

Tribunal meeting number: 270
Case reference: 178984
Case: Prohibition of an associated individual

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

Background

Summary relating to Ms Lara Simon aka Lara Kellard

The Tribunal was asked to consider imposing a prohibition against Ms Lara Simon pursuant to paragraph 4.8.3(g) of the 14th edition of the Phone-paid Services Authority (“PSA”) Code of Practice (the “Code”). Lara Simon is also known by her married name of Lara Kellard however on company documents is referred to as Ms Lara Simon and therefore she will be referred to as Ms Lara Simon in this adjudication.

The case related to two previous adjudications against the Level 2 provider, Heart Communications Limited:

Case 1 – This was adjudicated on 10 October 2018 (case reference: 133839) and involved an Information Service on working from home as a virtual assistant; and

Case 2 – This was adjudicated on 7 August 2019 (case reference: 162296) and related to a failure to comply with the financial sanctions and administrative charges imposed by the Tribunal on 10 October 2018.

On 10 October 2018, the Tribunal recommended that the Executive consider a prohibition in accordance with paragraph 4.8.3(g) of the Code against Ms Simon, the primary contact for the Level 2 provider on the PSA Registration Scheme and the former registered director of the company.

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 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 (20 July 2020)

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 Ms Lara Simon on 11 June 2020 via email to the registered electronic mail address the PSA had on file for the recipient with a delivery and read receipt. The Executive had also copied an alternative email address for the Level 2 provider into the email containing the Warning Notice. The Executive provided confirmation that the Warning Notice had been delivered to the registered electronic mail address, but the email to the alternative email address could not be delivered.

The Executive sent an email to the same email addresses as noted above on 26 June 2020 advising that the deadline for the response to the Warning Notice had passed and explaining that in the absence of a response the Executive would proceed with the case on the assumption that Ms Simon did not wish to respond. Again, delivery to the registered electronic email address was complete but the email to the alternative email address failed to deliver.

The Tribunal was informed that the Executive confirmed the hearing date and time to Ms Simon on 3 July 2020 by sending emails to the same addresses as before. The Executive also provided a copy of the Tribunal Case Report and Annexes by email. The Executive received confirmation that delivery of the email of 3 July 2020 was complete to the registered electronic email address.

The Executive also sent an email reminding Ms Simon of the hearing date and time on 10 July 2020 and received confirmation that delivery of that email was complete.

The Executive advised that it had also attempted to call Ms Simon on 16 July 2020 but all three telephone numbers it had for Ms Simon were either out of service or unavailable.

The Tribunal acknowledged that whilst the PSA rules for service were fairly relaxed, the Tribunal still had to be satisfied that all reasonable attempts to notify the individual concerned had been made. The Tribunal was concerned that the documents had not been downloaded and wanted to clarify if the company was still trading and what the current information on the PSA Registration Scheme showed.

The Executive was therefore asked to confirm whether the company was still trading and what the current registration details for the Level 2 provider showed. In response to questioning by the Tribunal, the Executive advised that the Level 2 provider had notified the PSA registration that it had left the market on 14 January 2019. The Executive further advised that whilst Ms Simons had resigned as a director of Heart Communications Limited on 18 June 2019, the Level 2 provider company still currently existed. The Executive further clarified that the PSA office had re-opened on 6 July 2020 and therefore documents could have been posted to Ms Simons at the registered address for the company but unfortunately this had not been done.

The Tribunal considered that in all probability Ms Simons did not know the hearing was taking place. It considered that service was defective as the Executive could have written to Ms Simons at the Level 2 provider company's registered address. The Tribunal concluded that all reasonable attempts to notify Ms Simons of the potential prohibition had not been made and therefore it was not fair or appropriate to proceed with the case on this occasion. The matter was therefore adjourned for all reasonable attempts to notify Ms Simons and the Level 2 provider in writing about the proceedings.

Service (11 September 2020)

The Tribunal reconvened on 11 September 2020 to consider the case.

In considering whether service had been properly made out, and whether to proceed in Ms Simon's absence, the Tribunal considered the bundle and specifically the annexes relating to the service of the documents.

The Tribunal noted that the Executive had posted the Warning Notice and Tribunal bundle to two postal addresses: the postal address for the registered address for the Level 2 provider company and the second address was an associated address for Ms Simon that the Executive had found on Companies House Register. The Tribunal noted that the paperwork that had been posted to the registered address for the provider had been returned undelivered to the PSA, but the paperwork that had been sent to the associated address for Ms Simon had been successfully delivered by UPS.

The Tribunal noted that further attempts had been made by the Executive to notify Ms Simon and the Level 2 provider of the proceedings, namely sending the documents and notification of the hearing date by email to the registered email address it had on file for the Level 2 provider,

which had not been changed or updated by the provider. The Executive had also attempted to telephone Ms Simon on three telephone contact numbers it had on record for the Level 2 provider company, contact numbers that had not been changed or updated by the provider. None of the three contact numbers the Executive had for Ms Simon appeared to be in service.

The Tribunal considered that the Executive had made all reasonable attempts to notify Ms Simon and the Level 2 provider of the prohibition investigation into Ms Simons and its recommendation for Ms Simon to be prohibited under paragraph 4.8.3(g).

In light of this and considering its responsibility to ensure that Tribunal hearings are conducted properly, fairly and in accordance with good practice and the relevant law, the Tribunal was satisfied that service had been properly made out and that it was fair to proceed in the absence of Ms Simon and that adjourning the case would not secure the participation of Ms Simon.

Submissions and conclusions

The Executive submitted that the following evidence indicated that Ms Simons was an associated individual involved in a serious and/or series of breaches of the Code in respect of the adjudications of 10 October 2018 and 7 August 2019.

Adjudication of 10 October 2018 (case reference: 133839)

The Tribunal upheld the following breaches of the Code:

- Rule 2.2.7 – Pricing information
- Rule 2.3.2 – Misleading
- Rule 2.3.4 – Undue delay
- Rule 2.6.1 – Complaint handling

The Tribunal considered the overall case to be **very serious** and imposed the following sanctions:

- an aggregate fine of £165,000
- a requirement that the provider remedies the breaches
- a formal reprimand
- 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 the PSA that such refunds have been made
- access to the Service be barred until the Level 2 provider has sought and implemented compliance advice on the Service and its promotions to the satisfaction of the PSA, and remedied the breaches to the satisfaction of the PSA
- a requirement of a compliance audit of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the provider with rules

governing pricing transparency, misleading promotions, undue delay in service delivery and complaints handling.

The Tribunal also recommended that the Level 2 provider pay 100% of the administrative costs which totalled £8,825.11.

Adjudication of 7 August 2019 (case reference: 162296)

On 7 August 2019, the Tribunal adjudicated against the Level 2 provider for non-compliance with the sanctions and administrative charge imposed by the earlier Tribunal of 10 October 2018. The Tribunal upheld the following breaches of the Code raised against the Level 2 provider:

- 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 considered the overall case to be **very serious** and imposed the following sanctions:

- 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, or until all sanctions imposed by the Tribunal of 10 October 2018 have been complied with and both administrative charges have been paid in full, whichever is the later.

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

1. The Executive submitted that Ms Simon 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 submitted that this was evidenced by the following:
 - Ms Simon was the sole director of the Level 2 provider from the date of incorporation of the company on 7 January 2014 and resigned on 18 June 2019 according to Companies House. No other person is listed as a director/ as having significant control according to Companies House even after Ms Simon's resignation.
 - Ms Simon was also the sole shareholder of 100% of the Level 2 provider company as evidenced by the CreditSafe report for the Level 2 provider company
 - Ms Simon had been listed as the sole and primary contact for the Level 2 provider on the PSA registration database since the Level 2 provider first registered
 - within Ms Simon's contact information on the PSA Registration Scheme, Ms Simon stated that her job title was "director" and registered herself as a 'responsible party' by the title of "director"
 - on 29 April 2015, Ms Simon signed a check list form required by the Level 1 provider in her position as director on behalf of the Level 2 provider company

- earlier on in the check list form mentioned above, Ms Simon had also named herself as 'the main person responsible for PRS/SMS'
- also on 29 April 2015, Ms Simon, in her capacity as director of the Level 2 provider, signed a contract to operate both premium rate services with the Level 1 provider/Network operator.

The Executive asserted that the information above demonstrated that Ms Simon had day-to-day responsibility for the conduct of the Level 2 provider's business and therefore she was an associated individual under paragraph 5.3.9 of the Code when the breaches of Rule 2.2.7, Rule 2.3.2, Rule 2.3.4, Rule 2.6.1, Paragraph 4.8.6(b), and Paragraph 4.11.2(b) were upheld and were considered overall to be **very serious** by the Tribunals of 10 October 2018 and 7 August 2019.

The Executive further submitted that key events occurred which would have alerted Ms Simon to potential breaches of the Code and the fact that the Level 2 provider was not operating compliantly with the Code.

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

The Executive submitted that there were a number of key events that would have alerted Ms Simon to the fact that the Service may not have been operating compliantly with the Code:

- the PSA had received 9 complaints about the Service and information requests were sent to the Level 2 provider. Ms Simon responded to 9 of the information requests from the Executive. The Executive submitted that this showed Ms Simon was aware of the complaints that had been received about the Service and she was able to access detailed information on the users of the Service due to her status as a responsible individual.
- Ms Simon corresponded with the Executive in relation to the operation and promotion of the Service
- Ms Simon responded to the Executive's request for information about the Service.

The Executive asserted that Ms Simon was aware that the Level 2 provider was operating non-compliantly and had knowledge of the requirements of the sanctions imposed. However, in her responsible position, she failed to take steps to comply with the Code and the sanctions.

The Executive outlined that Ms Simon had corresponded with the Executive in relation to the operation and promotion of the Service and such correspondence received and responded to by Ms Simon included:

- the request for compliance advice from the Executive dated 31 July 2017
- further correspondence to the Executive regarding compliance advice dated 11 August 2017
- the response to the informal enquiry dated 4 September 2017

- the response to Track 2 allocation notification dated 26 January 2018
- the response to a direction for information dated 23 May 2018

The Executive further outlined that Ms Simon had responded to correspondence from the Executive but signed off as “for and on behalf of Heart Communications Ltd” using the same email address, the one registered on the PSA Registration Scheme, that she had used when emailing in her own name. Examples of such correspondence included:

- the response to the Warning Notice notification dated 19 July 2018
- the further response to Warning Notice notification dated 14 August 2018
- the response to email from Head of Investigations and Enforcement dated 15 August 2018
- letters from Heart Communications regarding proposed legal proceedings against the PSA and investigator dated 10 September 2018
- the response to the informal notification of the Tribunal outcome issued on 19 October 2018
- request from Heart Communications for a review of the Tribunal decision dated 29 October 2018
- request from Heart Communications to waive the review fee dated 30 October 2018
- the response to the payment reminder issued on 9 November 2018
- the response to the allocation to breach of sanctions investigation notification issued on 8 January 2019.

The Executive also advised that Ms Simon was sent correspondence to the registered email address that was received but no response was provided. The Executive advised that some of this correspondence did not require a response, but all were relevant updates about the PSA’s investigation into its concerns about the Service and the adjudicatory process and outcomes. This correspondence included:

- the formal notification of the Tribunal outcome issued on 24 October 2018
- reminder to Heart Communications regarding application for review submission and outstanding payment for fine and administrative charge dated 9 November 2018
- further reminder to Heart Communications regarding outstanding payment of fine and administrative charge, and application for review submission dated 21 December 2018
- notification to Heart Communications that an application for review would be submitted to the Chair of the Tribunal dated 14 January 2019
- notification to Heart Communications of outcome of application for review dated 25 January 2019
- the Warning Notice regarding non-compliance with sanctions issued on 24 June 2019
- the informal notification of the Tribunal outcome issued on 14 August 2019
- the formal notification of the Tribunal outcome issued on 21 August 2019
- the payment reminder issued on 5 September 2019.

The Executive submitted that in relation to the correspondence that required a response but Ms Simon either failed to respond, or where responses were signed off as “For and on behalf of

Heart Communications Ltd”, Ms Simon had total oversight of the company affairs by virtue of her position as sole director of the company and her high engagement with the PSA on the company’s behalf.

The Executive accordingly submitted that Ms Simon was an associated individual in a series of six breaches of the Code that were upheld and considered overall to be **very serious** by two earlier Tribunals and that she was knowingly involved in the non-compliant conduct at the relevant time.

2. Ms Simon did not respond to the Warning Notice.

3. The Tribunal considered all the evidence presented to it and found that in accordance with paragraph 5.3.9 of the Code that Ms Simon was an associated individual. The Tribunal noted that Ms Simon had been the sole director of the company until the point of resignation and that no other director has been appointed in her place. The Tribunal further noted that Ms Simon was listed as the sole and primary contact for the Level 2 provider on the PSA Registration Scheme.

Further, the Tribunal found, for the reasons advanced by the Executive, that Ms Simon was knowingly involved in a series of six breaches of the Code that were upheld and considered overall to be **very serious** by the earlier Tribunals.

Accordingly, the Tribunal was satisfied that, on a balance of probabilities, Ms Simon had knowledge of the series of breaches of the Code and was knowingly involved in the non-compliant conduct at the relevant time.

The Tribunal noted that there was no evidence to suggest that any other person was involved and was making decisions on behalf of the company. Ms Simon had informed the Executive when registering the company that she was, ‘the main person responsible for PRS/SMS’.

The Tribunal found that there was considerable correspondence detailing Ms Simon’s engagement with the PSA around the Level 2 provider’s non-compliant activity and the challenges that she had made on behalf of the company such as her email dated 26 January 2018 questioning why the Executive had decided to allocate the Service to a Track 2 investigation.

The Tribunal was therefore satisfied that Ms Simon was knowingly involved in the series of breaches of the Code given her position and the involvement and interaction she had had with the investigatory and adjudicatory process.

Sanction

The Tribunal decided to prohibit Ms Simon 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 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 Tribunals. The Tribunal took into account the deterrent effect of sanctions and the need to ensure that such non-compliant conduct would not be repeated by Ms Simon and would deter others in the industry from knowingly being involved in such conduct. The Tribunal accordingly considered that the prohibition was a proportionate sanction, having considered all the facts of the case and the seriousness of the underlying cases and the need to deter conduct of this nature.

Administrative charge recommendation: 100%