

Tribunal meeting number 148 / Case 2

Case reference number: 37181

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 Vahid Yousefi

The Tribunal was asked to consider a prohibition against Mr Vahid Yousefi 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 Tel4U Ltd (22 August 2013, case reference: 16682), which concerned a payday loan information premium rate service (the “**Service**”). On 22 August 2013, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Vahid Yousefi, (an Associated individual) pursuant to paragraph 4.8.2(g) of the Code.

The Tribunal considered the following evidence in full:

- Tel4U Ltd Tribunal decision of 22 August 2013
- Credit safe report of 12 February 2014
- Contract between the Level 1 and Level 2 provider of 24 September 2012
- Schedule to the contract “Company Due Diligence”
- Documents from the Executive that the prohibition letter had been properly served.

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 Yousefi was knowingly involved in a number of serious and very serious breaches of the Code in respect of the adjudication dated 22 August 2013.

Adjudication dated 22 August 2013, case reference: 16682

On 22 August 2013, the Tribunal adjudicated against the Level 2 provider Tel4U Ltd. The adjudication concerned a payday loan information premium rate service. The Service operated on the premium rate numbers 09050022777, 09050022999 and 0982555555. The cost of the call was £1.53 per minute and lasted approximately three minutes and 16 seconds per call.

PhonepayPlus received five complaints regarding the Service. Generally, the complainants stated that the SMS messages received were unsolicited. In addition, complainants stated the promotional SMS messages did not contain any pricing information.

The Tribunal upheld the following breaches of the Code:

- Rule 2.2.5 – Pricing prominence and proximity
- Rule 2.4.2 – Consent to market
- Paragraph 3.4.12(a) – Registration of numbers

The Tribunal concluded that the breaches of rule 2.2.5 and 2.4.2 of the Code were very serious. The breach of paragraph 3.4.12(a) of the Code was 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 £10,000;
- a prohibition on the Level 2 provider from providing or having any involvement in, any premium rate service or promotion for five years, starting from the date of publication of the decision; and
- a requirement that the Level 2 provider must refund all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund. Refunds should be directly credited to the users' telephone accounts and the Level 2 provider must provide evidence to PhonepayPlus that the 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 Yousefi was an Associated individual knowingly involved in the breaches upheld in the adjudication dated 22 August 2013 as a result of the following:

- Mr Yousefi was the sole Director of a small company and was therefore responsible for the oversight of the Level 2 provider's affairs. Mr Yousefi had day-to-day responsibility for the management of the Service at the time the serious and very serious breaches of the Code occurred.
 - Mr Yousefi was the sole shareholder of the Level 2 provider and as such had a personal interest.
 - Mr Yousefi was named as the "director with primary responsibility for premium rate services" and "the person with responsible [sic] for day to day operation of each of the Service provider's premium rate services" in a document entitled "Schedule x: Company due diligence" which was completed by the Level 2 provider for the Level 1 provider as part of its due diligence procedure. The Level 1 provider supplied the Executive with this document.
 - Mr Yousefi was listed as a contact on the contract between the Level 1 provider and the Level 2 provider dated 20 September 2012.
2. Mr Yousefi 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 5.3.9 of the Code, Mr Vahid Yousefi was an Associated individual as he was a Director of the Level 2 provider at the relevant time. Further, the Tribunal found that Mr Vahid Yousefi was knowingly involved in the serious and very serious breaches of the Code upheld against the Level 2 provider on 22 August 2013 as a result of Mr Vahid Yousefi being the sole Director, the sole shareholder and the documents that demonstrated that he had involvement in the Level 2 provider's affairs. In light of this, and in accordance with paragraph 4.8.2(g) of the Code, the Tribunal concluded that for the reasons advanced by the Executive, Mr Vahid Yousefi had been knowingly involved in a series of breaches of the Code, some of which were serious or very serious, as an Associated individual.

Sanction

The Tribunal decided to prohibit Mr Vahid Yousefi 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 Vahid Yousefi had failed to co-operate, or acknowledge the prohibition proceedings. In addition, the Tribunal commented that the underlying adjudication related to the sending of unsolicited and misleading messages promoting a Service that had very little purpose. Further, vulnerable consumers were likely to have been affected. Therefore, there had been fundamental non-compliance with Code obligations. Accordingly, the Tribunal was satisfied that, particularly given the need to protect the consumer from similar conduct, five years' prohibition was an appropriate period, taking into consideration all the circumstances.