



Tribunal meeting number 157 / Case 1

Case reference: 43709

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 Johann Antonius Wilhelmus Verpoort (also known as Mr Joost Verpoort)**

The Tribunal was asked to consider imposing a prohibition against Mr Johann Verpoort 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 (the “**Level 2 provider**”) JJP Mobile B.V. (24 July 2014, case reference: 45179), which concerned a breach of the sanctions imposed by an earlier Tribunal (17 April 2014, case reference 04842) and non-payment of the associated administrative charges. The case on 24 July 2014 concerned trivia competition subscription services (the “**Service(s)**”).

On 17 April 2014 and 24 July 2014, the Tribunal instructed the Executive to initiate the process which may lead to the prohibition of Mr Johann Verpoort, (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 5 July 2012;
- The Tribunal decision against the Level 2 provider dated 17 April 2014;
- The Tribunal decision against the Level 2 provider dated 24 July 2014;
- An extract from the Netherlands Chamber of Commerce Commercial Register dated 8 August 2014;
- A extract from the PhonepayPlus registration database for the Level 2 provider dated 11 August 2014;
- Documentation provided by the Level 1 provider in relation to its due diligence and risk assessment of the Level 2 provider and the Service including the following;
  - A copy of Mr Johann Verpoort’s passport;
  - An extract from the Netherlands Chamber of Commerce Commercial Register dated 9 August 2010; and
  - An extract from the PhonepayPlus database dated 18 August 2011.
- Email correspondence between the Executive and Mr Verpoort between 2 May 2012 and 5 May 2012, 9 February 2012 and 6 March 2012;
- Contracts between the Level 1 provider and the Level 2 provider dated 29 September 2010 and 14 November 2011;
- Contracts between the Level 2 provider and the affiliate marketers dated 22 November 2011, 16 December 2011 and 19 December 2011;
- Direction for information of 11 July 2012 and the Level 2 provider’s response of 12 July 2012;
- Correspondence with Mr Verpoort on 5 June 2014;
- The covering letter and email to notification of potential prohibition of 11 August 2014; and

- Confirmation of delivery of the potential prohibition notification to Mr Verpoort and the Level 2 provider dated 11 August 2014.

The Executive conducted this matter in accordance with paragraph 4.8.6 of the Code. The Executive sent notification of a potential prohibition to Mr Verpoort and the Level 2 provider on 11 August 2014. On 21 August 2014, Mr Verpoort contacted the Executive by email and stated that he had only received the notification of prohibition on that date, he would not be back at his place of work until 1 September 2014 and he was unable to reply until 7 September 2014. The Executive responded and stated that the response deadline could not be extended until 7 September 2014 but it was willing to extend the deadline for the response until 26 August 2014 (which was the last date a response could be received before the Tribunal on 4 September 2014). It informed Mr Verpoort that any response submitted prior to 4 September 2014 would still be provided to the Tribunal and he could attend the Tribunal to provide oral submissions. Mr Verpoort did not provide any further response. The Tribunal acknowledged that the deadline imposed a strict time limit but it commented that it was open to him to apply to the Tribunal for an adjournment. Further, it noted that Mr Verpoort had stated that he would return on 1 September 2014 and therefore had the opportunity to provide a response if he wished to do so. Taking all the circumstances into account, the Tribunal was satisfied that Mr Verpoort had been notified of the proceedings and he had sufficient time to submit a response and/or an application for an adjournment, which he had not done. Further, in reviewing the procedural history of the case against the Level 2 provider, the Tribunal noted that it had not complied with a previous decision of the Tribunal and Mr Verpoort had clearly stated that he did not recognise the authority of PhonepayPlus as the regulator nor the Tribunal as an adjudicator. Accordingly, the Tribunal was satisfied that, in accordance with paragraph 4.8.6 of the Code, the Executive had informed Mr Verpoort of the potential prohibition proceedings and given him an opportunity to provide a response and make informal representations. On 4 September 2014, the Tribunal reached a decision regarding the imposition of a prohibition on Mr Verpoort.

### 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 Verpoort was an associated individual knowingly involved in a serious and/or series of breaches of the Code, in respect of the adjudications of 17 April 2014 and 24 July 2014.

#### **Adjudication on 17 April 2014, case reference: 04842**

On 17 April 2014, the Tribunal adjudicated against the Level 2 provider JJP Mobile B.V. The adjudication concerned trivia competition subscription and non-subscription services that operated under brand names including “Grocery Shopping”, “Win £500 grocery shopping vouchers”, “Win 2 tickets to the Champions League Final 2012”, “Win an iPad” and “Win a pharmacy coupon”. The Services were operated on the premium rate shortcodes 64888 and 65558. The Services were operational from at least September 2011 and were voluntarily suspended in February 2012 by the Level 1 provider, following correspondence with PhonepayPlus. Consumers were charged £4.50 per week (via three chargeable SMS messages costing £1.50 each) for the subscription Service. Consumers were charged either £1.50 per SMS message or £1.50 per SMS message plus a £3.00 “sign up” fee.

Generally complainants stated that they had received unsolicited promotional SMS or email messages, in some cases the messages were personalised. Other complainants reported viewing misleading promotions and/or promotions without pricing information.

During the initial investigation, and as a result of communication with the Level 1 provider, the Level 2 provider was identified as JJP Mobile B.V. Accordingly, the Executive conducted the matter as a Track 2 investigation. On 5 July 2012, the Tribunal was scheduled to consider the breaches raised against JJP Mobile B.V. Mr Verpoort attended to provide informal representations and stated that JJP Mobile B.V. was not the Level 2 provider but was the Level 1 provider. Following these submissions, as a direct result of the representations made to it and before consideration of the breaches of the Code, the Tribunal adjourned the case to allow the Executive time to obtain further information from JJP Mobile B.V. in support of its claim that it was not the Level 2 provider. The Executive subsequently informed the Tribunal that, having considered further documents from JJP Mobile B.V. it did not consider that JJP Mobile B.V. was the Level 2 provider. The Tribunal did not adjudicate on the breaches. The Tribunal recommended that in due course the Executive consider pursuing breaches against the correct Level 2 provider.

Following, the Tribunal, the Executive further investigated the value-chain to ascertain the identity of the Level 2 provider. Despite the Executive’s post Tribunal view that JJP Mobile B.V. was not the Level 2 provider, the investigation into the other potential Level 2 providers led the Executive to conclude that its previous conclusion had been wrong and that JJP Mobile B.V. was in fact the Level 2 provider.



The Executive again conducted the matter as a Track 2 investigation against JJP Mobile B.V. as the Level 2 provider. On 17 April 2014, the Tribunal upheld the following breaches of the Code against the Level 2 provider:

- Rule 2.4.2 – Consent to market
- Rule 2.3.1 – Fair and equitable treatment
- Rule 2.2.1(a) – Provision of information regarding the identity of the Level 2 provider; and
- Paragraph 4.2.4 – Provision of false or misleading information.

The Tribunal concluded that the breaches of rule 2.4.2 and rule 2.2.1(a) of the Code were serious and the breaches of rule 2.3.1 and paragraph 4.2.4 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 fine of £250,000;
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of eight years (starting from the date of publication of the decision), or until payment of the outstanding fine and total administrative charges, whichever is the later; and
- a requirement to 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 on 24 July 2014, case reference: 45179**

On 24 July 2014, the Tribunal adjudicated against the Level 2 provider JJP Mobile B.V. for the non-compliance with the sanctions and non-payment of an administrative charge imposed by the Tribunal on 17 April 2014.

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 sanction:

- a formal reprimand.

The Tribunal noted that a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of eight years had been imposed as a result of the adjudication on 17 April 2014 and accordingly, it concluded that a further prohibition was not necessary or appropriate in the circumstances of the case.

In addition to the above sanctions, the Tribunal recommended that the Level 2 provider pay 100% of the administrative costs incurred by PhonepayPlus.

### **Associated individual knowingly involved in a serious and/or series of breaches of the Code**

The Executive submitted that Mr Verpoort was an associated individual at the time breaches of the Code occurred and were upheld by Tribunals on 17 April 2014 and 24 July 2014, as he was a director of the Level 2 provider and had been since 12 July 2010. The Executive relied on an extract from the Netherlands' Chamber of Commerce Commercial Register that revealed Mr Verpoort was a director of the Level 2 provider company. In addition, the Executive noted that in correspondence Mr Verpoort had identified himself as the Chief Executive Officer (the "CEO") of the Level 2 provider. Accordingly, the Executive submitted that as a Director and CEO Mr Verpoort was an associated individual of the Level 2 provider.

The Executive submitted that Mr Verpoort was knowingly involved in serious and very serious breaches of the Code, upheld by the Tribunal on 17 April 2014, as a result of the following:

- As a director of the Level 2 provider, Mr Verpoort was responsible for the oversight of the Level 2 provider's affairs and ensuring that it was properly managed at the relevant time.
- As a director, Mr Verpoort had a fiduciary duty to ensure that all commercial activities, including the operation of the Service were conducted in accordance with the law and the regulatory obligations.
- Mr Verpoort was named on the PhonepayPlus registration database as the responsible person for the Level 2 provider on 17 August 2011 and he continued to retain that status.
- Before and shortly after the Tribunal of 5 July 2012, Mr Verpoort was the only individual to correspond with the Executive. He provided detailed responses to directions for information concerning the promotion, operation and content of the Service.
- An agreement between the Level 2 provider and the Level 1 provider dated 14 November 2011 for the provision of the UK premium rate shortcode was signed for on behalf of the Level 2 provider by Mr Verpoort.
- Two contracts between the Level 2 provider and marketing companies named Mr Verpoort as the main contact for the Level 2 provider.
- Mr Verpoort provided a detailed response to the breach letter in relation to the adjudication of 17 April 2014, indicating that he had extensive knowledge of the Service under investigation. The Executive raised a breach of rule 2.3.1 of the Code, which included amongst other reasons an assertion that the Level 2 provider had not treated consumers fairly and equitably due to a lack of evidence that demonstrated that competition prizes existed. The Tribunal upheld a breach of rule 2.3.1 of the Code and found that, on the balance of probabilities, the failure to provide evidence of competition prizes led it to conclude that no prizes existed and therefore the Service had little purpose. The Executive submitted that Mr Verpoort, as a director, would have been knowingly involved in the operation of Services that had no prizes and operated with little purpose.
- During the course of the investigation and at the Tribunal of 5 July 2012, Mr Verpoort made false representations regarding the identity of the Level 2 provider and a fictitious company called 12SMS. The Tribunal found:



“that not only had the Level 2 provider knowingly misled the regulator during the investigation, the CEO of the Level 2 provider had attended a Tribunal hearing on 5 July 2012, asserted that it was the Level 1 provider and misled a Tribunal. The Tribunal found that misleading a Tribunal was a particularly serious matter when the CEO, Mr Joost Verpoort must have known (and the Tribunal found, did know) what the true identity of the Level 2 provider was – namely that JJP Mobile B.V. was the Level 2 provider. Accordingly, the Tribunal concluded that the Level 2 provider had knowingly misled both the Executive and the Tribunal and had provided false information in an effort to circumvent regulation. In coming to its decision on this breach, the Tribunal found that there was a compelling body of cogent evidence to support its conclusions on this breach and the conduct of the CEO, Mr Joost Verpoort.”

The Executive submitted that Mr Verpoort was knowingly involved in very serious breaches of the Code that were upheld by the Tribunal on 24 July 2014 as a result of the following:

- As a director of the Level 2 provider, Mr Verpoort was responsible for ensuring that the Level 2 provider adhered to the sanctions imposed against it by the Tribunal of 17 April 2014 and paid the associated administrative charges. Mr Verpoort was made aware of the outcome of the adjudication of 17 April 2014 and the consequences of the failure to comply with the sanctions imposed and non-payment of the administrative charge.
- On 5 June 2014, following a reminder email sent by the Executive, Mr Verpoort acknowledged the Tribunal decision of 17 April 2014 and stated:

“JJP Mobile BV does not recognize nor accepts these sanctions which are made up out of unfounded accusations and will surely not pay. PPP publishing lies like this will result in JJP Mobile BV seeking legal council and start pressing charges. Personally I will do the same as you are deliberately harming my good name and reputation [sic].”

“The decision is made up with big fat lies and we do not agree in any way! If anything of those lies is published we will press charges both to PPP and the private individuals involved since this is 100% pure slander. I’m fed up with this total nonsense. JJP Mobile B.V. did all things correctly... We even got a formal notice from you about that. That you are not able to retrieve funds from the L2 is not our problem [sic].”

The Executive asserted that the emails demonstrated that Mr Verpoort was aware of the sanctions imposed by the Tribunal on 17 April 2014 and therefore, as a director he was knowingly involved in the Level 2 provider’s failure to comply with the sanctions and make payment of the associated administrative charges.

Consequently, the Executive submitted that Mr Verpoort was an associated individual who was knowingly involved in serious and very serious breaches of the Code.

2. Mr Verpoort did not provide a response to the notification of potential prohibition. Mr Verpoort corresponded with the Executive following the service of the notification of potential prohibition, which is summarised in the “background” section above.



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 Verpoort was an associated individual as he was the director of the Level 2 provider at the relevant time.

The Tribunal noted that the evidence in the underlying adjudication (17 April 2014) indicated that Mr Verpoort had significant involvement, as the most senior individual within the Level 2 provider's company. It particularly noted that Mr Verpoort had provided false information during the investigation and at the Tribunal hearing on 5 July 2012. As a result of this, the Tribunal found that there was clear evidence that Mr Verpoort, as a director had been knowingly involved in deliberate non-compliance with the Code.

In addition, Mr Verpoort had failed to ensure that the Level 2 provider complied with the sanctions imposed. The Tribunal particularly noted Mr Verpoort's response to the Executive in email correspondence on 5 June 2014 and 21 August 2014, where he had made it clear that the Level 2 provider did not agree with the Tribunal decision nor did it intend to comply with the sanctions imposed, despite being aware of them and the associated administrative charges.

Accordingly, for all the reasons outlined above, the Tribunal found, a compelling body of cogent evidence that Mr Verpoort was an associated individual knowingly involved in serious and very serious breaches of the Code, upheld against the Level 2 provider on 17 April 2014 and 24 July 2014.

### Sanction

The Tribunal decided to prohibit Mr Verpoort from providing, or having any involvement in, any premium rate service for a period of seven 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 across two cases involving a range of Code breaches. The Tribunal particularly noted the seriousness of the underlying case where Mr Verpoort had deliberately and knowingly misled and provided false information to the Executive and the Tribunal, during the course of the investigation and the adjudicatory process. That in itself was a very serious matter.

Accordingly, the Tribunal was satisfied that this case fell into an exceptional category and given the need to protect consumers from similar conduct, seven years' prohibition was appropriate and proportionate. The facts of the case and the findings of the Tribunal called for a departure from previous cases, where shorter periods of prohibition had been imposed. In this case, a considerably longer period was justified, taking into consideration all the circumstances of the case.