

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Monday 26 July 2010 TRIBUNAL SITTING No. 58 / CASE 3  
CASE REFERENCE: 830140**

Service provider & area:	Mr Mark Pointer trading as 'Call Shop International', Dagenham, Essex
Information provider & area:	N/A
Type of service:	Fixed-line
Service title:	N/A
Service number:	09061110221 and all other premium rate numbers on which the service was available
Cost:	£1.50 per minute
Network operator:	Kingston Communications
Number of complainants:	1

## **THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER UNDER PARAGRAPH 8.5 OF THE CODE**

### **BACKGROUND**

As of 18 June 2010, the Executive received one complaint from a member of the public regarding this fixed-line service. The complainant stated to have received a missed call from the premium rate number 09061110221 on 9 January 2010.

PhonepayPlus monitored the service and, when it called the number in question, it heard a short recorded message as follows:

*"Hello, this is Richard from Consolidated Media, now it's a very quick call to let you know that I have tried to contact you before about your share of some of the many unclaimed awards from national competitions that have been running in the UK."*

### **The Investigation**

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Executive issued a breach letter to the Service Provider dated 18 June 2010. The Executive received a response to the breaches raised in the letter on 8 July 2010.

The Tribunal made a decision on the alleged breaches raised by the Executive on 26 July 2010.

### **SUBMISSIONS AND CONCLUSIONS**

#### **ALLEGED BREACH ONE FAIRNESS (MISLEADING) (Paragraph 5.4.1a)**

*"Services and promotional material must not:  
A mislead, or be likely to mislead in any way,"*

1. The Executive submitted that a complainant stated to have received a missed call from the premium rate number 09061110221 on 9 January 2010 at approximately 6pm. It submitted that the consumer advised that his/her phone rang five to six times before stopping. The mobile phone then displayed a missed call from the number 09061110221.

The Executive submitted that it was of the view that, by receiving a missed call in this manner, users would be intrigued or curious as to who was calling them and would be prompted to return the call. It followed that consumers had been misled into calling a premium rate service.

The Executive submitted that it monitored the service on the number 09061110221 and made reference to the transcript of the call. It submitted that the message on the connection of the call had been as follows:

*“Hello, this is Richard from Consolidated Media, now it’s a very quick call to let you know that I have tried to contact you before about your share of some of the many unclaimed awards from national competitions that have been running in the UK.”*

The Executive submitted that it was of the view that the statement contained within the recorded message implied that someone had attempted to contact consumers and confirmed that contact had been made via a missed call promotion, rather than via the promotional material supplied by the Service Provider.

2. The Service Provider stated that it was alleged that the complainant had received a ‘missed call from the PRN 09061110221 on the 9 January 2010 at approximately 6pm’. In addition, the consumer had stated that his/her handset had rang five to six times before stopping. The Service Provider questioned how the complainant had obtained the transcript of the voice message. It stated that the service was not operational and stated that, when it had been operational, the recorded message had been as follows:

*“Hello and thank you for calling.*

*This is a promotion brought to you by Consolidated Media and is not in any way connected to your own phone operator, service provider or any other telecommunications organisation.*

*If you’d like to claim either one of two fantastic cash awards of £20,000 or even £50,000, or a weekend for 2 in Prague complete with £2,000 spending money or a superb Panasonic 37” widescreen full HD LCD TV or an Xbox 360 or a brand new high-tech Mini Digital Camera, stay on the line, and at the end of this message we’ll tell you which award is yours and how you can go about collecting it.*

*Apart from the cost of this call, there are no charges, no catches, and you will definitely walk away with one of 6 fabulous awards!*

*This call will cost £1.50 per minute and should not exceed six minutes and twenty seconds*

*If you're calling from a mobile 'phone, the cost of the call may vary from the £1.50 per minute charge just mentioned, so if you're on the mobile right now, it might be better to try ringing back from a landline.*

*First, you must be over 18 years of age and have the bill payer's permission before proceeding with this call.*

*Please confirm that you are 18 or over by using the keypad on your 'phone now; for example if you're 24, press 2 then 4 after this tone...."*

(Please note that the Executive has included only the first part of this purported transcript.)

The Service Provider stated that it was sure that the Tribunal would agree that, to operate a premium rate service whereby the caller called the advertised premium rate number only to hear a voice marketing call, would have been contrary to operating the service. The Service Provider stated that it, therefore, did not consider that it had been in breach of paragraph 5.4.1a of the Code.

3. The Tribunal considered the evidence and concluded that, on the balance of probabilities, the service had been promoted through a missed call. It found that the users were likely to have been misled into calling a premium rate number with the understanding that they had missed a call to their mobile handset and, as such, would seek to establish from whom and where the call had originated. The Tribunal noted the complainant evidence and the Executive's monitoring exercise and found it to be persuasive; it rejected the Service Provider's argument that the service was promoted by way of a scratchcard in the North of England, given the location of the traffic (this argument had been transcribed in a conversation between the Executive and the Service Provider and was included in the Executive's submissions). The Tribunal upheld a breach of paragraph 5.4.1a of the Code.

**Decision: UPHELD**

## **ALLEGED BREACH TWO PRICING INFORMATION (COST) (Paragraph 5.7.1)**

*"Service Providers must ensure that all users of premium rate services are fully informed, clearly and straightforwardly, of the cost of using a service prior to incurring any charge."*

1. The Executive submitted that a complainant stated to have received a missed call from the premium rate number 09061110221 on 9 January 2010 at approximately 6pm. It submitted that the consumer advised that his/her phone rang five to six times before stopping. The mobile phone then displayed a missed call from the number 09061110221. It submitted that the complainant made no reference to pricing being given at any point.

The Executive submitted that it monitored the service on the number 09061110221 and noted that no pricing had been present at any point of its interaction with the service (i.e. there was no pricing information in the recorded message, nor had there been a free-to-hear network level message provided before charging commenced).

As the number displayed on the consumer's handset is considered a 'promotion' within the meaning of paragraph 11.3.27 of the Code, the absence of pricing information appeared to have constituted a breach of paragraph 5.7.1 of the Code.

2. The Service Provider made reference to the Executive's submission and quoted the wording of paragraph 5.7.1 of the Code. It stated that the basis of the Executive's alleged breach had been the Privacy and Electronic Communications (EC Directive) Regulations 2003, as it was an offence to use Automated Calling Equipment as a direct marketing tool.

The Service Provider submitted that it had explained that it did not use Automated Calling Equipment as part of its marketing strategy and actually used a direct mail campaign.

3. The Tribunal considered the evidence and concluded that there had been no pricing information afforded to consumers prior to calling the premium rate number. It also found that the Executive's monitoring of the telephone recording had demonstrated that there had been no pricing during the call. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH THREE CONTACT INFORMATION (Paragraph 5.8)**

*"For any promotion, the identity and contact details in the UK of either the service provider or information provider, where not otherwise obvious, must be clearly stated. The customer service phone number required in paragraph 3.3.5 must also be clearly stated unless reasonable steps have previously been taken to bring it to the attention of the user or it is otherwise and easily available to the user."*

1. The Executive submitted that a complainant stated to have received a missed call from the premium rate number 09061110221 on 9 January 2010 at approximately 6pm. It submitted that the consumer advised that his/her phone rang five to six times before stopping. The mobile phone then displayed a missed call from the number 09061110221. The Executive submitted that the complainant made no reference to contact information being given at any point.

The Executive submitted that there had been no way for the complainant to contact the Service Provider, with the exception of calling back the premium rate number. It submitted that, even if a consumer was to call back the premium rate number and incur premium rate charges, the recorded message did not contain a UK non-premium rate customer care number, as required under paragraph 5.8 of the Code.

The Executive submitted that, in light of its submissions and the missed call premium rate number displayed on the consumer's handset being considered a 'promotion' under the definition of paragraph 11.3.27 of the Code, the absence of contact information had constituted a breach of paragraph 5.8 of the Code.

2. The Service Provider did not respond specifically to the Executive's submissions in relation to this alleged breach.
3. The Tribunal considered the evidence and concluded that the identity of the Service Provider or the Information Provider had not been present in the recorded message

heard by the caller on connection, and there had been no effort prior to the call to bring any contact information to the attention of the caller. The Tribunal upheld a breach of paragraph 5.8 of the Code.

## **Decision: UPHELD**

### **SANCTIONS**

The Tribunal's initial assessment was that, overall, the breaches taken together were **serious**.

In determining the sanctions appropriate for the case, the Tribunal took into account the following aggravating factors:

- The service was valueless to consumers as users received no benefit from calling the premium rate number.
- The behaviour of the Service Provider was deliberate as to its operation of the service.
- The cost paid by individuals was high when considering that a caller received no benefit for calling the premium rate number.
- Missed call services have been singled out for criticism by PhonepayPlus.

There were no mitigating factors for the Tribunal to consider.

The revenue in relation to this service was in the low range of Band 6 (£1-£5,000).

Having taken into account the aggravating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

Having regard to all the circumstances of the case, including the revenue of the service, the Tribunal decided to impose the following sanctions:

- A Formal Reprimand;
- A fine of £15,000;
- The Tribunal also ordered that claims for refunds are to be paid by the Service Provider for the full amount spent by users, except where there is good cause to believe that such claims are not valid.