

Tribunal meeting number: 251
Case reference: 174551
Case: Prohibition of an associated individual

This case was brought against the named individual under paragraph 4.8.6 of the Code of Practice.

Background

i) Summary relating to Mr Eliad Shenar

The Tribunal was asked to consider imposing a prohibition against Mr Eliad Shenar pursuant to paragraph 4.8.3(g) of the 14th edition of the Phone-paid Services Authority (“PSA”) Code of Practice (the “Code”).

The case related to two previous adjudications against the Level 2 provider, Halak Online Limited, one dated 07 June 2018 (case reference: 137924) that involved an Information, Connection and Signposting Service (ICSS) and one dated 23 January 2019 (case reference: 157189). The decision of the Tribunal on 23 January 2019 related to a failure to comply with the financial sanctions and administrative charges imposed by the Tribunal on 07 June 2018. On 23 January 2019, the Tribunal recommended that the Executive consider initiating the process which may lead to the prohibition of Mr Shenar pursuant to paragraph 4.8.3(g) of the Code.

ii) Relevant Code Provisions

- Paragraph 4.8.8 of the Code states:

“(a) If a Tribunal considers that it may wish to make a prohibition under sub-paragraph 4.8.3(f), 4.8.3(g) or 4.8.3(h) in respect of any associated individual, the PSA shall first make all reasonable attempts to notify the individual concerned and the relevant party in writing.

(b) It shall inform each of them that any of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of the right of any of them (or the PSA itself) to instead require an oral hearing.”

- Paragraph 4.8.3(g) of the Code states:

“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 PRS 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 the PSA.”

Preliminary issue – Service

The Tribunal noted that the Executive had conducted this matter in accordance with paragraph 4.8.8 of the Code. The Executive sent notification of a potential prohibition to Mr Shenar and the Level 2 provider on 24 June 2019, but it did not receive a response.

The Executive subsequently wrote to Mr Shenar and the Level 2 provider on 09 July 2019 advising that a Tribunal date would be scheduled. The Executive wrote again to Mr Shenar and the Level 2 provider on 30 July 2019 providing the date of the Tribunal meeting. The Executive had also attempted to telephone the Level 2 provider on 09 July 2019 using three numbers that had been provided in due diligence forms and had left a voicemail on an answerphone. The Executive did not receive any response from Mr Shenar or the Level 2 provider.

The Tribunal was satisfied that the Executive had made all reasonable attempts to notify Mr Shenar and the Level 2 provider of the prohibition proceedings and their rights, in accordance with paragraph 4.8.8 of the Code.

Submissions and conclusions

The Executive submitted that the following evidence indicated that Mr Shenar was an associated individual knowingly involved in a serious and/or series of breaches of the Code in respect of the adjudications of 07 June 2018 and 23 January 2019.

Adjudication on 07 June 2018, case reference: 137924

On 07 June 2018, the Tribunal had adjudicated against the Service operated by the Level 2 provider. The Tribunal had upheld six breaches of the Code raised against the Level 2 provider (as outlined below).

Rule 2.2.7 - Pricing information

The Executive had asserted that the Level 2 provider had breached rule 2.2.7 because pricing information on the Service promotions on the website was not prominent or proximate to the premium rate number on the website. The Level 2 provider did not make any representations in respect of the breach. The Tribunal found that the pricing information in respect of the Service was not sufficiently prominent and proximate to the premium rate number and upheld the breach.

Paragraph 3.4.1 - Registration

The Executive had asserted that the Level 2 provider was not registered with the PSA for a period of time when the Service was operational. The Level 2 provider did not make any representations in respect of the breach. The Tribunal was satisfied that the Service had been in operation while the Level 2 provider was unregistered. The Tribunal was also satisfied from correspondence exchanged with the Level 2 provider that the Level 2 provider was aware of its responsibility to register under the Code. Accordingly, the Tribunal upheld a breach of paragraph 3.4.1 of the Code.

Paragraph 3.11.3 - Special conditions ICSS 1

The Executive asserted that a breach of paragraph 3.11.3 of the Code had occurred because Special condition ICSS 1 had not been adhered to by the Level 2 provider. The Executive argued that the Service fell within the Type 1 category for ICSS because its primary purpose was to provide call connection to public or commercial organisations. The Executive submitted that the use of language in sponsored advertising on Google such as “Want to contact EE Customer Service?” could have misled consumers into believing that the Service was linked to the actual organisation. The Executive further submitted that the sponsored advertising did not provide an accurate description of the Service. The Level 2 provider did not make representations in respect of the breach. The Tribunal considered that the meta-descriptions and words used in the sponsored advertising to be misleading to consumers because it created the impression that consumers were calling the organisation in question. Although the Tribunal noted that the Google Adwords campaign had occurred over a time-limited period of 9 weeks and had been conducted by a freelancer on behalf of the Level 2 provider, the Tribunal considered that it was the Level 2 provider’s responsibility to ensure that the Service was promoted compliantly, and accordingly it was satisfied that the Level 2 provider had, at the very least, been reckless as to whether or not the Google Adwords campaign was conducted in compliance with the Special conditions. Therefore, the Tribunal upheld a breach of Paragraph 3.11.3 of the Code.

Paragraph 3.11.3 - Special conditions ICSS 5

The Executive had noted that the website landing pages for the Service used an identical typeface to that used on the website for the actual commercial or public organisation. The Executive had also noted that the logos used were identical to those used on the website for the actual commercial or public organisation. The Level 2 provider did not make representations in respect of the breach. The Tribunal was satisfied that the use of identical logos, together with the description of the premium rate numbers as the “contact number” for the relevant organisations, was designed to imitate the relevant organisation and to intentionally mislead consumers. The Tribunal was satisfied that the Level 2 provider had used promotional material for the Service which imitated the relevant organisations, in contravention of Special condition ICSS 5, and accordingly upheld a breach of Paragraph 3.11.3 of the Code.

Paragraph 3.11.3 - Special conditions ICSS 11

The Executive submitted that its own internal monitoring demonstrated that no information regarding pricing was given to consumers upon dialling the premium rate number. The Level 2 provider did not make representations in respect of the breach. The Tribunal was satisfied that the pre-recorded IVR message did not contain the price per minute, nor did it identify the Level 2 service provider or indicate to the consumer that they were not calling the end organisation directly. The Tribunal found that the Level 2 provider had been made aware by the Executive of the requirements of ICSS 11 and did not accept the Level 2 provider's contention (advanced during correspondence with the Executive) that it did not know about them. The Tribunal noted that the Level 2 provider had been put on notice of the Special conditions and it was satisfied that the Level 2 provider had intentionally not complied with the Special condition ICSS 11 and upheld a breach of paragraph 3.11.3 of the Code.

Paragraph 3.11.3 - Special conditions ICSS 13

The Executive had asserted that a breach of paragraph 3.11.3 had occurred as the Special condition ICSS 13 had not been adhered to by the Level 2 provider. The Executive examined its Customer Relationship Management system and noted that no Services were registered for the Level 2 provider, demonstrating that no Premium rate numbers in relation to the Services had been registered. The Level 2 provider did not make representations in respect of the breach. The Tribunal had concluded that Special condition ICSS 13 had not been adhered to as the relevant service numbers had not been registered with the PSA and accordingly upheld a breach of paragraph 3.11.3 of the Code.

The Tribunal had concluded that the breaches of rule 2.2.7, paragraph 3.4.1, paragraph 3.11.3/Special condition ICSS 1 and paragraph 3.11.3/Special condition ICSS 13 were serious. The Tribunal had concluded that the breaches of paragraph 3.11.3/Special condition ICSS 5 and paragraph 3.11.3/Special condition ICSS 11 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 requirement that the Level 2 provider remedy the breach by addressing the issues around transparency and pricing, number registration, and the ICSS Special conditions;
- A requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority;
- A bar on access to the service until compliance advice is sought and implemented to the satisfaction of PSA and the breach has been remedied to the satisfaction of PSA;
- 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 PSA that such refunds have been made;
- An aggregate fine of £200,000.

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

Adjudication on 23 January 2019, case reference: 157189

On 23 January 2019, the Tribunal had adjudicated against the Level 2 provider for non-compliance with the financial sanctions and administrative charges imposed by the Tribunal on 07 June 2018.

The Tribunal had upheld the following breaches of the Code:

- Paragraph 4.8.6 (b) - Failure to comply with a sanction; and
- Paragraph 4.11.2 (b) - Non-payment of an administrative charge.

The Tribunal had concluded that the breach of paragraph 4.8.6 (b) was very serious and that the breach of 4.11.2 was moderate and imposed the following sanctions:

- A formal reprimand;
- Fine of £250,000 comprised of £200,000 for the breach of paragraph 4.8.6 (b) of the Code and £50,000 for the breach of paragraph 4.11.2 (b) of the Code;
- A prohibition on the Level 2 provider from having any involvement in any current or future PRS operated on a number or number range within the PSA's regulatory remit for a period of 5 years or until all sanctions imposed by the Tribunal of 07 June 2018 had been complied with, whichever is the later.

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

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

1. The Executive submitted that Mr Shenar was an associated individual for the purpose of paragraph 5.3.9 of the Code because he had day-to-day responsibility for the conduct of the Level 2 provider. The Executive noted that Mr Shenar had been listed as the sole and primary contact for the Level 2 provider on the PSA (formerly known as 'Phonepay Plus') registration database since the Level 2 provider first registered. The Executive further noted that within Mr Shenar's contact information, it was stated that Mr Shenar's job title was "CEO" and he was registered as a responsible person by the title of "owner".

The Executive noted that on 06 October 2015, the Level 2 provider completed a due diligence and risk control form required by the Level 1 provider and listed Mr Shenar as an alternative contact for the Level 2 provider.

Following this, the Executive noted that on 23 October 2015, after being informed of the Special conditions to operate ICSS services in the UK, Mr Shenar wrote to the Level

1 provider requesting 0844 numbers to begin non-premium rate services within the UK.

The Executive submitted that throughout its two investigations, Mr Shenar was the main point of contact for the PSA and responded to day-to-day communications from the Executive on behalf of the Level 2 provider. This included:

- Responding to detailed requests for information on PSA complainants;
- Responding to informal enquiries;
- Responding to the direction for information on 18 October 2017;
- Responding to the direction for information on 10 November 2017;
- Responding to the direction for information on 13 December 2017;
- Responding to the Warning Notice issued on 22 November 2018;
- Settlement offers by Mr Shenar between March-April 2018;
- The application for a Tribunal adjournment by Mr Shenar on 30 April 2018.

The Executive further stated that on 01 May 2018, Mr Shenar appointed a consultant to represent the Level 2 provider. The Executive asserted that appointing a consultant demonstrated Mr Shenar's high level of authority within the company.

Based on the information above, the Executive asserted that Mr Shenar was an individual with significant control of the Level 2 provider's business and had day-to-day responsibility for the regulatory conduct of the business, and therefore was an associated individual under paragraph 5.3.9 of the Code when the breaches of rule 2.2.7, paragraphs 3.4.1, 3.11.3, 4.8.6(b) and 4.11.2 of the Code were upheld and both cases considered overall by the Tribunal to be 'very serious' by the Tribunals on 07 June 2018 and 23 January 2019.

The Executive asserted that Mr Shenar was knowingly involved in a series of breaches, including serious breaches of the Code that were upheld by the Tribunals on 07 June 2018 and 23 January 2019.

The Executive submitted that Mr Shenar was, at the time that the 'very serious' breaches of the Code occurred, responsible for oversight of the company affairs and for ensuring that the company was complying with the Code and sanctions.

The Executive stated that in October 2015, the Level 2 provider was made aware of the Special conditions to operate ICSS services in the UK by the Level 1 provider prior to the Service commencing. When informed of the Special conditions, the Executive reported that Mr Shenar initially made the decision to operate non-premium rate services; however, after 2 months, the Level 2 provider requested premium rate numbers from the Level 1 provider. This request for premium rate numbers began the Service, which resulted in six breaches of the Code being upheld by the Tribunal on 07 June 2018, of which four breaches related to non-compliance with the ICSS special conditions. The Executive submitted that, as Mr Shenar was the individual who was initially informed about the ICSS Special conditions and decided to operate non-

premium rate numbers to avoid the Special conditions, this demonstrated that he was alerted to potential breaches and aware of the requirements of the Code.

The Executive outlined that during the Service operation, the PSA received 3 complaints about the Service and requests for information were sent to the Level 2 provider. Mr Shenar responded to two out of three of the information requests. The Executive asserted that this showed Mr Shenar was aware of the complaints and as a responsible individual was able to access detailed information on the users of the Service. The Executive submitted that the complaints were key events that alerted Mr Shenar that the Service may have been operating non-compliantly.

The Executive further asserted that throughout the PSA's investigation between August 2017 and June 2018, Mr Shenar corresponded with the Executive in relation to the operation and duration of the Service. Mr Shenar commented on each of the apparent breaches of the Code raised against the Level 2 provider in the Warning Notice that was issued by the PSA on 25 February 2018, as well as responding to all three of the Executive's directions for information in relation to the Service.

The Executive stated that Mr Shenar was sent all correspondence throughout the two investigations, as he was the main point of contact for the Level 2 provider. Mr Shenar received and responded to crucial correspondence on behalf of the Level 2 provider during the first investigation and although he did not respond to correspondence during the second investigation, the Executive received confirmation of delivery for all correspondence sent to Mr Shenar via the Microsoft Outlook delivery function and UPS postal delivery receipts. For that reason, the Executive asserted that Mr Shenar was alive to potential breaches and was fully aware of the investigations and sanctions which required compliance, including the fines and administrative charges.

The Executive further stated that throughout the two investigations carried out by the PSA, Mr Shenar was also sent correspondence which he received, but did not respond to. The Executive noted that some of the correspondence did not require a response, however, all were relevant updates informing Mr Shenar of the progress of the PSA's investigations. The correspondence included:

- The allocation to Track 2 investigation notification issued on 12 September 2017;
- The informal notification of the Tribunal outcome issued on 18 June 2018;
- The formal notification of the Tribunal outcome issued on 20 June 2018;
- The payment reminder issued on 09 July 2018 after the Tribunal of 07 June 2018 imposed a financial sanction and administrative charges;
- The allocation to breach of sanctions investigation notification issued on 30 August 2018;
- The Warning Notice about non-compliance with sanctions issued on 22 November 2018;
- The informal notification of the Tribunal outcome issued on 31 January 2019; and
- The formal notification of the Tribunal outcome issued on 07 February 2019.

The Executive asserted that Mr Shenar held a high level of responsibility which was evidenced by his responses to the Warning Notice issued on 25 February 2018 and offers of settlement. The Executive submitted that this further demonstrated Mr Shenar's knowledge of the investigation and the proposed financial sanctions, which the Level 2 provider later failed to comply with.

The Executive accordingly submitted that Mr Shenar was an associated individual and was knowingly involved in the series of eight breaches of the Code that were upheld and considered overall to be '**very serious**' by two Tribunals.

2. Mr Shenar did not provide a response to the notification of potential prohibition.
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 Shenar was an associated individual, as he had day to day responsibility for the conduct of the Level 2 provider's business. The Tribunal noted that Mr Shenar had been listed as the sole and primary contact for the Level 2 provider on the PSA registration database, corresponded with the Level 1 provider, corresponded with the Executive regarding the alleged breaches of the Code, instructed a consultant to represent the Level 2 provider in respect of the PSA's first investigation, and proposed settlement amounts, which demonstrated that he had day-to-day responsibility for the conduct of the relevant business. Further, the Tribunal found, for the reasons advanced by the Executive that Mr Shenar was knowingly involved in a series of eight breaches of the Code that were upheld and considered overall to be '**very serious**' by the two earlier Tribunals. Accordingly, the Tribunal was satisfied that, on a balance of probabilities, Mr Shenar had knowledge of the series of breaches and was knowingly involved in the non-compliant conduct at the relevant time.

Sanction

The Tribunal decided to prohibit Mr Shenar from providing, or having any involvement in, any premium rate service in the UK for a period of 5 years from the date of publication of this decision. The Tribunal considered that this was a proportionate sanction, having considered all the facts of the case and the nature of the series of eight breaches of the Code that had been upheld by the earlier Tribunals.

Administrative charge recommendation: 100%