

Tribunal meeting number 145 / Case 2

**Case reference: 34946
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 Mrs Corinne Hunter

The Tribunal was asked to consider a prohibition against Mrs Corinne Hunter 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 Zooborang Ltd (28 August 2013, case reference 30056), which concerned a breach of the sanctions and non-payment of an administrative charge imposed by an earlier Tribunal (27 June 2013, case reference 15316). On 28 August 2013, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mrs Hunter, (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 subparagraph 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 Mrs Hunter was knowingly involved in a number of serious and very serious breaches of the Code in respect of adjudications dated 27 June 2013 and 28 August 2013.

Adjudication dated 27 June 2013, Case reference: 15316

On 27 June 2013, the Tribunal adjudicated against the Level 2 provider Zooborang Ltd. The adjudication concerned an adult virtual chat service (the “**Service**”). The Service operated on the premium rate shortcode 83737 and cost £1.50 per message received from the operator and 25 pence per message sent by the consumer. A consumer could receive up to five messages for every message s/he sent.

PhonepayPlus received 53 complaints regarding the Service. Generally, the complainants stated that the messages received were unsolicited. Consumers who accepted that they had used the Service stated that they were under the impression that the Service was free.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.12(c) – Spend reminder messages
- Rule 2.3.11 – The method of exit
- Rule 2.3.8 – Age verification
- Paragraph 3.9.2 – Appropriate use of number ranges
- Paragraph 3.4.12(a) – Registration of the service

The Tribunal concluded that the breach of rule 2.3.11 of the Code was very serious. The breaches of rules 2.3.8, paragraph 3.9.2 and 3.4.12(a) of the Code were serious and the breach of rule 3.4.12(c) 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 £60,000;
- a requirement that access is barred to the Service until compliance advice has been implemented to the satisfaction of PhonepayPlus; 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 28 August 2013, Case reference: 30056

On 28 August 2013, the Tribunal adjudicated against the Level 2 provider Zooborang Ltd for non-compliance with the sanctions and non-payment of an administrative charge imposed by the Tribunal on 27 June 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 prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of three years (starting from the date of publication of the decision), or until the breaches are remedied by payment of the fine and original and instant administrative charges, whichever is the later.

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 Mrs Hunter was an associated individual knowingly involved in the breaches upheld in the adjudications dated 27 June 2013 and 28 August 2013 as a result of the following:

- As a Director, Mrs Hunter was jointly responsible for the oversight of the Level 2 provider's affairs and the management of the service at the time the serious and very serious breaches of the Code occurred;
- Mrs Hunter was a 50 percent shareholder in the Level 2 provider and as such had a personal interest.
- Mrs Hunter had a history of involvement in premium rate services (as a Director) and had previously interacted with PhonepayPlus on at least two occasions. Accordingly, Mrs Hunter had knowledge and experience of the regulatory requirements. In light of her experience, the Executive submitted that it was highly likely that, as a Director, she was aware of the non-compliant manner in which the Service was operating.

2. Mrs Hunter did not provide a response to the prohibition investigation letter.
3. The Tribunal considered all the evidence presented to it. The Tribunal commented that the Executive had used all reasonable endeavors to ensure that Mrs Hunter had notice of the proceedings, including sending the prohibition investigation letter to three separate personal and professional addresses. The Tribunal noted that one of the letters had been accepted by "C. Hunter" and therefore it was highly likely that Mrs Hunter was aware of the proceedings but had chosen not to exercise her right to respond to the action. The Tribunal found



that Mrs Hunter was an Associated individual as she was one of two Directors and a 50% shareholder of the Level 2 provider at the relevant time. The Tribunal noted that Mrs Hunter had a long history of activity in the premium rate industry and had been associated with a number of companies which had been subject to regulatory action by PhonepayPlus. Consequently, the Tribunal found that Mrs Hunter was not and/or should not have been ignorant of her obligations as a Director in relation to the provision of the premium rate service. Further, as a Director, and in the absence of evidence to the contrary, on the balance of probabilities she would have been knowingly involved in the circumstances which led to the two very serious breaches of the Code upheld against the Level 2 provider on 28 August 2013. In light of the above, and in accordance with paragraph 4.8.2(g) of the Code, the Tribunal concluded that Mrs Hunter had been knowingly involved in series of breaches of the Code, some of which were serious or very serious, as an Associated individual.

Sanction

The Tribunal decided to prohibit Mrs Hunter 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 Mrs Hunter had failed to co-operate, or even acknowledge the proceedings. In addition, the Tribunal commented that the two underlying adjudications upon which it had based its decision demonstrated systemic non-compliance with a wide spectrum of Code obligations. However, the Tribunal was satisfied that, taking into consideration all the circumstances, five years was an appropriate period.