion that he would have been aware of the potential sanctions available to the Tribunal. Mr Ratta adamantly disputed that he was aware that a large financial sanction would be imposed and commented that it appeared hugely disproportionate to the number of complaints the received.

Mr Ratta submitted that the Tribunal on 24 January 2013 failed to take into account that he voluntarily suspended the Service, which was an action of a responsible director.

In relation to the adjudication on 24 January 2013, Mr Ratta stated had he been able to make informal representations he would have gathered documents and evidence to present to the Tribunal to

strengthen his assertions. He asserted that he was no longer in a position to access the Level 2 provider's paperwork, but from recollection he was able to specifically address some of the breaches raised by the Executive in the original adjudication.

Consent to market

Mr Ratta stated that the Level 2 provider did not buy or sell consumer data because it would not have been able to verify that consumers had consented to third party marketing.

Further, every SMS from the Level 2 provider contained wording that informed the consumer that they may receive promotional and service messages. This was an essential element as it enabled the Level 2 provider to use data for its other adult related services. Mr Ratta accepted the opt-in may not have been on the website advertisement but stated that this was rectified as soon as it was discovered and only a few consumers were affected.

Mr Ratta recalled that the Service was configured in line with the industry standard and that, by texting STOP to the last service promoted, it would stop all services or promotions from that shortcode. A consumer could also contact the Level 2 provider's customer services department to stop promotions.

The Service and all promotions for the Service were always labeled as "18+" therefore any cross promotions were always age appropriate.

Mr Ratta denied that promotional messages did not contain information regarding method of exit from the Service. Mr Ratta submitted that if this had occurred, it would have been an isolated incident limited to a few messages.

Consent to charge

Mr Ratta asserted that consumers were made aware of the cost of the Service prior to incurring any costs. However, it was not uncommon for consumers to either forget the cost of a service or allege that they did not understand the charges to try and obtain a refund.

Complaints process

Mr Ratta explained that the telephone system temporarily broke down during one weekend and caused some customer service issues. However at all other times the Level 2 provider operated a customer services telephone line from 10am to 6pm on all UK working days. It had an answer phone facility and a member of staff would call the consumer back at the next available opportunity. Mr Ratta submitted that it was false to assume that the system was deficient because of a one off issue for a short period of time, which only affected a small number of consumers.

Spend reminders

Mr Ratta stated that the evidence provided in relation to the spend reminder messages had been taken out of context and seemed to imply that the whole service was inadequate when that was not the case. Mr Ratta explained that there was a rotating schedule of messages containing different advertisements, a fact that was overlooked in the Executive's case.

Mr Ratta was asked by the Tribunal about the role of his fellow director. Mr Ratta stated that the other director had engaged in marketing on a day-to-day basis and assisted in the development of new projects. However, he relocated to America in July 2012 and ceased involvement with the business.



In summary, Mr Ratta stated that he was deeply sorry for not being able to represent the Level 2 provider at the adjudication on 24 January 2013 and that he would have been able to make a difference to the outcome of the case. Mr Ratta asked the Tribunal to take into consideration that he was not in control of the Level 2 provider at the time of the adjudication and was now faced with huge ramifications, which he considered to be unfair.

3. The Tribunal considered all the evidence presented to it, including the detailed written and oral submissions made by Mr Ratta. The Tribunal found that, in accordance with paragraph 4.8.2(g) of the Code, Mr Ratta had been knowingly involved in a series of breaches of the Code, some of which were serious or very serious, as an associated individual. The Tribunal concluded that Mr Ratta was knowingly involved in the breaches as he was a director of the Level 2 provider and responsible for regulatory compliance at the time of the breaches. Further, he controlled the business on a day-to-day basis and had oversight of the small team who he asserted ran the Service.

Sanction

The Tribunal decided to prohibit Mr Ratta from providing, or having any involvement in, any premium rate service for the period of two years from the date of publication of this decision.

In making this decision the Tribunal noted that the Level 2 provider's company was not in Mr Ratta's control at the time of the adjudication and that Mr Ratta had engaged with PhonepayPlus and the Tribunal in relation to the prohibition application. However, given the seriousness of the underlying case, and in particular, the broad range of breaches upheld which indicated systemic failings on the part of those in control and with day-to-day responsibility of the Service, the Tribunal was satisfied that two years was an appropriate period, taking into account all the relevant circumstances.