



Tribunal meeting number 172 / Case 2

Case reference: 75450
Case: Prohibition of an associated individual

THIS CASE WAS BROUGHT AGAINST THE ASSOCIATED INDIVIDUAL UNDER PARAGRAPH 4.8.7 OF THE CODE

BACKGROUND

i) Summary relating to Mr Curtis King

The Tribunal was asked to consider imposing a prohibition against Mr Curtis Brempong King pursuant to paragraph 4.8.2(g) of the 13th edition of the PhonepayPlus Code of Practice (the “Code”).

The case related to adjudications against the Level 2 providers (the “Level 2 providers”) New Business Start-Up LTD (formerly known as BKings Group Limited and BKings Telecommunications Limited) (“NBS”) and Total Recruitment Consultancy Limited (“TRC”) (28 May 2015, case references: 45162 and 48460 respectively), which concerned breaches of the sanctions imposed by an earlier Tribunal (13 November 2014, case references 45162 and 48460 respectively) and non-payment of the associated administrative charges. The cases on 13 November 2014 concerned recruitment and recruitment training and advice services operated by the Level 2 providers (the “Services”). Among other issues, the Services were found to have been operated in a way which misled consumers, and the promotions for the Services omitted key information.

On 28 May 2015, the Tribunal instructed the Executive to initiate the process which may lead to the prohibition of Mr King pursuant to paragraph 4.8.2(g) of the Code.

The Tribunal considered the following evidence in full:

- The Tribunal decisions against the Level 2 providers dated 13 November 2014;
- The Tribunal decisions against the Level 2 providers dated 28 May 2015;
- Extracts from the Companies House database in respect of the Level 2 providers, including notifications of appointment and termination of Mr King as a director, and the document filing history of NBS;
- An extract from the PhonepayPlus registration database identifying Mr King as a responsible person for NBS and TRC;
- Request for informal representations made by Curtis and AnnMarie King;
- Network operator’s registration records for TRC signed by Mr King;
- Correspondence with Ms King relating to standstill agreements in respect of NBS and TRC;
- Proof of service of the prohibition letter in respect of Mr King by post and email on Mr King, and the Level 2 providers.

The Executive conducted this matter in accordance with paragraph 4.8.7 of the Code. The Executive sent notification of a potential prohibition to Mr King, and the Level 2 providers on 24 July 2015 but it did not receive a response. Upon questioning by the Tribunal, the Executive confirmed that the notification was posted to NBS’ registered office at the time the notification was posted, although it appeared the registered office had since been changed. The Executive confirmed that it had seen a number of addresses for the individual and the Level 2 providers so had sent the notification to the addresses it understood were the most recently known addresses.



The Tribunal noted that the notification had been posted to Mr King's registered residential address, NBS and TRC's registered address at the time, and had been emailed to two email addresses which the Executive had recorded as contact addresses for Mr King, plus the email address for his business partner Ms King. The Tribunal noted that a further email address and two correspondence addresses were given for Mr King in the registration records for TRC, which the Tribunal understood had been completed at the time TRC first contracted with the Network operator. The Tribunal noted that the notification had been undeliverable to one of the two email addresses for Mr King to which the notification had been sent. The Tribunal noted that it was not clear from the signatory to the postal notifications whether Mr King had personally signed for the post. The Tribunal also noted that the Executive had previously in October 2014 received a response from Mr King at one of the email addresses, and the Executive had received confirmation of download of the notification sent to this address. The Tribunal also noted that the notification had been posted to NBS, a company of which Mr King was sole director, and signed for at the address which was its registered address at that time. Having considered these factors, the Tribunal was satisfied, in accordance with paragraph 4.8.7 of the Code, that the Executive had made all reasonable attempts to notify Mr King and the relevant parties in writing. On 20 August 2015, the Tribunal reached a decision regarding the imposition of a prohibition on Mr King.

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 as it deems to be appropriate and proportionate...

(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 4.8.7 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 associated individual, PhonepayPlus shall first make all reasonable attempts to notify 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 instead require an oral hearing".

The Tribunal noted that the Executive had in its case report referred to the wording of paragraph 4.8.6 of the 12th Edition of the PhonepayPlus Code of Practice. The Tribunal further noted that the equivalent provision under the 13th Edition of the PhonepayPlus Code of Practice was paragraph 4.8.7, and that there were some minor differences in wording between para. 4.8.7 of the 13th Code and para. 4.8.6 of the 12th Code. The Tribunal determined that para. 4.8.7 of the



13th Code was the paragraph which applied at the relevant time and the Tribunal accordingly proceeded to determine the matter under para. 4.8.7 of the 13th Code.

SUBMISSIONS AND CONCLUSIONS

1. The Executive submitted that the following evidence indicated that Mr King was an associated individual knowingly involved in serious and/or a series of breaches of the 12th Edition of the PhonepayPlus Code of Practice (the “**12th Code**”), in respect of the adjudications of 13 November 2014 and 28 May 2015 against the Level 2 providers.

Adjudication on 13 November 2014 against NBS - case reference 45162

On 13 November 2014, the Tribunal adjudicated against the Service operated by NBS.

Between 17 April 2014 and 26 June 2014, the Executive received 33 complaints from consumers in relation to the Service operated by NBS. The Service operated on various 090 premium rate numbers that had been allocated to NBS by the Network operator Numbers Plus Ltd (the “**Network operator**”). Consumers were charged between 61p and £1.53 per minute (plus network charges). The Service operated from April 2014.

The majority of complainants stated that they had received an email notifying them that they had been selected for a telephone job interview. Some complainants also reported receiving a job specification. Complainants stated that they had called the 090 number but they were unaware that they would incur premium rate charges, as such many experienced bill shock. Many complainants also reported being kept on the line for extended periods of time or being asked a series of irrelevant or repetitive questions. One complainant reported incurring charges of £128 plus VAT after interacting with the Service and many complainants reported being on the call for over an hour.

The Tribunal upheld the following breaches of the 12th Code:

- Rule 2.3.2 – Misleading
- Rule 2.1.1 – Legality
- Rule 2.2.1(a) – Provision of information
- Paragraph 3.4.12(a) – Registration of numbers

The Tribunal determined that the seriousness of the case overall was serious and imposed the following sanctions:

- a formal reprimand;
- a requirement that NBS seek compliance advice for the Service and any other services that it operated within two weeks of the date of publication of the decision and thereafter implement that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus;
- a fine of £40,000; and
- a requirement that NBS 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 NBS pay 100% of the administrative costs incurred by PhonepayPlus.

Adjudication on 13 November 2014 against TRC, case reference: 48460

On 13 November 2014, the Tribunal adjudicated against the Service operated by TRC. Between 30 June 2014 and 5 September 2014, PhonepayPlus received 21 complaints from consumers in relation to the Service operated by TRC. The Service operated on various 090 premium rate numbers that had been allocated to TRC by the Network operator. Consumers were charged between 77p and £1.53 per minute (plus Network charges). The Service operated from June 2014.

The majority of complainants stated that they had received an email notifying them that they had been selected for a job interview. Some complainants also reported receiving a job specification. Complainants stated that they had called the 090 number but they were unaware that they would incur premium rate charges, as such many experienced bill shock. Many complainants also reported being kept on the line for extended periods of time or being asked a series of irrelevant or repetitive questions. One complainant reported incurring charges of £200 after interacting with the Service.

The Tribunal upheld the following breaches of the 12th Code:

- Rule 2.3.2 – Misleading
- Rule 2.2.5 – Pricing prominence and proximity
- Rule 2.2.1(a) – Provision of information
- Paragraph 3.4.12(a) – Registration of numbers

The Tribunal determined that the seriousness of the case overall was serious and imposed the following sanctions:

- a formal reprimand;
- a requirement that TRC seek compliance advice for the Service and any other services that it operates within two weeks of the date of publication of the decision and thereafter implement that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus;
- a fine of £8,000, and
- a requirement that TRC 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 TRC pay 100% of the administrative costs incurred by PhonepayPlus.

Adjudication on 28 May 2015 against NBS, case reference: 58930

The Tribunal adjudicated against NBS for non-compliance with the sanctions imposed by the Tribunal on 13 November 2014 and non-payment of the associated administrative charge. The Tribunal upheld the following breaches of the 12th 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 were very serious. The Tribunal determined that the seriousness of the case overall was very serious and imposed the following sanctions:

- a formal reprimand; and
- a prohibition on NBS 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 payment of the fine and original and instant administrative charges, whichever is the later.

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

Adjudication on 28 May 2015 against TRC, case reference: 66375

The Tribunal adjudicated against TRC for non-compliance with the sanctions imposed by the Tribunal on 13 November 2014 and non-payment of the associated administrative charge.

The Tribunal upheld the following breaches of the 12th 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 were very serious. The Tribunal determined that the seriousness of the case overall was very serious and imposed the following sanctions:

- a formal reprimand; and
- a prohibition on TRC 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 payment of the fine and original and instant administrative charges, whichever is the later

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

Associated individual knowingly involved in a serious and/or series of breaches of the 12th Code

In relation to NBS, the Executive submitted that Mr King was at all relevant times an associated individual for NBS as he was a director from 5 August 2013 until 24 July 2015 at least.

In relation to TRC, the Executive asserted that Mr King was at all relevant times an associated individual, as he was director of TRC from 11 August 2014 until 6 January 2015. In relation to the period from 7 February 2015 to 28 May 2015 in which the very serious breaches of paragraph 4.8.4(b) and 4.10.2 of the 12th Code occurred and were upheld, the Executive noted that TRC had no registered directors. The Executive submitted that in the circumstances the previous director(s) must have continued to have responsibility for the affairs of TRC. The Executive had sent Mr King the formal notification of the Tribunal decision of 13 November 2014 when Mr King was a director and was responsible for compliance with the sanctions. Further correspondence with the Executive regarding negotiations and agreement of a payment plan



were conducted with the other director of the Level 2 provider, however the Executive noted that the other director continued to copy Mr King into this correspondence after Mr King resigned his directorship and therefore the Executive submitted that Mr King continued to remain an associated individual with joint day-to-day responsibility for the company.

The Executive asserted that, for the purposes of paragraph 4.8.2(g) of the Code, the evidence gathered further demonstrated that the associated individual, Mr King, was knowingly involved in a series of serious and very serious breaches of the Code which were upheld by Tribunals on 13 November 2014 and 28 May 2015.

NBS - 13 November 2014 - case reference: 45162

- i. The Executive asserted that as a joint director of NBS from 5 August 2013, Mr King was jointly responsible for oversight of the company affairs and ensuring that the company was properly managed. The Executive submitted that as a director Mr King had a fiduciary duty to ensure that all commercial activities, including the operation of the premium rate services, were conducted in compliance with the law and the regulatory obligations.
- ii. The Executive noted that Mr King was named as a responsible person for NBS when NBS was registered with PhonepayPlus on 7 August 2013 and was listed as such until 16 June 2014.
- iii. The Executive noted that Mr King corresponded with the Executive in response to the breach letter and supplied detailed supporting attachments. He proceeded to correspond with the Executive after the first breach letter was issued on 2 October 2014. The Executive asserted that, as a result of his detailed knowledge of the Service under investigation, Mr King was clearly knowingly involved in the serious breaches of the Code which were upheld by the Tribunal on 13 November 2014.
- iv. The Executive noted that Mr King had attended the Tribunal on 13 November 2014 to provide informal representations on behalf of NBS and demonstrated a detailed knowledge of how the Service operated. During informal representations NBS stated that:

“it currently employed eight people and they worked from its Wembley office...These employees had been recruited as a result of the Service as there had been many and most had only been employed for a short period of time...”

It was explained that Mr King was a joint director of the company with his sister, who also attended the informal representations. The Executive submitted that, as well as having a personal relationship with the other director, it was clear from the submissions made that they worked closely together and both had an active role in the day-to-day management of the business. NBS asked the Tribunal to have regard:

“to the fact that its directors were young individuals who were trying to make a success of a small business ...”

The Executive submitted that it was reasonable to infer from these statements that as a director of a small company, Mr King would have been aware of NBS’s affairs and therefore knowingly involved in the breaches of the 12th Code.

TRC – 13 November 2014 - case reference 48460



- i. The Executive asserted that as a joint director of TRC between 11 August 2014 and January 2015, Mr King was jointly responsible for oversight of the company affairs and ensuring that the company was properly managed. The Executive submitted that as a director Mr King had a fiduciary duty to ensure that all commercial activities, including the operation of the premium rate services, were conducted in compliance with the law and the regulatory obligations. During Mr King's directorship, PhonepayPlus notified Mr King of its concerns by copying him into directions for information regarding the ongoing receipt of complaints.
- ii. The Executive noted that Mr King named himself as a responsible person for TRC when TRC was registered with PhonepayPlus from 5 August until 15 October 2014. The Executive noted that this covered the main period of complaints for the serious breaches of the 12th Code upheld by the Tribunal on 13 November 2014.
- iii. The Executive sent a breach letter to TRC on 22 September 2014. On 24 September 2014 Mr King telephoned the Executive requesting an extension to respond. On 6 October 2014 Mr King supplied a response to this breach letter along with detailed attachments. The Executive asserted that, as a result of his detailed knowledge of the Service under investigation, Mr King was clearly knowingly involved in the serious breaches of the 12th Code which were upheld by the Tribunal on 13 November 2014.
- iv. The Executive noted that the due diligence risk assessment and control reports obtained from the Network operator demonstrated that the checklist form completed by TRC had been signed by Mr King in his capacity as director.
- v. The Executive noted that Mr King had attended the Tribunal on 13 November 2014 to provide informal representations on behalf of TRC and demonstrated a detailed knowledge of how the Service operated. During the informal representations, it was explained that Mr King was a joint director of TRC with his sister, who also attended the informal representations. The Executive submitted that, as well as having a personal relationship with the other director, it was clear from the submissions made that they worked closely together and both had an active role in the day-to-day management of the business. TRC asked the Tribunal to have regard

“to the fact that its directors were young individuals who were trying to make a success of a small business ...”.

The Executive submitted that it was reasonable to infer from these statements that as a director of a small company, Mr King would have been aware of TRC's affairs and therefore knowingly involved in the breaches of the 12th Code.

NBS – 28 May 2015 - Case reference- 65048

- i. Between 13 November 2014 and 9 April 2015, Mr King's sister corresponded with the Executive regarding compliance with the sanctions imposed. During this correspondence Ms King negotiated a payment plan. The Executive submitted that it was clear from Ms King's correspondence that she was aware of the sanctions and administrative charge imposed and that compliance with those sanctions was required, otherwise further breaches of the 12th Code could be raised. Ms King also signed a standstill agreement (payment plan) dated 24 February 2015. Mr King was copied into all this correspondence, which the Executive submitted meant he was also aware. As the statutory director of NBS at the time, Mr King had a duty to ensure that all commercial activities of NBS were



conducted in compliance with the law and regulatory obligations. The Executive also submitted that the company director would have access to the company's bank statements and could establish what payments had been made. The Executive therefore submitted it was reasonable to infer that Mr King was aware of the steps taken on behalf of NBS in purported compliance with the sanctions, and its continuing failure to comply in full, and accordingly that he had knowing involvement in the very serious breaches of the 12th Code which were upheld by the Tribunal on 28 May 2015.

TRC – 28 May 2015 - case reference- 66375

- i. Between 13 November 2014 and until 9 April 2015, Mr King's sister corresponded with the Executive regarding compliance with the sanctions imposed. During this correspondence Ms King negotiated a payment plan. The Executive submitted that it was clear from Ms King's correspondence that she was aware of the sanctions and administrative charge imposed and that compliance with those sanctions was required, otherwise further breaches of the 12th Code could be raised. Ms King also signed a standstill agreement (payment plan) dated 24 February 2015. The Executive noted that although Mr King resigned as a director on 6 January 2015, before a payment plan was negotiated, he continued to be copied into key correspondence regarding compliance with the sanctions by Ms King, the other past director. The Executive noted that in the period from 7 February 2015 to 28 May 2015, in which the very serious breaches of paragraph 4.8.4(b) and 4.10.2 of the 12th Code occurred and were upheld, TRC had no registered directors. The Executive submitted that in the circumstances the previous director(s) must have continued to have responsibility for the affairs of TRC and knowing involvement in the failure to comply with the sanctions.

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

2. Mr King did not provide a response to the notification of potential prohibition.
3. The Tribunal considered the Code and all the evidence presented to it. The Tribunal noted that, in respect of NBS, the main consumer complaint period had been from May 2014 to July 2014. On 5 August 2013 Mr King was appointed as a Director. On 7 August 2013 Curtis King was named as a responsible person on PhonepayPlus' database. On 16 June 2014 Mr King was removed as a responsible person. Mr King remained a director of NBS as at 24 July 2015.

The Tribunal noted that in respect of TRC the main complaint period was June 2014 to November 2014. The Tribunal noted that on 5 August 2014 Curtis King was named as a responsible person on PhonepayPlus' database. On 11 August 2014 Mr King was appointed as a director. On 15 October 2014 Mr King was removed as a responsible person. On 6 January 2015 Mr King's directorship was terminated.

The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Mr King was an associated individual in respect of NBS and TRC, for the reasons raised by the Executive. The Tribunal in particular noted that Mr King was a director of NBS and TRC in the period when the initial breaches took place, and remained a director of NBS throughout the relevant period, and the correspondence showed that he appeared to retain some responsibility for the affairs of TRC after he resigned as a director. Further, the Tribunal found that, for the reasons raised by the Executive, Mr King was knowingly involved in a series of serious and very serious breaches of the 12th Code committed by NBS, which were upheld on 13 November 2014 and 28 May 2015. Further, the Tribunal found that, for the reasons raised by the Executive, Mr King was



knowingly involved in a series of serious breaches of the 12th Code committed by TRC which were upheld on 13 November 2014. In addition to the above findings on association, the Tribunal in particular noted that, in the course of the adjudication process on the initial breaches, Mr King engaged with the Executive and provided representations regarding the operation of the Services, and in respect of the breach of sanctions by NBS, it was clear that Mr King was aware of the sanctions and administrative charge imposed and that he bore responsibility for compliance with the sanctions. The Tribunal was not satisfied, on the balance of probabilities, that Mr King was knowingly involved in the very serious breaches of the 12th Code committed by TRC which were upheld on 28 May 2015.

Sanction

The Tribunal considered the facts of the case, and in particular the number of serious and very serious breaches with which Mr King was knowingly involved as an associated individual, the manner in which NBS had failed to comply with sanctions, and the amounts outstanding pursuant to sanctions. The Tribunal noted that the larger part of the unsatisfied sanctions related to NBS, and that Mr King had been the sole director of NBS since 9 December 2014.

The Tribunal decided to prohibit Mr King from providing, or having any involvement in, any premium rate service for a period of three years from the date of publication of this decision.

Administrative charge recommendation:

100%