Neutral citation [2025] CAT 30

Case No: 1721/3/3/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

20 May 2025

Before:

THE HONOURABLE MR JUSTICE ROTH
(Acting President)

Sitting as a Tribunal in England and Wales

BETWEEN:

MR PETER LYONS

Proposed Appellant

- v -

OFFICE OF COMMUNICATIONS

Proposed Respondent

- and -

Heard at Salisbury Square House on 20 May 2025

JUDGMENT ON APPLICATION FOR AN EXTENSION OF TIME

APPEARANCES

Peter Lyons in person (assisted by Ross Carpenter as a McKenzie Friend).
Anneliese Blackwood appeared on behalf of the Office of Communications.

A. INTRODUCTION

1. Mr Peter Lyons seeks to appeal against three Decisions made by the then Phonepaid Services Authority (the "PSA") made on 18 September 2018 (the "First Decision"); 17 July 2019 (the "Second Decision"); and 15 October 2020 (the "Third Decision"). Each of those Decisions was taken under the 14th edition of the Code of Practice (the "Code") for regulating Premium Rate Services ("PRS") issued by the PSA under its previous name, PhonepayPlus. That code was approved under section 121 of the Communications Act 2003 (the "2003 Act") by the Office of Communications ("Ofcom").

2. The PSA no longer exists, and its functions in regulating PRS have been taken over by Ofcom with effect from 1 February 2025. Ofcom is the respondent to the appeal Mr Lyons seeks to bring.

3. Mr Lyons filed his Notice of Appeal on 8 April 2025. Under Rule 9(1) of the Competition Appeal Tribunal Rules 2015 (the "Rules"), an appeal against a decision by Ofcom has to be brought within two months. It is obvious, as Mr Lyons recognises, that his appeal is very substantially out of time. He therefore applies in the first place for an extension of time to file his appeal.

4. The application to extend time has been heard as a matter of urgency at Mr Lyons's request. The urgency arises because the trial of an application brought against him, under section 212 of the Insolvency Act 1986, is due to be heard in the Insolvency and Companies Court starting on 28 May 2025. I will refer to that as the "Section 212 Proceedings".

5. As I will explain, the appeal which Mr Lyons seeks to bring in this Tribunal has a bearing on those Section 212 Proceedings. Indeed, Mr Lyons frankly explained that the reason for bringing this appeal is that the Decisions of the PSA are being relied on against him in those proceedings.

6. Mr Lyons is acting in person. He has had assistance for this hearing from Mr Ross Carpenter as a McKenzie Friend, and at certain points I permitted Mr Carpenter to address the Tribunal as Mr Lyons has some, in his words, cognitive

impairment and is also severely dyslexic. It was no doubt helpful for Mr Lyons that Mr Carpenter, who is not a lawyer, could help him navigate through the bundles.

7. Mr Lyons has been able to file a five-and-a-half-page skeleton argument which is well-structured, clear and coherent. He has this morning produced a supplemental skeleton argument referring to two legal authorities. I expect, although I do not know, that this was done with Mr Carpenter's help. However, Mr Lyons has also been able himself to answer some questions which I have asked, and having heard from him, he is clearly an intelligent man. Indeed, despite his dyslexia, he was able to graduate with a BSc in Building Surveying. Both Mr Lyons and Mr Carpenter have conducted themselves with respect and courtesy to this Tribunal.

B. THE DECISIONS

8. It is necessary, first, to say a little about the three Decisions. The First Decision is addressed to a company called PowerTel Ltd, which I will refer to as the "Company". The Company was, under the Code, called a "Level 2 provider" as regards the operation of a directory enquiries service on premium rate numbers. Following complaints and an investigation, an Adjudication Tribunal under the Code found that four breaches of different provisions of the Code were made out. The Adjudication Tribunal found overall that the case should be regarded as very serious and imposed a formal reprimand and, among other sanctions, a fine of £200,000 plus an administrative charge of £9,664.72.

9. The Second Decision was also addressed to the Company. It arose from the failure by the Company to pay the fine or charge imposed by the First Decision. Unsurprisingly, that failure was itself a breach of the Code. The sanctions under the Second Decision were a formal reprimand and a prohibition on the Company being involved in any PRS for five years, or until the payments under the First Decision were made, whichever is the later.

10. Mr Lyons was one of two directors of the Company and held all the shares. He says that he was the de facto controlling mind of the Company. That was indeed

the basis of the Third Decision which, unlike the first two Decisions, was addressed to him personally. As a director of the Company, he was what is called an "associated individual" within the definition of that term in the Code. The Adjudication Tribunal found, pursuant to paragraph 4.8.3(g) of the Code, that Mr Lyons was knowingly involved in the breaches of the Code by the Company. The sanction imposed was a prohibition on Mr Lyons being involved in any PRS provision for five years. As that Decision was made in October 2020, the period of prohibition now has only some five months still to run.

C. STANDING

11. I raised with the parties the preliminary question of the basis on which Mr Lyons can bring an appeal at all as against the First and Second Decisions, given that they were made not against him but against the Company. If he has no right to appeal, then clearly it would be wrong to extend the time for him to appeal.

12. In response, Mr Lyons relied on several factors: he stressed that he was a director at the time of the Decisions; that he had been able to represent the Company in seeking to set aside the winding up petition; he said that he was a shareholder; and he said that the liquidator of the Company had not sought to appeal, so now it was only he who could bring an appeal.

13. I have to say that, in my judgment, none of those factors would give him a personal right of appeal. He is, of course, no longer a director of the Company, and has not been since 5 December 2019, when he resigned. The fact that he is a shareholder is never a basis on which an individual or, indeed, a group of individuals, can bring an action to challenge a sanction or award against a company.

14. The most compelling reason put forward by Mr Lyons is that the first two Decisions affect him personally, as they are relied on by the liquidator in the Section 212 Proceedings as constituting a breach of duty by him as a director at the time. That, it seems to me, is the only possible basis on which he could bring himself within the terms of section 192 of the 2003 Act. That section provides,

as regards a decision by Ofcom, that a "person affected by a decision" may appeal against it.

15. I have to say, nonetheless, I doubt very much that this alone would be sufficient to give Mr Lyons standing. But, for reasons that will become clear, it is unnecessary for me to reach a concluded view. Obviously, that factor does not apply to the Third Decision, which is a Decision against Mr Lyons and where there is no issue about his right to seek to appeal it.

16. I will consider, therefore, the question of an extension of time as regards all of the Decisions. But I should emphasise that I am considering today only the question of an extension of time; I am not concerned with the correctness of the Decisions and what might happen if an appeal could be brought. Of course, it is only if time were extended that this tribunal could proceed to hear the appeals.

D. EXCEPTIONAL CIRCUMSTANCES

17. Rule 9(2) of the Rules states:

> "The Tribunal may not extend the time limit provided under paragraph (1) unless it is satisfied that the circumstances are exceptional." The time limit under Rule 9(1) is two months from the date on which the appellant is notified of the disputed decision, and there is no suggestion here that Mr Lyons was not notified of the three Decisions promptly.

18. The Tribunal's Guide to Proceedings 2015 (the "Guide"), which has the status of a practice direction, says, at paragraph 4.20:

> "Under Rule 9(2)...the Tribunal may not extend the time limit for commencing proceedings 'unless it satisfied that the circumstances are exceptional'. Any application for an extension of time must be made a reasonable time before the prescribed period has expired and reasons for the application must be given."

19. Here, the application is manifestly not made before the two months period had expired. Further, at paragraph 4.21, the Guide states:

> "In *Hasbro v DGFT* [2003] CAT 1, the President indicated that respect for the deadline for commencing proceedings is, in many ways, the keystone of the whole procedure. The possibilities of obtaining an extension of the time limit for commencing proceedings are thus extremely limited. In order to demonstrate the existence of unforeseen circumstances, the party concerned

> may have to point to an excusable error or a situation of force majeure which prevented it from complying with the time limit."

20. I am not sure that the requirement to apply for an extension of time before the time has expired can be a mandatory requirement. It is not in the Rules, and the Guide cannot override the Rules. But it is certainly a very relevant factor. And I think it is fundamental that any exceptional circumstances must apply for the entire period of the delay. For example, if exceptional circumstances could explain a delay of three months, that cannot possibly serve as justification for an extension of time of three years. Here, as I have said, the appeal comes many years out of time.

21. I ask, therefore, what are the exceptional circumstances relied on? Mr Lyons relies to a certain extent on his physical and cognitive difficulties and has said that the whole matter was overwhelming.

22. However, following the First Decision, on 2 October 2018, Mr Lyons wrote an email to the PSA in which he challenged the First Decision. He did so by reference to the specific provisions in paragraph 4.10.2 of the Code, setting out, under each of the grounds on which a decision could be reviewed, the reasons for his objection. First, he said the relevant Decision was based on a material error of fact, and he gave details. Secondly, he said the relevant Decision was based on an error of law and ultra vires. Thirdly, he said the Adjudication Tribunal reached its Decision through a material error of process in respect of the procedures set out in the Code or procedures published by the PSA from time to time, and he gave details. Next, he said the Adjudication Tribunal came to a Decision that no reasonable tribunal could have reached. Under that head, he said that the fine was clearly wholly disproportionate and made that argument by reference to other fines that had been imposed in other circumstances. He concluded:

> "A full independent judicial review is required as this action is disproportionate, it kills small businesses while appearing to only serve yourselves and large companies."

23. As I said, that email was sent by Mr Lyons on 2 October 2018, and he received a response from the PSA the same day, which said:

> "Dear Mr Lyons, Thank you for your email, the contents of which are noted. You have stated that a 'full independent judicial review is required'. Please be aware that a Judicial Review would have to be pursued in the Administrative Court and cannot be facilitated by the PSA. An adequate alternative remedy is available to you as under paragraph 4.10.1 [of the Code], you are entitled to seek a review of the [Adjudication] Tribunal decision by a differently constituted [Adjudication] Tribunal. I have attached a form for you to make an application for review if you choose to do so."

24. Mr Lyons was therefore given a clear indication of what he could do, specifying two potential avenues that he could pursue to challenge the First Decision. Accordingly, I cannot accept the statement made by Mr Lyons in his witness statement for the purpose of today's proceedings that he had no knowledge that there was any right of appeal or at least to bring a legal challenge to the decisions of the PSA Adjudication Tribunal.

25. When I asked Mr Lyons why he did not seek a review under paragraph 4.10.1 of the Code that was referred to in the email that he received, he replied to say that there was no attachment to that email, and the form that was referred to was in fact a link which rapidly expired. He said that he found it all very difficult.

26. However, he was not alone at the time. He clearly had been able to compose and send a well-reasoned email setting out a number of grounds of challenge to the First Decision. Mr Lyons said that he had help in preparing that email. I have no doubt that is correct. There was another director, a Mr Cassidy. I was told that Mr Cassidy had another job, but as a director, he owed a duty to the Company. All that Mr Lyons could say is that Mr Cassidy's involvement was only from time to time, sometimes several weeks apart. But nothing was done several weeks after Mr Lyons was told about the avenues for challenge. Moreover, there were others on the scene. There was a Dr Topping, who Mr Lyons said had "much greater knowledge than" him. And Mr Lyons said that there was someone else who was also able to assist.

27. Given that Mr Lyons could write – perhaps, as I accept, with help from others – a clear email challenging the First Decision, referencing specific grounds in paragraph 4.10.2 of the Code, I cannot accept that he was unable, on behalf of the Company at the time, to apply for a review by another Adjudication Tribunal under paragraph 4.10.1.

28. Moreover, and more relevantly, he could have sought to go to the Administrative Court and apply for judicial review. Mr Lyons said that this would have been very expensive and the Company did not have money, or at least did not have sufficient funds, to instruct lawyers for that purpose. But he could have applied in person on behalf of the Company, just as he is doing now for himself.

29. The Second Decision, as I have mentioned, was issued on 17 July 2019. That was a few months after Mr Lyons suffered a terrible road accident. But six months later, when the Court made an order on 29 January 2020 for the winding up of the Company, Mr Lyons personally issued an application in the High Court to rescind that order. He served a witness statement, which he wrote himself, setting out the grounds for applying for rescission, and he attended the hearing in the Insolvency and Companies Court on 19 February 2020 to argue in favour of setting aside the order.

30. His application there was unsuccessful, but that is not the point. If Mr Lyons was able to issue an application in the High Court to rescind the winding-up order, make a witness statement and attend court, then in my view, he would clearly have been able to seek to bring a judicial review of the first two Decisions. He would still have been out of time and he would have needed an extension of time, but that can be no excuse for the further delay of over five years.

31. Mr Lyons told me that he got help from the court staff in preparing the application to rescind the winding-up order. I am sure that is correct, but there is no reason for assuming that he would have had no help from the staff in the Administrative Court. Mr Lyons said he did not know what the Administrative Court was, but it is obvious that it takes minimal effort to find out. Moreover, as I have mentioned, there were others who could have assisted him.

32. The Third Decision, as I have said, was issued on 15 October 2020. By then, the Company was in liquidation. Less than three months later, the liquidator started investigating whether Mr Lyons had been in breach of his duties as a director to the Company.

33. On 1 December 2021, the solicitors for the liquidator sent Mr Lyons a letter before action. Faced with that detailed letter, Mr Lyons very sensibly instructed solicitors to assist him. The liquidator's letter was relying very heavily on, among other things, the findings of the PSA Adjudication Tribunal in the First Decision.

34. Mr Lyons's solicitors wrote in response to the liquidator's letter on 13 April 2022. So, although today Mr Lyons appears in person, as at April 2022, he had solicitors advising him and representing him. His solicitors' letter, indeed, makes reference to Mr Lyons's dealings with the PSA Adjudication Tribunal.

35. When I asked Mr Lyons why he did not instruct those solicitors to appeal against the Adjudication Tribunal Decision, his only explanation was:

> "I've explored every avenue within my capabilities that I've been able to do within my powers. And I've done my very best, that's all I can tell you, to do this…I've been told multiple times I cannot challenge the fine."

36. Of course, I do not wish to explore what might have been said between Mr Lyons and his solicitors, but the short point is that he had legal representation and would have been able, had he so wished and thought it appropriate, to seek to bring judicial review in mid-2022. By then, it was absolutely clear that the Section 212 Proceedings which the liquidator was threatening would rely on the Adjudication Tribunal Decisions.

37. I also note that on 16 December 2024, Mr Lyons served full and detailed Points of Defence in the Section 212 Proceedings settled by counsel. So, by that stage he had both solicitors and counsel acting for him, and his lawyers clearly appreciated, as is apparent already from the 13 April 2022 letter, that the Decisions were very relevant to the Section 212 Proceedings.

38. There is, in Mr Lyons's defence, a section referring to the Adjudication Tribunal proceedings and at paragraph 44 of Mr Lyons's defence, it is said at 44.1.3 that Mr Lyons: "...considers that the [Adjudication T]ribunal's conclusions as to breach of the code by the company are unjustified and incorrect, on the basis that ..." and then some grounds are set out.

E. CONCLUSION

39. By order made on 21 October 2024 (the "2024 Order"), which came into effect on 1 February 2025, the Code was revoked by Ofcom and the regulatory function regarding PRS was transferred to Ofcom.

40. It was suggested by Mr Carpenter on behalf of Mr Lyons that perhaps the clock has restarted with the transfer of functions to Ofcom. Insofar as that was a submission that the time for appeal somehow starts all over again regarding PSA Decisions of 2018, 2019 and 2020, that argument is wholly misconceived. The dates of the three Decisions have not changed, and those are the dates from which time is to be counted.

41. I recognise and accept that Mr Lyons is severely dyslexic, and that at least since his terrible accident on 10 April 2019, he has had cognitive issues, and maybe he had some before. But all the evidence which I have summarised as to what actually happened over the years immediately following each of the Decisions means that I do not accept that he has such problems that he could not have sought to bring a legal challenge by way of an application for judicial review of any or each of the three Decisions several years ago, at least.

42. Even if he might then have had some basis for seeking an extension of time then, there are no good grounds for an extension of time of several more years that Mr Lyons needs today.

43. In short, I cannot accept, as Mr Lyons repeatedly said to me, that he did his "best". On the contrary, I think that it was only once the Section 212 Proceedings were finally approaching trial that Mr Lyons has been galvanised into seeking now to challenge the Decisions. So, even if he might have had some basis for seeking an extension of time some years ago, there are no good grounds for an extension of time today.

44. There was some suggestion in the course of the hearing from Mr Lyons that he has a human right under Article 6 of the European Convention on Human Rights (the "Convention") to have the opportunity now to challenge the PSA

Decisions. However, he and the Company had that opportunity, and the jurisprudence under the Convention recognises and accepts that it is entirely legitimate for national laws to have time limits on the bringing of appeals.

45. I should add that Mr Lyons said in his witness statement in support of his application:

> "When the PSA decisions were issued, I had no knowledge of the existence of the Competition Appeal Tribunal (CAT), nor that it had jurisdiction to review or overturn PSA decisions."

46. I fully accept that at the time Mr Lyons had never heard of the CAT, but in his skeleton argument, Mr Lyons recognises, quite correctly, that there was no right of appeal against the Decisions to this Tribunal at the time. Any challenge at that time, other than by way of seeking a reconsideration under paragraph 4.10.1 of the Code, would have been by way of judicial review. See, for example, the decision of the Administrative Court in *R (Ordanduu & Optimus Mobile) v PhonepayPlus Ltd* [2015] EWHC 50 (Admin).

47. The only basis on which Mr Lyons seeks to bring his appeal in this Tribunal is in reliance of the 2024 Order, which, as I have said, came into effect on 1 February 2025. So, on any view, before that date, a legal challenge would have been by way of judicial review in the Administrative Court and not in this Tribunal.

48. I should also say that, in his appeal, one of the heads of relief which Mr Lyons seeks is relief under section 1157 of the Companies Act 2006. That is the provision whereby, in proceedings for breach of duty against the director of a company, the court can grant relief if that person has been acting honestly and reasonably. That is entirely a matter for the High Court. This Tribunal has no jurisdiction to grant relief under that provision.

49. In the light of my decision on the extension of time, it is unnecessary to consider the further ground of opposition to the application raised by Ofcom, which is that although Ofcom took over direct responsibility for the regulation of PRS services on 1 February 2025, the terms of the transitional provisions in Schedule 4 to the 2024 Order do not mean that previous decisions of the PSA

are now treated as decisions of Ofcom for the purpose of the appeal provision to this Tribunal under the 2003 Act. I can see considerable force in Ofcom's argument to that effect, but in the light of my decision on extension of time, it is unnecessary for me to express a concluded view on that point.

50. Accordingly, the application for an extension of time is dismissed, and I further declare that the application is totally without merit.

The Hon. Mr Justice Roth
Acting President

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 20 May 2025