

Tribunal meeting number 143 / Case 2

Case reference: 34949

Case: Prohibition of an Associated individual

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

#### BACKGROUND

##### (i) Summary relating to Mr Waqar Ashraf

The Tribunal was asked to consider a prohibition against Mr Waqar Ashraf pursuant to paragraph 4.8.2(g) of the 12<sup>th</sup> Edition of the PhonepayPlus Code of Practice (the “Code”).

The case related to an adjudication against the Level 2 provider (22 August 2013, case reference 34949), which concerned a breach of the sanctions and non-payment of an administrative charge imposed by an earlier Tribunal (16 May 2013, case reference 17843). On 22 August 2013, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Waqar Ashraf, (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 Waqar Ashraf was knowingly involved in a number of serious and very serious breaches of the Code in respect of adjudications dated 16 May 2013 and 22 August 2013.

#### **Adjudication dated 16 May 2013, Case reference: 17843**

On 16 May 2013, the Tribunal adjudicated against the Level 2 provider Waqar Ashraf trading as book-theory-test-online. The adjudication concerned a premium rate customer support service (the “**Service**”). The Service offered consumers the opportunity to book a driving theory test either online or by calling a fixed line premium rate number.

PhonepayPlus received 17 complaints regarding the Service. Complainants raised concerns regarding the length of calls, pricing prominence and complaint handling. In addition, a number of complainants stated that they were under the impression that they were calling the Driving Standards Authority.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.4 – Undue delay
- Rule 2.2.1 – Provision of information
- Rule 2.2.5 – Pricing prominence
- Rule 2.3.2 - Misleading
- Paragraph 3.4.12(a) – Registration of the Service

The Tribunal concluded that the breach of rule 2.2.5 of the Code was very serious. The breaches of rules 2.3.4, 2.2.5 and 2.3.2 of the Code were serious and the breach of rule 3.4.12(a) of the Code 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 £85,000; 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.

#### **Adjudication dated 22 August 2013, Case reference: 27904**

On 22 August 2013, the Tribunal adjudicated against the Level 2 provider Waqar Ashraf trading as book-theory-test-online for non-compliance with the sanctions and non-payment of an administrative charge imposed by the Tribunal on 16 May 2013.

The Tribunal upheld the following breaches of the Code:

- Paragraph 4.8.4(b) – Failure to comply with a sanction
- Paragraph 4.10.2 – Non-payment of an administrative charge



The Tribunal concluded that both breaches of the Code were very serious. The Tribunal determined that the seriousness of the case overall was very serious and imposed the following sanctions:

- a formal reprimand;
- a bar on access to all of the Level 2 provider's services and numbers until the breaches are remedied by payment of the fine and original and instant administrative charges.

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 Waqar Ashraf was an associated individual knowingly involved in the breaches upheld in the adjudications dated 16 May 2013 and 22 August 2013 as a result of the following:

- As a sole trader, Mr Waqar Ashraf was responsible for the day-to-day management of the Service at the time the serious and very serious breaches of the Code occurred;
  - Mr Waqar Ashraf was named as the responsible party when the Level 2 provider registered with PhonepayPlus; and
  - Mr Waqar Ashraf was named as the responsible party on the Level 1 provider's "Due Diligence" Report.
2. On 28 May 2013, the Executive received notification from an individual who stated that she was Mr Ashraf's nominated representative. She stated that Mr Ashraf was winding down his business and wanted nothing more to do with the adjudication against him. On 27 August 2013, the Executive received an email from Mr Ashraf's nominated representative, which stated that Mr Ashraf's business had ceased to trade and he was bankrupt.

Mr Ashraf did not provide a response to the prohibition investigation letter.

3. The Tribunal considered all the evidence presented to it. The Tribunal found that, in accordance with paragraph 4.8.2(g) of the Code, Mr Ashraf 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 Ashraf was knowingly involved in the breaches as he was a sole trader, who was responsible for the management and day-to-day operations of the business.

### Sanction

The Tribunal decided to prohibit Mr Waqar Ashraf 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 Waqar Ashraf had a general disregard for the regulatory process and had not responded to the prohibition investigation letter, although there was some email correspondence. The Tribunal was satisfied that five years was an appropriate period, taking into consideration all the circumstances and the nature of the underlying case.