

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 6 August 2009

TRIBUNAL SITTING No. 32 / CASE 2

CASE REFERENCE: 807068/AM

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| Information provider: | Auction Helpline Ltd, Staffordshire |
| Service provider: | StealthNET Limited, Norfolk |
| Type of service: | Fraud advice line |
| Service title: | fraudhelpline.org |
| Service numbers: | 09070055002 Other associated numbers to the service: 09061205949, 09065175668, 09065179937, 09066355412 |
| Cost: | £1.50 per minute |
| Network operator: | Oxygen8 Communications |
| Number of complainants: | 3 |

THIS CASE WAS BROUGHT AGAINST THE INFORMATION PROVIDER UNDER PARAGRAPH 8.7 OF THE CODE

BACKGROUND

The PhonepayPlus Executive (the 'Executive') received three complaints – one from the City of London Police National Fraud Reporting Centre; one from the Metropolitan Police Central E-Crime Unit & Economic/ Specialist Crime Unit; and one from the Welsh Internet Fraud Advisory Group (InterFraud) – regarding a fraud advice service promoted on the website fraudhelpline.org. The website promoted the fixed line premium rate number 09070055002 and other numbers (09061205949, 09065175668, 09065179937 and 09066355412) were used in other correspondence with consumers after they had registered on the website – all of the numbers cost £1.50 per minute from a BT landline.

The three complainants are bodies which seek to professionally deal with fraud-related matters, and they stated that they were concerned about the use of a premium rate number to obtain advice on fraud when this information was available for free in the public domain. They were also concerned about the use of the title 'National Fraud Reporting Centre' as a marketing name. When this name was entered into the Google search engine, the website fraudhelpline.org was the top sponsored link and the wording of the promotional claims made by the service on the website.

Complaint investigation - fraudhelpline.org

(i) The Executive's understanding of the service

1. The service operates under the name fraudhelpline.org.

2. Operates on premium rate fixed line number 09070055002 which is promoted on the website.
3. Numbers used in other correspondence with users after consumers have registered with the website:

09061205949 via email
09065175668 via email
09065179937 via email
09066355412 via SMS

4. The cost of the service to these 0906 numbers is £1.50 per minute to call.
5. The service appears to have used “National Fraud Reporting Centre” as the Google Ad word header
6. The website fraudhelpline.org makes the following claims:

“Whether you are seeking general advice or have a specific problem The Fraud Helpline can assist. We can help you,

- *Resolve any incident of fraud that has affected you.*
- *Liaise with the Police, Government departments and any other relevant bodies.*
- *Communicate with large financial institutions including banks and credit card insurers.*
- *Recuperate any financial loss.*
- *Protect and prevent any future cases of fraud”*

(ii) Details of complaints

On 5 June 2009, the Executive received correspondence from a Detective Superintendent from the City of London Police who had been tasked by the Home Office to launch the National Fraud Reporting Centre (‘NFRC’) website. In his correspondence, the Detective Superintendent explained that the NFRC was an initiative to capture, record and disseminate reports of fraud-related crime and associated intelligence. As well as dealing with major institutions, they anticipated a large number of calls from individuals who had themselves been defrauded, or were seeking relevant information. Their previous experience showed that many of these callers would be vulnerable and would have been specifically preyed upon by fraudsters.

The Detective Superintendent’s correspondence expressed great concern of the use of the specific words linked to their project; namely the fact that, when the keywords “*national fraud reporting centre*” were entered into a Google search, fraudhelpline.org appeared as the first sponsored link. This then invited members of the public to call a premium rate number in order to obtain relevant advice. This was further aggravated by the fact that callers were vulnerable members of the public, who had already been defrauded and would have further funds taken away from them when such advice could be obtained for free from Consumer Direct.

On 18 June 2009, the Executive received a further two complaints from the Metropolitan Police Central E-Crime Unit & Economic/ Specialist Crime Unit and the Welsh Internet Fraud Advisory

Group (InterFraud), both of whom were concerned about the claims made on the website and believed it be a scam.

(iii) Monitoring of the website fraudhelpline.org (9 -12 June 2009)

1) The Executive entered 'national fraud helpline centre' into the Google search engine. The first sponsored link that appeared on the page was for fraudhelpline.org. The 'ad word' (ad header in blue underline) used by the company was the exact same name as the Home Office initiative 'National Fraud Helpline Centre'.

2) Once on the website, the Executive received a pop-up style online query form which stated as follows:

*"Get Instant Confidential advice.
To get assistance from The Fraud Helpline please fill in your details below..."*

The Executive completed and sent the online query form several times – on 9, 10, 11 and 12 June 2009 – and each time the online form was submitted it returned an error page with the message *"the website cannot display the page most likely cause the website is under maintenance"*

(iv) Monitoring the number 09070055002 (9 June 2009)

1) After having tried the online query form several times, the Executive called the number 09070055002 and the beginning of the recorded message welcomed callers to 'the helpline', and stated that calls cost £1.50 per minute, callers must be over 18 and have bill payer's permission, and gave the name of service provider. This was followed by a ringing tone, before another automated interactive voice recognition ('IVR') message was received which stated something similar to, or along the lines of: *"Sorry we haven't been able to answer your call if you call back in 10 minutes an operator should be available to answer your query. Additionally you can leave a message after the tone"*

The cost of this call was £1.50.

3) The Executive called the number back and, upon connection to an operator, proceeded to communicate the query. As the line was crackling, it was difficult to hear the operator, following which the line went dead.

The cost of this call was £3.00.

4) The Executive called back and got through to an operator who stated *"Welcome to the helpline"*. The Executive explained the problem – an unknown transaction on a Halifax credit card statement for a £27 purchase made in an electrical store.

Approximately four minutes into the conversation, the operator told the Executive *"bear with me for a couple of seconds"*, but the Executive was put on hold for approximately one minute, 10 seconds. During this holding period, the Executive could hear the 'operator' shouting the Executive's query to another colleague and getting advice from him regarding the subject. The operator briefly returned to the phone to ask what type of credit card was involved and the

Executive was again left to hold for a further one minute, 30 seconds. In a call lasting approximately 12 minutes, the advice provided to the Executive regarding the query was the customer services number for Halifax bank.

Following the advice, the operator then continued to question the Executive as to whether the payment related to CPP (Card Protection Plan), despite the fact that the Executive had already told the operator that the unknown purchase had been made in an electrical store.

This call lasted over 12 minutes and cost £19.50.

For one query, the total amount the Executive incurred was £24.00

Ringling tone prior to connection:

During all of the calls made to the fraud helpline, the monitoring highlighted that the ring tone after the IVR message appeared to be a recording and not a genuine ringing tone as, during the monitoring recordings, an audible background noise of voices could be heard throughout the duration of the ringing tone.

Registered Address:

The Executive found that the registered address appearing on the fraudhelpline.org website and other helpline websites operated by this Information Provider was "PO Box 11535, Tamworth, Staffordshire B79 9BA" when, according to Companies House and the Information Provider's signed undertaking form, the registered address for the Auction Helpline was Hanover Court, Queen Street, Lichfield WS13 6QD.

Standard Procedure

The Executive conducted this matter as a standard procedure investigation in accordance with paragraph 8.7 of the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code').

The Executive sent a breach letter dated 12 June 2009 to the Service Provider raising potential breaches of paragraphs 5.4.1a, 5.4.1b and 5.4.2 of the Code. The Executive monitored the service on the 16 June and found that changes had been made to the website. The Executive issued an amended breach letter to the Service Provider who claimed not to have received the letter. The Executive issued the correspondence again on 2 July 2009 and the Service Provider responded by requesting an Information Provider pass-through which was approved by the Executive. The Information Provider responded to the breaches on 8 July 2009.

The Tribunal made a decision on the breaches raised by the Executive on 6 August 2009.

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 the City of London Police had expressed concern that the Information Provider was selling a fraud advisory service via an associated website. The Executive submitted that its monitoring had confirmed that the premium rate service (fraudhelpline.org) had used the exact Google Ad keyword as that of a government agency, namely the 'national fraud reporting centre', and had promoted this as a sponsored link on the search engine.

The Executive also submitted that it was of the opinion that the '.org' domain name suffix of the service web address would usually be indicative of a website that belongs to a non-profit organisation, such as www.phonepayplus.org.uk, and not a premium rate service.

The Executive submitted that combination of the use of an official agency's name and the '.org' domain name suffix had misled, or was likely to have misled, consumers into calling a premium rate number at a cost of £1.50 per minute in the mistaken belief that the service was part of the same organisation as the National Fraud Reporting Centre and/or was a not-for-profit organisation.

2. The Information Provider made reference to Executive's submission that the service domain name was indicative of a non-profit organisation and stated that it believed this submission to be incorrect. The Information Provider stated that anyone could register the '.org' domain name suffix, as it is was an unrestricted top-level domain, and that a government body would use the '.gov.uk' domain name as this was restricted for the government's own usage. The Information Provider stated that, as the service was a helpline for fraud, it had thought that the domain name should contain these two words and that the top three choices had been: fraudhelpline.com, fraudhelpline.co.uk and fraudhelpline.org. The Information Provider stated that as the first and second choices had been unavailable, it had been left with the third choice – fraudhelpline.org – and this had been registered accordingly.
3. The Tribunal considered the evidence and concluded that the sponsored search engine link entitled 'National Fraud Centre' gave the impression that the service was an official body for reporting fraud and this had been compounded by the '.org' domain name suffix which was usually indicative of a non-profit organisation. The Tribunal also found that the website landing page suggested that the service was the 'The UK's national fraud line'. The tribunal concluded that all of these factors taken together were likely to mislead consumers into believing the service was an official one and not a commercial service. The Tribunal therefore upheld a breach of paragraph 5.4.1a of the Code.

Decision: UPHELD

**ALLEGED BREACH TWO
FAIRNESS (MISLEADING) (Paragraph 5.4.1b)**

*Services and promotional material must not:
b take unfair advantage of any characteristics or circumstances which may make consumers vulnerable..*

1. The Executive submitted that it was of the opinion that consumers using this service were likely to have been defrauded and, as such, were vulnerable.

The Executive submitted that a £1.50 per minute fraud helpline, providing information and advice which was also readily available for free but not making this information available to the user, appeared to take advantage of the characteristics and the circumstances which made consumers who had been victim of fraud vulnerable (i.e. people who had suffered some form of detriment or financial loss). It submitted that, although the service offered consumers the opportunity to complete an online query form, this form did not work which subsequently led consumers to call the premium rate number.

The Executive submitted that the alleged breach was further aggravated by the fact that the Information Provider had been made aware of this alleged breach in April 2009 when the Executive raised the same alleged breach in respect of another helpline service – benefitshelpline.com – which was also operated by the Service Provider. The Executive asserted that the Information Provider had been aware that operating a premium rate helpline, and not providing information to consumers that the same information was also available for free and in the public domain, was likely to take unfair advantage of consumers that were deemed vulnerable.

2. The Information Provider stated that it had added a further disclaimer under the phone number on its website and that this clearly stated that the information available was also available for free in the public domain.

The Information Provider stated that, on this particular occasion, it had experienced a server problem which resulted in the enquiry form not being completed. It also stated that, at the end of the enquiry form, the caller was asked to ring the premium rate telephone number for further assistance. The online enquiry form was not used 'instead' of calling in but was merely a means of gathering preliminary information for its records, so that the operator had a background on the caller's problem and as such was able to offer a quicker solution. The Information Provider stated that it had not advocated that it offered a free service.

3. The Tribunal considered the evidence and concluded that the service had taken unfair advantage of people who had fallen victim to fraud and, as such, were vulnerable within the meaning of paragraph 5.4.1b. The Tribunal considered that the fact that individuals had been the victim of fraud was a circumstance that was exploited by the service offering advice via a premium rate line, by encouraging them to call the premium rate number to receive otherwise freely available fraud advice from a service purporting to be from an official site. The Tribunal considered that the Information Provider had not made it clear enough to the consumer that this advice was available for free from other sources. The Tribunal therefore upheld a breach of paragraph 5.4.1b of the Code.

Decision: UPHELD

ALLEGED BREACH THREE DELAY (Paragraph 5.4.2)

'Services must not be unreasonably prolonged or delayed.'

1. The Executive submitted that it monitored the service on several occasions. The Executive made reference to an occasion where it was connected to a service operator and was able to submit a full query. It submitted that during that call it was told to “hold on a few seconds” and was placed on hold for approximately two minutes, 40 seconds (collectively) as the operator asked another colleague for advice on the query.

The Executive submitted that the delay was further aggravated by the fact that the ringing tone the Executive heard after the IVR message appeared to be a recording and not a genuine ringing tone (a voice could be heard in the background during the ringing tone).

The Executive submitted that it was of the opinion that those making a call to the service would be put on hold on when told to do so by an operator and be charged £1.50 a minute whilst waiting for the operator to answer the query and that being charged for a pre-recording of a ringing tone made the service unreasonably prolonged or delayed.

2. The Information Provider stated that it accepted that this was not suitable behaviour by the operator. It stated that this matter had been taken extremely seriously and that re-training had been implemented immediately. The Information Provider stated that, having listened to the recording, it was of the opinion that the Executive had led the operator and given wrong or misleading details at the beginning of the call, and it was this that had further prolonged the call.
3. The Tribunal considered the evidence (including the monitoring evidence) of the Executive and concluded that the operator had kept the Executive on hold for an unreasonably prolonged period of time for a call that was costing £1.50 per minute. The Tribunal considered the Information Provider’s response and noted that, although there may have been circumstances which confused the operator as put forward by the Executive, these were not so unusual as to be outside the normal behaviour of consumers calling the number. In the circumstances, the Tribunal considered that the call was unreasonably prolonged. The Tribunal therefore upheld a breach of paragraph 5.4.2 of the Code.

Decision: UPHELD

SANCTIONS

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

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

- The behaviour of the Information Provider was deliberate as the service was designed to mislead and prolong the amount of time the consumer spent on the premium rate call. The service was tested and launched almost immediately after the Executive had highlighted issues with another similar ‘benefits helpline’ service.

- The cost paid by the individual was high, particularly when the information could be obtained free elsewhere. Calls to the phone numbers were charged at £1.50 per minute and callers could be kept on the line for 24 minutes.
- The service was harmful to people who had been the victim of fraud and, as such, had suffered some kind of financial detriment.

There were no mitigating circumstances for the Tribunal to consider. The Tribunal also considered the Information Provider's involvement in a Service Provider case in April 2009 which had involved similar issues that were dealt with using the Informal Procedure.

Having taken into account the aggravating factors, the lack of mitigating factors and the Information Provider's involvement in a recent Informal Procedure case in which the Executive had highlighted the regulatory issues with a similar 'benefits helpline' service, the Tribunal considered 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 £50,000 fine;
- The Tribunal imposed a bar on the service and related promotional material for a period of three months or until the Information Provider seeks and implements compliance advice to the satisfaction of the Executive, whichever is the longer;
- The Tribunal also ordered that claims for refunds are to be paid by the Information Provider for the full amount spent by users, except where there is good cause to believe that such claims are not valid.