

Case Reference: 706639/06

Service provider & area:	2Ergo Limited, Rawtenstall
Information provider & area:	Bang Media Limited, London
Type of service:	Live 1-2-1 adult (sexual) chat services operating on television
Service title :	Bang Babes (Sky channels 915 and 961)
Service number:	0909 7776969, 0909 7779696
Cost:	£1.50 per minute
Network operator:	Hotchilli Communications
Number of complainants:	1
Claims for compensation:	2

BACKGROUND

The Executive was provided with copies of two claimants' telephone bills through the ICSTIS Live Entertainment Services Compensation Scheme. These showed that calls for the service in question had exceeded £30, contrary to 2Ergo Limited's live entertainment permission certificate. As a result the Executive requested information on 19 June 2007 under paragraph 8.1.3 of the 11th Edition of the Code of Practice ("the Code"). An opportunity was given to the service provider to respond. The service provider responded on 2 July 2007.

The Executive then received a complaint from a consumer relating to the services.

As a result of the information received and the complaint, the Executive raised breaches of paragraphs 5.1.3, 5.4.1a and 5.4.2 of the Code in a letter dated 10 July 2007, along with a request for information under paragraph 8.1.3 of the Code. An opportunity was given to the service provider to respond. The service provider responded on 18 July 2007.

A decision on the breaches raised was made by the Adjudication Panel ('the Panel') on 30 August 2007.

INVESTIGATION AND DECISION

BREACH OF CONDITION OF PERMISSION CERTIFICATE (Paragraph 5.1.3)

- 1) A condition of the service provider's permission certificate granted in 2006 was that calls must not exceed £30 in total and must be terminated by forced release if this amount was reached. Based on the call details provided by the service provider, which demonstrated that over 1,300 calls had exceeded £30, it was the Executive's opinion that there had been a breach of this paragraph of the Code.
- 2) The service provider responded that it had an agreement in place with its network and IVR provider to provide a forced release mechanism. A problem with the forced release application was identified by its client, Bang Media, after test calls on 24 April 2007 as part of the service provider's compliance testing. The service provider stated that the network operator rectified the issue on 1 May 2007.

The network provider explained via the service provider the reason why this occurred. It noted that AITs were issued by British Telecom amounting to £5986.61. It stated that it regretted the fault had not been identified sooner, but that minimal financial gain had been made. It stated it was confident the mechanism was now working correctly and that it would work with service providers to give end users refunds where their call has exceeded the quoted cap.

- 3) From the evidence provided by the service provider, the Panel concluded that there had been gross and frequent breaches of the condition of the permission certificate which stated that calls must not exceed £30. The Panel noted that the problem had still not been resolved as call charges in June and July 2007 continued to exceed £30. The Panel was dismayed that the problem had not been picked up earlier and could not understand why this was the case, especially given the warnings the service provider had received in the form of AITs from British Telecom.

Decision: **UPHELD**

MISLEADING (Paragraph 5.4.1a)

- 1) The Executive considered the complaint raised by a consumer regarding the television programme 'Bang Babes', where viewers are invited to call in to speak to operators who are shown live on the television waiting to be called. The Executive was of the opinion that the service was misleading consumers into believing the operators were available to take calls immediately, when in fact on calling the consumer was put on hold or offered the option of speaking to another operator.
- 2) The service provider responded that under company policy its operators were only permitted to encourage viewers to call when they were not on calls. It stated that it believed either that the complainant was confusing the service with that of another service provider, or that the complainant was confused into thinking an operator was available as a result of the broadcast delay, compliance delay and delay caused by technical delivery, leading to a delay in the transmission of 'live' programmes of 10-15 seconds.
- 3) The Panel did not believe that the caller was confusing the service with another, especially as the relevant operator's name was provided by the consumer. The Panel held that the programme was misleading consumers into believing that the operator they wished to speak to was available and that if the consumer called they could speak directly to the on-screen operator, when in reality this was not the case. The Panel therefore upheld a breach of this paragraph of the Code.

The Panel pointed out that it should be made clear to consumers exactly what the service offers. On viewing the programme currently, it appears that the on-screen operator is available to take calls but on analysing the statistics it appeared that most callers did not get through quickly to an on-screen operator.

Decision: **UPHELD**

DELAY (Paragraph 5.4.2)

- 1) The Executive was of the opinion that the service was unreasonably delayed in that:
 - i) The complainant was placed on hold when attempting to reach an on-screen operator of his choice. The Executive questioned if this format is ever appropriate.
 - ii) From the monitoring of the calls made to the service in a one hour period, only 13% were put through to their chosen on-screen operator immediately whilst other callers were put on hold for often a considerable amount of time.

- 2) The Service provider responded to the breaches as follows:
 - iii) The service provider believed the service to be fully compliant with the Code and stated it did not believe the call was unreasonably prolonged or delayed. It provided a flow diagram showing how calls were treated and a transcript of a sound recording played to callers placed on hold.
 - iv) The service provider gave a transcript of a message played continuously, then repeated every 10-20 seconds to all callers in a queue whilst being on hold. This gave callers the option to hold or to speak to an alternative operator.
 - v) The service provider responded that the maximum number of callers on hold for any one operator was four. Callers were not informed of their place in the queue, but the recorded message was played informing them they were on hold and could speak to an alternative operator. The service provider noted its statistics showed 70% of its callers were repeat callers and had used the service for three months or more. It also noted that it explored alternative ways of providing the service, but that these had been unpopular with consumers.

- 3) The Panel found a clear breach of this paragraph. It noted that callers were not told their place in the queue and that they were made to wait a long time at £1.50 per minute before the service was provided. No information was given as to how long the wait may be in order that an informed choice about holding could be made. The Panel noted that it believed that it was not appropriate for there to be any type of delay.

Decision: **UPHELD**

FURTHER INFORMATION (Paragraph 8.1.3)

- 1) To assist the investigation, the service provider was asked to provide further information about the service and its promotion, including call revenue and volume statistics.

- 2) The service provider provided a response to the information requested under this paragraph.

- 3) The Panel decided that the service provider had complied with the request to supply information.

Decision: **NOT UPHELD**

SANCTIONS

There were no mitigating factors for the Panel to consider.

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

- Despite what the service provider stated, the call records it supplied demonstrated that calls continued to go over the £30 limit of its permission certificate even after it had supposedly fixed the problem. The Panel can only assume this problem is continuing to the present day.
- The service provider should have noticed more quickly that calls were routinely going over the £30 limit and repaired the problem expeditiously; the abuse was frequent and flagrant, even after the service provider had received AITs from British Telecom, which should have alerted it that problems were occurring.
- With one of the call numbers monitored for one hour, only 13% of callers were able to use the service as had been envisaged (i.e. getting through quickly to the on-screen operator).
- Much of the revenue from the service appeared to come from calls which cost over £30 and callers being kept on hold.

Taking into account the aggravating factors the Panel concluded that, overall, the breaches taken together were **very serious**.

The Panel therefore decided to impose the following sanctions against 2Ergo Limited:

- A formal reprimand;
- A £125,000 fine; and
- A bar on the service until it is compliant. The forced release mechanism must be set to work correctly and the operators issued with timers. Once these conditions are in place, the service provider is required to submit call data to the Executive weekly until further notice to demonstrate that the service is operating according to the conditions of its prior permission certificate.