

Tribunal meeting number: 268  
Case reference: 182447  
Case: Prohibition of an associated individual

This case was brought against the associated individual under paragraph 4.8.8 of the Code.

## Background

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

The case related to an adjudication against the Level 2 provider, IT Zone Limited. This adjudication took place on 11 October 2019 (case reference: 154674). The adjudication involved a subscriptions alert service operating under the brand name ‘StarSign Alerts’ on short code 60770.

On 11 October 2019, the Tribunal recommended that the Executive consider a prohibition in accordance with paragraph 4.8.3(g) of the Code against Mr Wander, the primary contact for the Level 2 provider on the PSA Registration Scheme and the former registered director of the company.

- 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 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 Tribunal was advised that the Executive had issued a Warning Notice to Mr Wander and the Level 2 provider on 22 May 2020 notifying Mr Wander of the Executive’s intention to seek a prohibition under 4.8.3(g) of the Code. The deadline for Mr Wander’s response to the Warning Notice was 8 June 2020 but Mr Wander did not respond by the deadline.

The Executive sent a further email to Mr Wander and the Level 2 provider on 11 June 2020 advising that a Tribunal hearing, held remotely via Microsoft Teams, would be scheduled.

The Executive sent a further email to Mr Wander and the Level 2 provider on 18 June 2020 advising Mr Wander of the time and date of the Tribunal hearing.

On 15 July 2020, Mr Wander responded to the Executive advising that he had decided to voluntarily suspend himself from the premium rate services (“**PRS**”) market for a period of five years. He advised that he did not feel it was in anyone’s best interests to proceed with a Tribunal to review the matter, stating that such action would serve only to generate additional costs and waste time. He reiterated that he had no desire to pursue any further activity in the PRS market.

The Executive responded on the same day explaining that it had carefully considered Mr Wander’s offer to voluntarily suspend himself but explained that there was a strong regulatory benefit in pursuing the case against him and therefore the case would not be discontinued. The Executive advised that it had also considered an adjudication by consent but due to the extra work that this would involve and the likely costs of cancelling the pending Tribunal hearing, an adjudication by consent at this late stage would incur additional costs and delay the conclusion of the proceedings.

On 16 July 2020, Mr Wander responded to the Executive and stated that he wanted to assist things by volunteering his suspension and that he felt it was regrettable that the matter would proceed regardless. He stated that he would not go as far as to say that he agreed with the proposed sanction, rather that it seemed pointless to proceed with a Tribunal where the outcome had been predetermined.

The Executive responded on the same date acknowledging receipt of Mr Wander's email and explaining how he could participate at the hearing if he wished to and when he would be notified about the hearing.

On 17 July 2020, Mr Wander responded thanking the Executive for passing on his responses to the Tribunal and stating that he would await the Executive's notification.

The Tribunal was satisfied that the Executive had made all reasonable attempts to notify Mr Wander and the Level 2 provider in writing. Indeed, Mr Wander had indicated that he was fully aware of the potential prohibition proceedings against him and of the date and time of the hearing.

## **Submissions and conclusions**

The Executive submitted that the following evidence indicated that Mr Wander was an associated individual knowingly involved in a serious and/or series of breaches of the Code in respect of the adjudications of 11 October 2019.

### **Adjudication of 11 October 2019 (case reference: 154674)**

The Tribunal upheld the following breaches of the PSA's Code:

- **Rule 2.3.1 Fair and equitable treatment**

The Executive had asserted that the Level 2 provider had breached rule 2.3.1 of the Code because subscribers to the Service were charged but were not provided with access to the Service. The Executive submitted that failing to provide consumers access to the Service amounted to unfair and inequitable treatment. The Level 2 provider did not respond to the Warning Notice. The Tribunal determined that consumers had not been treated fairly or equitably, as access to the Service and its content had not been given via the website link provided within the message logs or in any other way.

- **Rule 2.3.2 Misleading**

The Executive asserted that the Level 2 provider had breached rule 2.3.2 of the Code because the promotional material misled consumers by providing incorrect pricing information. In addition to the discrepancy between the Service promotional material and the spend reminder messages, the Executive noted from text message logs that some complainants received two chargeable Service messages in a month at a total cost of £9, when the advertised cost was £4.50 per month. It asserted that the Level 2 provider had not provided any explanation for the discrepancy between the promotional material and the spend reminder messages and considered that at least some consumers were misled about the total monthly charge for the Service. The Level 2 provider did not respond to the Warning Notice. The Tribunal noted that there was no explanation from the Level 2 provider about the discrepancy in the cost information

that it had submitted. The Tribunal noted that complainants had stated that they had been billed £4.50 some months and £9 in other months. The Tribunal noted that the double charging appeared to occur after the Level 2 provider was put on notice about the PSA's investigation. The Tribunal accordingly upheld a breach of rule 2.3.2 of the Code.

- **Rule 2.3.3 Consent to charge**

The Executive asserted that the Level 2 provider had breached rule 2.3.3 of the Code because the Level 2 provider had failed to provide evidence that established that consent had been obtained to charge complainants, and complainants advised that they did not enter a PIN onto the Service website. The Level 2 provider did not respond to the Warning Notice. The Tribunal found that the Level 2 provider had breached both limbs of rule 2.3.3 and accordingly upheld a breach of rule 2.3.3 of the Code.

- **Paragraph 4.2.3 Failure to provide information**

The Executive asserted that the Level 2 provider had breached 4.2.3 of the Code for failing to provide information which the Executive considered to be of regulatory benefit in the investigation. The Level 2 provider did not respond to the Warning Notice. The Tribunal found that the Level 2 provider had failed to provide key information about the Service and had been given plenty of opportunity to disclose the information to the Executive.

- **Paragraph 3.4.14(a) Service registration**

The Executive asserted that the Level 2 provider had breached paragraph 3.4.14(a) of the Code because the Service was not registered on the PSA Registration Scheme within two working days of the Service becoming accessible to consumers. The Level 2 provider did not respond to the Warning Notice. The Tribunal was satisfied that the Service had not been registered while it was operating, and consumers would not have been able to check which provider had charged them when using the PSA's Number Checker. The Tribunal found the breach of paragraph 3.4.14(a) proved.

The Tribunal determined that the breaches of rule 2.3.1, rule 2.3.3 and paragraph 4.2.3 were **very serious**. The Tribunal concluded that the breach of rule 2.3.2 was **serious** and the breach of paragraph 3.4.14(a) was **significant**. The Tribunal considered that the seriousness of the case overall was very serious and imposed the following sanctions:

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges, whichever is the later
- 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

- a fine of £250,000.

The Tribunal also recommended that the Level 2 provider pay 100% of the administrative costs which totalled £5,045.00.

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

1. The Executive submitted that Mr Wander 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 submitted that this was evidenced by the following:
  - Mr Wander was the sole director of the Level 2 provider since 7 December 2015 according to Companies House record
  - Mr Wander kept Companies House records up to date by updating the Level 2 provider's registered service address on 17 May 2017
  - Mr Wander is listed as the sole and primary contact for the Level 2 provider on the PSA's registration database since the Level 2 provider first registered on 15 August 2016. The Executive also noted that on the PSA registration database, Mr Wander registered as a responsible person for the Level 2 provider and with the title of 'Director'.
  - Mr Wander provided personal identification documents for the Level 1 provider's due diligence in respect of the Level 2 provider
  - Mr Wander signed the agreement on behalf of the Level 2 provider to supply PIN verification with the Verifier on 4 June 2018
  - Mr Wander concluded that the Level 2 provider company could not carry on its business and signed liquidation forms which begun voluntary liquidation proceedings on 7 August 2019.

The Executive asserted that the information above demonstrated that Mr Wander had day-to-day responsibility for the conduct of the Level 2 provider's business and therefore he was a responsible person as defined under paragraph 5.3.9 of the Code.

The Executive also submitted that key events occurred which would have alerted Mr Wander to potential breaches of the PSA's Code and the fact that the Level 2 provider was not operating compliantly.

The Executive asserted that as the sole primary contact and the person in the position of company director, Mr Wander was, at the time of the five breaches of the Code occurred, responsible for the oversight of the company affairs and ensuring the company was properly managed, including complying with the Code and sanctions.

The Executive advised that during the investigation, between October 2018 and January 2019, the Executive sent crucial correspondence to Mr Wander, some of which he responded to. This correspondence included:

- the informal enquiry sent on 3 October 2018 which Mr Wander responded to by requesting an extension with the apparent intention to supply detailed information on the Service operation, but subsequently failed to provide the information requested to the Executive
  - crucial correspondence sent on 15 November 2018 to Mr Wander as primary contact for the Level 2 provider notifying him that the Service had been allocated to an investigation under the Track 2 procedure due to breaches potentially occurring. The Executive noted that this did not require a response, however, it was a relevant update informing Mr Wander that the Level 2 provider was not operating compliantly
  - the direction for information sent twice in November 2018 which Mr Wander failed to respond to
  - the Interim Warning Notice issued on 17 January 2019 which Mr Wander downloaded, requested an extension for and then provided a response to be submitted to the Interim Measures Tribunal. Mr Wander responded with detailed information on the Level 2 provider's finances. The Interim Warning Notice included apparent breaches and potential sanctions. The Executive asserted that Mr Wander's response demonstrated knowledge of the company's affairs, and this further evidenced Mr Wander's day-to-day responsibility and his full understanding of the impact of interim measures being imposed as a result of apparent breaches.
  - the Warning Notice issued on 23 July 2019 detailing apparent breaches of the Code which Mr Wander downloaded successfully on 25 July 2019 but failed to respond to.
2. Mr Wander responded to the Executive on 15 July 2020 advising that he had reviewed the information that had been sent regarding his potential prohibition under paragraph 4.8.3(g) and stated that he had made the decision to voluntarily suspend himself from the PRS market for a period of five years. He stated that he did not feel it was in anyone's best interest to proceed with a Tribunal to review the matter and that such action would only serve to generate additional costs and waste time. Mr Wander reiterated that he had no desire to pursue any further activity in the PRS market.

When the Executive responded and explained that the case would still proceed to a Tribunal hearing scheduled to take place on 20 July 2020, Mr Wander clarified that he had wanted to assist by volunteering his suspension and found it regrettable that the hearing would proceed regardless. He advised that he would not go so far as to say that he was in agreement with the Executive's proposed sanction, rather that it seemed pointless to process with a Tribunal where the outcome was predetermined.

3. The Tribunal considered all the evidence presented to it and considered Mr Wander's responses. The Tribunal found that in accordance with paragraph 5.3.9 of the Code, Mr Wander was an associated individual. The Tribunal noted that Mr Wander had been the sole director of the company until the point he concluded that the Level 2 provider

company could not carry on its business and accordingly signed liquidation forms which began voluntary liquidation proceedings. The Tribunal further noted that Mr Wander was listed as the sole and primary contact for the Level 2 provider on the PSA Registration Scheme, and entered into a contract with the Level 1 provider and the third-party verifier and corresponded with the Executive. Further, the Tribunal found, for the reasons advanced by the Executive, that Mr Wander was knowingly involved in a series of five breaches of the Code that were upheld and considered overall to be 'very serious' by the earlier Tribunal. Accordingly, the Tribunal was satisfied that, on a balance of probabilities, Mr Wander 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 Wander from providing, or having any involvement in, any premium rate service in the UK for a period of five years from the date of publication of this decision.

The Tribunal considered Mr Wander's offer to voluntarily suspend himself from the PRS industry and believed that this offer was relevant when considering the likely impact that the prohibition would have on Mr Wander. The Tribunal felt that the impact on Mr Wander would be low since he had informed the Executive that he had decided against pursuing any further activity in the PRS industry and wished to voluntarily suspend himself for a five-year period. The Tribunal considered that a prohibition of this duration was justified due to the conduct of the Level 2 provider and the very serious breaches that were upheld by the earlier Tribunal which included a consent to charge breach. The Tribunal took into account Mr Wander's actions and bore in mind the deterrent effect of sanctions and the need to ensure that such non-compliant conduct would not be repeated by Mr Wander or by others in the industry and that responsible persons knowingly involved in a series of breaches of the Code may be prohibited. The Tribunal considered that the prohibition was a proportionate sanction, having considered all the facts of the case and the nature of the five breaches of the Code that had been upheld by the earlier Tribunal.

The Tribunal considered whether to reduce the administrative charge in light of Mr Wander's offer to voluntarily suspend himself. The Tribunal decided against this given the very late stage at which the invitation was made.

Administrative charge recommendation: 100%