



Tribunal meeting number 151 / Case 3

Case reference: 39728

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 Matthew Jones

The Tribunal was asked to consider the imposition of a prohibition against Mr Matthew Jones pursuant to paragraph 4.8.2(g) of the 12th edition of the PhonepayPlus Code of Practice (the “Code”).

The case related to adjudications against the Level 2 provider (the “**Level 2 provider**”) Frontier Limited (20 December 2012, case reference: 2336, and 20 February 2014, case reference: 27745), which concerned a concerned a pay-per-stream glamour video download service (the “**Service**”).

On 20 February 2014, a Tribunal instructed the Executive to initiate the process that may lead to the prohibition of Mr Matthew Jones (an associated individual) pursuant to paragraph 4.8.2(g) of the Code.

The Tribunal considered the following evidence in full:

- The Tribunal decision against the Level 2 provider dated 20 December 2012;
- The Tribunal decision against the Level 2 provider dated 20 February 2014;
- Agreement and contract between the Level 2 provider and the Level 1 provider;
- Email correspondence with the Level 2 provider dated 29 June 2012 and 25 July 2013;
- Email correspondence with the Level 1 provider dated 1 November 2011;
- Letter from solicitors for the Level 2 provider dated 26 November 2012;
- PhonepayPlus registration database screenshots;
- The covering letter and email to the breach of sanction letter dated 2 May 2014; and
- Confirmation of attempts to deliver the notification of potential prohibition to Mr Matthew Jones and the Level 2 provider.

The Executive conducted this matter in accordance with paragraph 4.8.6 of the Code. The Executive sent the notification of a potential prohibition to Mr Matthew Jones and the Level 2 provider on 2 May 2014 but did not receive a response. The Tribunal was satisfied that, in accordance with paragraph 4.8.6 of the Code, the Executive had made all reasonable attempts to inform Mr Matthew Jones of the potential prohibition proceedings. On 29 May 2014, the Tribunal reached a decision regarding the imposition of a prohibition on Mr Matthew Jones.

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

1. The Executive submitted that the following evidence indicated that Mr Matthew Jones was an associated individual knowingly involved in a series of breaches of the Code, some of which were serious or very serious, in respect of the adjudications dated 20 December 2012 and 20 February 2014.

Adjudication dated 20 December 2012, case reference: 2336

On 20 December 2012, the Tribunal adjudicated against the Level 2 provider Frontier Limited. The adjudication concerned a pay-per-stream glamour video download service, which was then called “Porn Locker.” The Service operated at a cost of £3.00 per download.

Generally complainants stated that they had not engaged with the Service but had been charged. In addition, certain complainants reported receiving unsolicited promotional messages from the Service.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.3 – Consent to charge
- Rule 2.4.2 – Consent to market

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



- a formal reprimand;
- a fine of £30,000; 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.

Adjudication dated 20 February 2014, case reference: 27745

On 20 February 2014, the Tribunal adjudicated against the Level 2 provider Frontier Limited in relation to the Service which was at the time called “PLocker.” The Service operated at a cost of 3.00 per download.

The majority of complainants stated that they had not engaged with the Service but had been charged. In addition, certain complainants reported receiving unsolicited promotional messages from the Service.

The Tribunal upheld the following breaches of the Code:

- Rule 2.3.3 – Consent to charge
- Paragraph 3.4.6 – Registration of an organisation

The Tribunal concluded that the breach of rule 2.3.3 of the Code was very serious and the breach of paragraph 3.4.6 of the Code was moderate. 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;
- a requirement that access is barred to all of the Level 2 provider’s premium rate services for 12 months or until compliance advice has been sought and implemented to the satisfaction of PhonepayPlus, whichever is the later; 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.

Associated individual knowingly involved in a series of breaches of the Code some of which were serious and very serious

The Executive submitted that Mr Matthew Jones was an associated individual at the time the breaches of the Code occurred and were upheld by Tribunals on 20 December 2012 and 20 February 2014, as he was a manager and/or director of the Level 2 provider’s company and the evidence demonstrated that he had day to day responsibility for the conduct of the Level 2 provider’s business. Specifically:

- A contract for the provision of a Payforit billing platform between the Level 2 provider and the Level 1 provider dated 17 June 2009, was signed on behalf of the Level 2 provider by Mr Matthew Jones as a director. An addendum to the contract was signed on 5 August 2011 by Mr Matthew Jones as a director. The Executive noted



- that this addendum was signed shortly before PhonepayPlus received the first complaint concerning the Service on 13 September 2011.
- Correspondence with the Level 1 provider on 1 November 2011 revealed that it understood that Mr Matthew Jones was the “Account Manager” of the Level 2 provider. The Executive stated that it was unclear when Mr Matthew Jones’ role changed, however it submitted that it was clear that Mr Matthew Jones retained a managerial role within the Level 2 provider when breaches of the Code occurred.
 - On 29 June 2012 and prior to the Tribunal adjudication (20 December 2012, case reference: 2336), Mr Matthew Jones informed the Executive that he would no longer be employed by the Level 2 provider but would act as a consultant. A letter dated 26 November 2012 from the Level 2 provider’s legal representatives confirmed that Mr Matthew Jones was a consultant for the Level 2 provider and was responsible for all matters relating to compliance:

“Matthew Jones is the consultant to our client responsible for all matters of compliance. He is the only person capable of responding to the allegations which have been raised.”

- The Executive asserted that the correspondence confirmed that, despite Mr Matthew Jones’ change of role in the Level 2 provider, he continued to retain a position of authority.
- Throughout the investigation and enforcement procedure for the adjudication of 20 December 2012 (case reference: 2336), Mr Jones was the only individual from the Level 2 provider to correspond with the Executive. Further, he attended the Tribunal and provided informal representations.
 - Throughout the investigation and enforcement procedure for the adjudication of 20 February 2014 (case reference: 27745), Mr Jones was the only individual from the Level 2 provider to correspond with the Executive, although no response to the breach letter was received.
 - Matthew Jones was named on the PhonepayPlus registration database as the primary contact for the Level 2 provider on 1 September 2011, and he continued to retain this status beyond conclusion of the investigation

The Executive submitted that Mr Matthew Jones was knowingly involved in a series of breaches of the code, some of which were serious or very serious, that were upheld by Tribunals on 20 December 2012 and 20 February 2014 as a result of the evidence in relation to Mr Matthew Jones’ responsibility in the Level 2 provider’s company, but particularly as a result of the following:

- Mr Matthew Jones was responsible for ensuring that the areas of the business for which he was responsible were properly managed. Mr Jones was identified in correspondence with the Level 2 provider’s legal representatives as the “only” person capable of responding to the Executive’s allegations. As such the Executive asserted that this suggested that he had a high level of responsibility (if not sole responsibility) for the day to day running of the Service.
- Mr Matthew Jones made informal representations on behalf of the Level 2 provider during the Tribunal of 20 December 2012 and articulated in detail the Level 2 provider’s position in relation to the alleged breaches. The Executive asserted that he had extensive knowledge of the Service under investigation.



- On 25 July 2013, the Executive sent a direction to the Level 2 provider to obtain information regarding the operation of the Service. On 6 August 2013, Mr Matthew Jones provided a detailed response, indicating that he continued to have an active role in the day to day running of the Service when breaches of the Code occurred.
- On 6 August 2013, the Executive asked Mr Matthew Jones, “Further to the previous Tribunal adjudication, please advise what action has been taken since then to remedy the issues identified and prevent them occurring again?” Mr Matthew Jones responded with full knowledge of the steps that had been taken, stating:

“We assure you we take the investigations by PhonepayPlus incredibly seriously and have to implement the changes you suggest or the fines would put us out of business. We immediately made the changes after the last investigation but the nature of the service doesn’t change – in so much that people will always try and get away with not paying for content, especially if it is glamour / topless content. That is the nature of the market as we know PhonepayPlus appreciates.”

A further response on 23 August 2013 continued to demonstrate Mr Matthew Jones’ detailed knowledge of the Service.

2. Mr Matthew Jones did not provide a response to the notification of potential prohibition documentation.
3. The Tribunal considered all the evidence presented to it. The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Mr Matthew Jones was an associated individual as the evidence presented by the Executive demonstrated that he was a director and/or consultant that had day-to-day responsibility for the Level 2 provider at the relevant time. Further, the Tribunal found that Mr Matthew Jones was knowingly involved in serious and very serious breaches of the Code upheld against the Level 2 provider on 20 December 2012 and 20 February 2014, particularly as a result of the information provided by Mr Matthew Jones to the Executive during the enforcement procedure and the detail of the correspondence provided by him.

Accordingly, for all the reasons outlined above, the Tribunal found that Mr Matthew Jones was an associated individual knowingly involved in a series of breaches of the Code, some of which were serious or very serious, upheld against the Level 2 provider on 20 December 2012 and 20 February 2014.

Sanction

The Tribunal decided to prohibit Mr Matthew Jones 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 found that there had been fundamental non-compliance with Code obligations as Mr Matthew Jones had failed to co-operate with, or acknowledge, the prohibition proceedings.

Accordingly, the Tribunal was satisfied that, given the need to protect consumers from similar conduct, five years’ prohibition was an appropriate period, taking into consideration all the circumstances.