



Tribunal meeting number 172 / Case 1

Case reference: 75448
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 Ms Naffisatu Adekemie Brempong (known as “Ann-Marie”) King

The Tribunal was asked to consider imposing a prohibition against Ms Naffisatu Adekemie Brempong (known as “Ann-Marie”) 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 Ms Naffisatu 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 Ms King as a director;
- Correspondence between the Executive and Ms King, and the Network operator and Ms King
- An extract from the PhonepayPlus registration database identifying Ms King as a director and primary contact for NBS and TRC;
- Request for informal representations made by Curtis and Ann-Marie King;
- Network operator’s registration records for TRC identifying Ms King as the main person responsible for PRS operated by TRC;
- Correspondence with Ms King relating to standstill agreements in respect of NBS and TRC;
- Correspondence between complainants and Ms King in respect of NBS and TRC post - 13 November 2014;
- Proof of service of the prohibition letter in respect of Ms King by post and email on Ms 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 Ms King, and the Level 2 providers on 24 July 2015 but it did not receive a response. The Tribunal was satisfied, in accordance with paragraph 4.8.7 of the Code, that the Executive had made all reasonable attempts to notify Ms King and the relevant parties



in writing of the prohibition proceedings. On 20 August 2015, the Tribunal reached a decision regarding the imposition of a prohibition on Ms 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 Ms 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 Ms King was at all relevant times an associated individual for NBS. The Executive noted that she was a director of NBS from 5 August 2013 until 9 December 2014. The Executive noted that in relation to the very serious breaches of paragraph 4.8.4(b) and 4.10.2 of the 12th Code upheld against NBS, at the time payment of the fine and administrative charge was due under the terms of a payment plan, Ms King had ceased to be a director but she remained a responsible person and primary contact for NBS on the PhonepayPlus Registration Scheme. The Executive submitted that she maintained a position of responsibility as an individual with day to day responsibility for the conduct of NBS's business as she continued to act on behalf of the company by:

- corresponding with the Executive regarding compliance with the sanctions, including negotiating a payment plan; and
- corresponding with the Executive when NBS had failed to make payments in accordance with the plan.

In relation to TRC, the Executive asserted that Ms King was at all relevant times an associated individual for TRC. The Executive noted that TRC incorporated on 6 June 2014 and Ms King was a director of TRC from 11 August 2014 until 7 February 2015. Ms King's resignation left TRC with no registered directors. The Executive noted that in relation to the very serious breaches of paragraph 4.8.4(b) and 4.10.2 of the 12th Code upheld against TRC, at the time payment of fine and administrative charge was due under the terms of a payment plan, Ms King had ceased to be a director of TRC but she remained a responsible person and primary contact for TRC on the PhonepayPlus Registration Scheme. The Executive submitted that she



maintained a position of responsibility as an individual with day to day responsibility for the conduct of TRC's business as she continued to act on behalf of the company by:

- corresponding with the Executive regarding compliance with the sanctions including negotiating a payment plan; and
- corresponding with the Executive when they had failed to make payments in accordance with the plan.

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, Ms 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 and shareholder of NBS between 5 August 2013 and 9 December 2014, Ms 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 Ms 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. The Executive noted that during Ms King's directorship, key events occurred which would have alerted her to the fact that the Service was operating non-compliantly:
 - a) The complaint period for the serious breaches of the 12th Code upheld by the Tribunal on 13 November 2014 occurred between 17 April 2013 and 4 September 2014. On 30 May 2014 the Network operator sent an email to Ms King after being alerted to complaints received by PhonepayPlus. In this email Ms King was advised she may wish to refund complainants and ensure costs of the call were made clear. The email also explained that she could not charge candidates a fee for recruitment services by law. The Executive submitted that the email demonstrated that the Network operator viewed Ms King as the main point of contact for the Level 2 provider and that Ms King was aware of the Executive's concerns regarding non-compliance at an early stage in the investigation.
 - b) PhonepayPlus notified Ms King of its concerns and issued a number of directions for information regarding the ongoing receipt of complaints.
- ii. The Executive noted that Ms King was named as the responsible person for NBS when NBS was registered with PhonepayPlus on 7 August 2013. She was also listed as the primary contact on the PhonepayPlus register and continued to be listed as such.
- iii. As mentioned above, the Executive issued a number of directions for information during the course of investigation. The Executive noted that Ms King corresponded frequently both in writing and via telephone with the Executive throughout the investigation and provided detailed responses to requests for information concerning the operation, content and promotion of the Service. The Executive asserted that, as a result of her detailed knowledge of the Service under investigation, Ms 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 Ms 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 Ms King was a joint director of the company with her brother, 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, Ms 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 7 February 2015, Ms 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 Ms 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. The Executive noted that during Ms King’s directorship, key events occurred which would have alerted her to the fact that the Service was operating non-compliantly:
- a) The complaint period for the serious breaches of the Code upheld by the Tribunal on 13 November 2014 occurred between 30 June 2014 and 9 October 2014. The Network operator provided email correspondence dated 19 September 2014 that it had had with Ms King in relation to the non-registration of numbers demonstrating that the Network operator regarded Ms King as the main contact for the Level 2 provider and that she was in control of the service.
 - b) PhonepayPlus notified Ms King of its concerns and issued a number of directions for information regarding the ongoing receipt of complaints.
- ii. The Executive noted that Ms King named herself as the responsible person for TRC when TRC was registered with PhonepayPlus on 26 June 2014. She was also listed as the primary contact on the PhonepayPlus register and continued to be listed as such.
- iii. The Executive sent a breach letter to TRC on 22 September 2014. The Executive received an acknowledgement of the breach letter from Ms King on 22 September 2014, which the Executive submitted demonstrated that she was aware of the breach allegations.
- iv. Ms King corresponded in writing with the Executive throughout the investigation and provided detailed responses to requests for information concerning the operation, content



and promotion of the Service. The Executive asserted that, as a result of her detailed knowledge of the Service under investigation, Ms King was clearly knowingly involved in the serious breaches of the Code which were upheld by the Tribunal on 13 November 2014.

- v. 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 listed Ms King as being the main person responsible for “PRS/SMS” and as having day to day responsibility for the “PRS/SMS”.
- vi. The Executive noted that Ms 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 Ms King was a joint director of TRC with her brother, 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, Ms King would have been aware of TRC’s affairs and therefore knowingly involved in the breaches of the Code.

NBS – 28 May 2015 - Case reference- 65048

- i. Between 13 November 2014 and until 9 April 2015, Ms King corresponded with the Executive regarding compliance with the sanctions imposed by the Tribunal of 13 November 2014. During this correspondence Ms King negotiated a payment plan and responded to consumer requests for refunds. 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.
- ii. Ms King signed a standstill agreement (a payment plan) dated 24 February 2015. The Executive submitted that this demonstrated that Ms King was knowingly involved in the payment of the fine and the administrative charge and she had accepted responsibility on behalf of NBS for arranging payment of the amounts outstanding to PhonepayPlus.
- iii. The deadline for the first upfront payment passed on 5 April without receipt of payment. Ms King corresponded with the Executive via telephone on 9 April to state that she had difficulties paying the sums due. Ms King confirmed that NBS would not be adhering to the standstill agreement and she understood the matter would result in a further breach of the 12th Code being raised. The Executive submitted that this indicated Ms King’s 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. Following the Tribunal of 13 November 2014 and until 9 April 2015, Ms King corresponded with the Executive regarding compliance with the sanctions imposed. During this



correspondence Ms King negotiated a payment plan and responded to consumer requests for refunds. 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.

- ii. Ms King signed a standstill agreement (payment plan) dated 24 February 2015. The Executive submitted that this demonstrated that Ms King was knowingly involved in the payment of the fine and the administrative charge and she had accepted responsibility on behalf of TRC for arranging payment of the amounts outstanding to PhonepayPlus.
- iii. The deadline for the first upfront payment passed on 5 April without receipt of payment. Ms King corresponded with the Executive via telephone on 9 April to state that she had difficulties paying the sums due. Ms King confirmed that TRC would not be adhering to the standstill agreement and she understood the matter would result in a further breach of the 12th Code being raised. The Executive submitted that this indicated Ms King's knowing involvement in the very serious breaches of the 12th Code which were upheld by the Tribunal on 28 May 2015.

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

2. Ms King did not provide a response to the notification of potential prohibition.
3. The Tribunal noted that Ms King was referred to by a number of different names within the Tribunal papers. The Tribunal was satisfied that all these names related to the same individual and any prohibition should relate to all such names.

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 Ms King was appointed as a Director. On 7 August 2013 Ms King was named as a responsible person on PhonepayPlus' database. On 9 December 2014 Ms King's directorship was terminated. The Tribunal noted that Ms King had been the sole shareholder in NBS.

The Tribunal noted that in respect of TRC the main complaint period was June 2014 to November 2014. The Tribunal noted that on 26 June 2014 Ms King was named as a responsible person on PhonepayPlus' database. On 11 August 2014 Ms King was appointed as a director. On 7 February 2015 Ms King's directorship was terminated.

The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Ms King was an associated individual in respect of both NBS and TRC for the reasons raised by the Executive. The Tribunal in particular noted that Ms King was a director of NBS and TRC in the period when the initial breaches took place, and after resigning as a director she continued to be a responsible person and the primary contact for the Executive when the breaches of sanction took place. Further, the Tribunal found that, for the reasons raised by the Executive, Ms King was knowingly involved in a series of serious and very serious breaches of the 12th Code, which were upheld against the Level 2 providers on 13 November 2014 and 28 May 2015. In addition to the above findings on association, the Tribunal in particular noted that, in the period when the initial breaches were being investigated Ms King corresponded with the Executive and provided detailed responses to requests for information concerning the operation of the Services, and in respect of the breach of sanctions, it was clear from Ms King's correspondence that she was



aware of the sanctions and administrative charge imposed, that compliance with those sanctions was required, and she was involved in the apparent attempts to so comply.

Sanction

The Tribunal considered the facts of the case, and in particular the number of serious and very serious breaches with which Ms King was knowingly involved as an associated individual, the manner in which the Level 2 providers failed to comply with the sanctions, and the amounts outstanding pursuant to sanctions.

In accordance with paragraph 4.8.2(g) of the Code, the Tribunal decided to prohibit Ms 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%