

Tribunal meeting number: 250
Case reference: 168256
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 Ms Meital Shenar

The Tribunal was asked to consider imposing a prohibition against Ms Meital Shenar pursuant to paragraph 4.8.3(g) of the 14th edition of the Phone-paid Services Authority 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 a call connection service 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 Ms Shenar (an associated individual) under paragraph 4.8.3(g).

(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 Ms Shenar and the Level 2 provider on 24 June 2019, but it did not receive a response. The notification was sent by both email and post and the Executive had provided proof that the email to Ms Shenar had been delivered and the attached Warning Notice downloaded on 24 June 2019 and the hardcopy delivered by UPS 26 June 2019.

The Executive subsequently wrote to Ms Shenar and the Level 2 provider on 09 July 2019 advising that a Tribunal date would be scheduled. The Executive wrote again to Ms Shenar and the Level 2 provider on 30 July 2019 providing the date of the Tribunal meeting. The Executive had also attempted to telephone Ms Shenar and the Level 2 provider on 09 July 2019 using three numbers that had been provided in due diligence forms. Calls to two of these phone numbers could not be connected but the Executive left a voicemail on the third number requesting a call back. The Executive did not receive any response from Ms Shenar or the Level 2 provider.

The Tribunal was satisfied that the Executive had made all reasonable attempts to notify Ms 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

Knowing involvement in a serious breach or a series of breaches of the Code

The Executive submitted that the following evidence indicated that Ms Shenar was an associated individual knowingly involved in a serious and/or a 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 Executive had asserted that the pricing was displayed within a block of text. It further submitted that consumers who were using their mobile to access the Service were required to scroll down below the fold in order to see pricing information that was placed within a block of text and was not easy to understand. 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 from 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 Ms Shenar was an associated individual for the purpose of paragraph 5.3.9 of the Code because she had day to day responsibility for the conduct of the Level 2 provider. The Executive noted that Ms Shenar had been the sole director of the Level 2 provider since the date of incorporation of the company on 29 June 2014 and reported that, at the time, Ms Shenar remained registered as the company's sole director.

The Executive noted that Ms Shenar signed a due diligence and risk control form required by the Level 1 provider and listed herself as the main company director.

Following this, the Executive noted that on 10 October 2015, Ms Shenar, in her capacity as director of the Level 2 provider signed a contract to operate both premium rate and non-premium rate services with the Level 1 provider.

Furthermore, the Executive noted that on 15 October 2015, Ms Shenar wrote to the Level 1 provider providing a personal guarantee, which the Executive advised demonstrated her personal responsibility for the conduct of the business.

The Executive noted that on 08 December 2015, the Level 2 provider filed an official document to change the company name from “MEITAL SHENHAR ENTREPRENEURSHIP LTD” to “Halak Online Ltd”. The Executive noted that “Meital Shenar” is the first and last name of the named individual, thus evidencing Ms Shenar’s controlling position in the Level 2 provider company.

The Executive reported that on 07 January 2019, Ms Shenar in her capacity as director responded to the Executive’s Warning Notice issued in relation to case reference: 157189 concluding that the Level 2 provider company could not carry on its business as a result of the financial sanctions imposed by the Tribunal of 07 June 2018:

*“I am sorry to announce that Halak Online Ltd was closed.
So there was no one to respond to your email.
Since you requested the fine, our main customers and suppliers have stopped working with us and the revenue has fallen to a level we could no longer hold in the company, therefore we had to cancel all activities in the UK and/or anywhere else.
Kind regards,
Meital.”*

Based on the information above, the Executive asserted that Ms Shenar was an individual with significant control of the Level 2 provider’s business and had day-to-day responsibility for the conduct of the business, and therefore was an associated individual under paragraph 5.3.9 of the Code when the breach 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 submitted that for the purpose of paragraph 4.8.3(g) of the Code, the evidence gathered by it in relation to Ms Shenar’s responsibility for the Level 2 provider’s business matters further demonstrated Ms Shenar’s knowing involvement in ‘**very serious**’ and ‘**serious**’ breaches of the Code.

The Executive asserted that key events occurred, which would have alerted Ms Shenar to the fact that the Level 2 provider was operating non-compliantly. It submitted that as Ms Shenar was the only person who had ever been in the position of company director, she 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 properly managed, including compliance with the PSA Code and sanctions.

The Executive submitted that in October 2015, the Level 2 provider was made aware of the Special conditions to operate Information, Connection and Call Signposting (“ICSS”) services in the UK. When made aware of the Special conditions, the Level 2 provider initially chose to operate non-premium rate services on 0844. However, after two months, Ms Shenar 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 ICSS Special conditions. The Executive submitted that as Ms Shenar was the individual who requested premium rate numbers, this evidenced her full knowledge and involvement in the very serious and serious breaches of the Code that were upheld by the Tribunal.

The Executive further noted that Ms Shenar was copied into crucial correspondence sent to the Level 2 provider from the PSA during the investigation alerting her to potential breaches and this included:

- The initial informal enquiry which contained monitoring evidence issued on 10 August 2017;
- The allocation to Track 2 investigation notification issued on 12 September 2017;
- The first direction for information issued on 06 October 2017;
- The payment reminder issued on 12 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 in regard to 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 submitted that it sent Ms Shenar correspondence during the initial investigation (case reference: 137924) save for two directions for information issued on 10 November 2017 and 06 December 2017 and the Warning Notice of 25 February 2018, which were received and responded by another individual. Despite this, the Executive asserted that as the director of the company, Ms Shenar had total oversight of the company affairs.

The Executive relied on Ms Shenar’s response to the second Warning Notice issued in relation to non-compliance with sanctions, which was received on 07 January 2019:

“I am sorry to announce that Halak Online Ltd was closed.

So there was no one to respond to your email.

Since you requested the fine, our main customers and suppliers have stopped working with us and the revenue has fallen to a level we could no longer hold in the company, therefore we had to cancel all activities in the UK and/or anywhere else.

Kind regards,

Meital.”

The Executive asserted that Ms Shenar’s knowledge of the business’s affairs, as demonstrated in the above response, was information that a responsible individual involved in the investigation would only have been aware of. In her capacity as director, Ms Shenar responded to the apparent breaches of the Code raised against the Level 2 provider in the Warning Notice. Additionally, the Warning Notice included details on the previous adjudication of 07 June 2018 (case reference 137924). The Executive therefore submitted that Ms Shenar was knowingly involved in a total of eight breaches across two investigations.

The Executive asserted that Ms Shenar was alerted to potential breaches prior to the Tribunal adjudications. This was based on correspondence sent to Ms Shenar prior to the adjudications and Ms Shenar’s response to the Executive and Ms Shenar’s request for premium rate numbers after being made aware of the ICSS Special conditions. The Executive therefore submitted that Ms Shenar was knowingly involved in a series of breaches of the Code, which were upheld and considered overall to be ‘**very serious**’ by the Tribunals of 07 June 2018 and 23 January 2019.

On 05 October 2018, in accordance with sanctions imposed by the Tribunal of 07 June 2018, the Level 1 provider barred the Level 2 provider’s Service. The Executive submitted that the bar of the Service was a key event that would have further alerted the Level 2 provider of the imposition of sanctions and that there were further outstanding actions that the Level 2 provider was required to comply with, namely, a financial sanction and administrative charge, a requirement to remedy the breach, a requirement to seek compliance advice, and a requirement that refunds are paid to all those who have requested a refund. Ms Shenar did not respond to the Executive’s allocation to breach of sanctions investigation email and payment reminders and, yet, the Executive noted that Ms Shenar continued to operate and exchange correspondence with the Level 1 provider.

The Executive accordingly submitted that Ms Shenar was aware that the company was operating a non-compliant Service and had thorough knowledge of the requirement to comply with the sanctions and therefore was aware of both investigations into the Service. The Executive submitted that the above points demonstrated that Ms Shenar 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 and that Ms Shenar, as a responsible individual, had the power to prevent.

2. Ms Shenar did not provide a response to the notification of potential prohibition.

3. The Tribunal considered all of the evidence presented to it. The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Ms Shenar was an associated individual, as she was the sole director of the company. The Tribunal concluded that Ms Shenar did not exercise a ‘hands-off’ role particularly as she had given a personal guarantee to the Level 1 provider which demonstrated her personal responsibility for the conduct of the business. The Tribunal also noted that Ms Shenar responded to some of the correspondence with the Executive, including a response to the Executive’s Warning Notice issued on 22 November 2018, as quoted above. The Tribunal also noted that there was a lot of correspondence between Ms

Shenar and the Level 1 provider. The Tribunal found, for the reasons advanced by the Executive, that Ms 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 previous Tribunals. Accordingly, the Tribunal was satisfied that, on a balance of probabilities, Ms Shenar had knowledge of the series of breaches and was knowingly involved in the non-compliant conduct at the relevant time.

Sanction

The Tribunal considered the facts of the case and, in particular, the number of very serious breaches in which Ms Shenar was knowingly involved as an associated individual. The Tribunal further considered the sanctions applied, the manner in which Ms Shenar had failed to engage with the Executive whilst still corresponding with the Level 1 provider, and the amounts outstanding pursuant to sanctions. The Tribunal decided to prohibit Ms 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 was satisfied that five years was an appropriate period considering the nature of the very serious breaches upheld and the amount of the outstanding fines and administrative costs.

Administrative charge recommendation:

100%