

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

## TRIBUNAL DECISION

Thursday 23 July 2009

TRIBUNAL SITTING No. 32 / CASE 2

CASE REFERENCE: 808145/AB

Service provider:	Digital Select Limited, London
Information provider:	childbenefit.org.uk – Digital Select Limited housingbenefits.org.uk - Digital Select Limited ukpi.org - Asigrati Consultants Limited
Type of service:	Fixed-line – automated recorded advice lines.
Service title:	N/A
Service number:	09066350655, 09066353203, 090665172417
Cost:	£1.50 per minute for all three 0906 phone numbers
Network operator:	Oxygen8 Communications
Number of complainants:	N/A

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

#### BACKGROUND

The PhonepayPlus Executive (the 'Executive') was contacted by the BBC's 'Watchdog' programme on 5 May 2009 and informed that the programme had been made aware of complaints received from members of the public, the Home Office, Her Majesty's Revenue and Customs, and the Department for Work and Pensions in relation to the following premium rate numbers operating on the following services:

childbenefit.org.uk - 09066350655  
housingbenefits.org.uk - 09066353203  
ukpassportoffice.org.uk – 09065172417

Complainants stated that the information contained on the recorded messages of these services was available for free on the official websites and advice lines of the Home Office, Her Majesty's Revenue and Customs, and the Department for Work and Pensions. Consumers who called the Information Provider's 0906 numbers were provided with the same information at a cost of £1.50 per minute. In relation to the child benefit service, callers were kept listening to a 'questions and answers' IVR message for up to 28 minutes in order to acquire this information.

#### Complaint Investigation

Monitoring the website child-benefit.org.uk and the number 09066350655

The Executive called the 0871 number promoted on the website child-benefits.org and was put through to an automated recording which repeated the information provided on the website. If callers wanted answers to any of those questions, they were then directed to call a 0906 number at a cost of £1.50 per minute. The Executive noted that the pricing

information of the premium rate number was given immediately after the IVR gave that number. A call to the 0871 number lasted approximately one minute and 20 seconds.

The Executive called the 0906 number. At the beginning of the call, the pricing information was given to callers and the questions on the website were again repeated but on this occasion each question was followed by a recorded answer. The recorded message lasted 19 minutes and 34 seconds. Throughout the recorded message, advice was given to contact the Child Benefit Office, the address and number of which would be provided 'shortly'. These contact details were not supplied until the end of the recorded message. At no point was the Executive given any IVR options or the opportunity to be connected to a live operator to gain advice regarding a specific question. As such a completed call made to this 0906 number would cost the caller up to £28.50 (19 minutes at £1.50 per minute).

#### Monitoring the website housing-benefits.org.uk and the number 09066353203

The Executive called the 0871 number promoted on the website housing-benefits.org where there was an automated recording which repeated the questions listed on the website. If callers wanted answers to any of those questions, they were then directed to call a 0906 number at a cost of £1.50 per minute. The Executive notes that pricing information was said directly after stating the premium rate number. The call to the 0871 number lasted approximately one minute and 26 seconds. In this instance, the Executive noted that the 0906 number was repeated.

The Executive called the 0906 number. At the beginning of the call, the questions on the website were again repeated but on this occasion each question was followed by a recorded answer. This recorded message lasted just over seven minutes. Throughout the recorded message, advice was given to contact the Housing Benefit Department, the address and telephone number of which would be provided 'shortly'. These contact details were not supplied until the end of the recorded message. At no point was the Executive given any IVR options or the opportunity to be connected to a live operator to gain advice regarding a specific question. As such, a completed call to the 0906 number cost £10.50

#### Monitoring the website ukpi.org and the number 09065172417

The Executive called the 0871 number promoted on the website ukpi.org where there was an automated recording which repeated the information provided on the website. If callers wanted answers to any of those questions, they were then directed to call a 0906 number at a cost of £1.50 per minute. The Executive notes that pricing information was said directly after stating the premium rate number. The call to the 0871 number lasted approximately one minute and 28 seconds.

The Executive called the 0906 number. At the beginning of the call, pricing information was given to callers and the questions on the website were again repeated but on this occasion each question was followed by a recorded answer. This recorded message lasted nine minutes and eight seconds. Throughout the recorded message, advice was given to contact the UK passport office, the address and number would be provided 'shortly'. These contact details were not supplied until the end of the call. At no point was the Executive given IVR options or connected to a live operator to gain advice regarding a specific question. As such, a completed call to this 0906 number would cost a caller an average of £13.50.

## **Standard Procedure**

The Executive conducted this matter as a standard procedure investigation in accordance with paragraph 8.5 of the Code. The Executive sent a breach letter dated 23 June 2009 to the Service Provider raising potential breaches of paragraphs 5.4.1a, 5.4.1b, 5.4.2 and 5.7.2 of the PhonepayPlus Code of Practice (11<sup>th</sup> Edition Amended April 2008) ('the Code'). The Tribunal made a decision on the breaches raised by the Executive on 23 July 2009 having heard informal representations from Service Provider (who was also acting as the Information Provider in relation to two of the services).

## **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 when the words 'Child benefits' and 'UK Passport Information' were searched for on the Google search engine, the first sponsored links that appeared were the Service Provider's websites named child-benefits.org and ukpi.org. The Executive submitted that it was of the opinion that users might consider these to be the official government websites regarding child benefits and UK passport information because of the Service Provider's use of the 'org' suffix in the registered web addresses.

The Executive submitted that it was of the opinion that that members of the public with queries regarding child benefit, UK passport information or housing benefit could be misled into calling both the 0871 and 0906 numbers at a cost of up to £28 in order to attain information or resolve their questions, thinking them to be the official numbers of those agencies

The Executive noted the presence of a disclaimer that could be read if users scrolled to the bottom of the webpage, the disclaimer stated as follows:

*"Please ensure that you are fully versed with our Terms and Conditions and Disclaimer before you use this service which is not affiliated with HM Revenue & Customs (HMRC)."*

Notwithstanding the presence of this disclaimer the Executive submitted that it was of the opinion that because the 0871 contact number was provided at the top of the page and the disclaimer was only visible when users scrolled down, there was a possibility that users could enter the website and call the number without ever scrolling down and seeing the disclaimer.

2. **childbenefit.org.uk (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider made reference to the relevant screenshot of the Google search engine webpage and noted that not only was its service described as "Child Benefit Information" but that Her Majesty's Revenue and Customs (the HMRC) had its advert for direct.gov.uk immediately below its own and the HMRC advert clearly stated that it was the 'official guide'.

### **housing-benefits.org (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that it noted that the Executive's alleged breach of paragraph 5.4.1a of the Code did not apply to the website housing-benefits.org service.

### **ukpi.org (Digital Select Limited – Service Provider)**

The Service Provider made reference to a previous adjudication by the Tribunal in relation to the ukpi.org (UK passport) service in November 2007. It stated that in the previous adjudication a breach of 5.4.1a of the Code had been upheld and that following the decision the Service Provider had liaised with the PhonepayPlus Compliance team who had subsequently deemed the service as compliant in relation to the breach of paragraph 5.4.1a of the Code. The Service Provider stated that the issues raised in relation to this alleged 5.4.1a breach now raised by the Executive had neither been raised by PhonepayPlus as being in breach of Paragraph 5.4.1a in relation to the previous adjudication, nor were they addressed as part of the previous compliance advice.

The Service Provider also relied upon the fact that the 'Identity and Passport Service' of the Home Office also advertised its service ([direct.gov.uk/passports](http://direct.gov.uk/passports)) on the Google search engine. It argued that it had no choice as to the placement or location of its advertisements on the search result pages. Google use their own algorithm to determine the position of advertisements and this position may change from search to search.

The Service Provider stated that the ukpi.org service had made use of an 'org' website address at the time of the previous adjudication and subsequent compliance advice but this was not raised at that time or since as an issue that could cause a potential breach of Paragraph 5.4.1a of the Code.

The Service Provider stated that the position of the disclaimer on the website had been deemed compliant by the Executive following the previous adjudication.

3. The Tribunal considered the evidence and concluded that the design of the service and the websites were likely to cause the reasonable consumer to consider that they were an official service of the relevant agency and that they were therefore misleading. The Tribunal found that factors which contributed to this misleading impression were the use of the 'org' suffix for a commercial website, the 'public information' nature of the subject matter without a sufficient disclaimer and (in relation to the Child Benefit service) and the click-through link to 'Apply Online' for child benefit. The Tribunal did not accept the Service Provider's argument that the disclaimer would have assisted the user in determining the nature of the website because, on both the passport and child benefit websites, the user was required to scroll down to read the disclaimer whilst the 0871 number was prominent at the top of the page. 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 customers using the Child Benefit and Housing Benefit services were likely to be on benefits or experiencing difficult financial circumstances and that a service operating a £1.50 per minute helpline providing information and/or advice (which was available for free on the official government websites) appeared to take unfair advantage of the characteristics or circumstances which appeared to make these consumers vulnerable.

2. **childbenefit.org.uk (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that Child Benefit was available to anyone, regardless of their financial situation, who had a child under the age of 16 (or under 19 if in full-time education) and therefore the service was not targeted at vulnerable individuals experiencing financial hardship.

The Service Provider stated that the service did not operate on a 'gov.uk' domain which is commonly and widely known to be the official domain for UK Government websites. The Service Provider also stated that the Google search page advertisement and website made no claim to be an official service and a disclaimer was clearly visible in the main body of the webpage stating that the service was not affiliated with the HMRC. It stated that having the disclaimer in the main body of the webpage had been previously approved by PhonepayPlus in relation to the ukpi.org service template.

**housing-benefits.org (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that the housing-benefits.org service did not operate on a 'gov.uk' domain which is commonly and widely known to be the official domain for UK Government websites. Additionally, the Google search page advertisement and housing-benefits.org website make no claim to be an official service and a disclaimer was clearly visible in the main body of the webpage stating that the service was not affiliated with the government body. The user did not need to scroll down the webpage to see the disclaimer. In addition, it stated that the website clearly stated that it was offering housing benefit information. It stated that having the disclaimer in the main body of the webpage had been previously approved by PhonepayPlus in relation to the ukpi.org service template. Furthermore, the recent compliance advice provided by PhonepayPlus suggested that benefit-related information services did not breach 5.4.1b of the Code when the disclaimer is clear and prominent in the promotional material.

The Service Provider stated that although housing benefit was paid to those of limited financial means, not all users of its service are claimants or potential claimants. It stated that users could clearly see the service was not the official service operated by HMRC, DWP or direct.gov. It also stated that both the website and the 0871 promotional material clearly stated the cost of using the service before connection and that, on connection to the 0906 premium rate number, pricing information was given again in accordance with the Code. The Service Provider stated that it was at the consumer's discretion to decide whether or not to purchase

the service and the relatively low traffic levels and no consumer complaints would show this statement to be true.

**ukpi.org (Digital Select Limited - Service Provider)**

The Service Provider stated that it noted that the Executive's alleged breach of paragraph 5.4.1b of the Code did not apply to the website ukpi.org service.

1. The Tribunal considered the evidence and found no breach in relation to the websites childbenefit.org.uk and ukpi.org, as applicants for child benefit or a passport are not means tested. However, the Tribunal found that there was a breach in relation to housing-benefits.org, in that housing benefit is means tested and those who claim housing benefit, or seek information about claiming such a benefit, are likely to be of limited financial means and to be vulnerable within the meaning of paragraph 5.4.1b of the Code. This service had charged these vulnerable consumers for information that was available free on the official government websites. The Tribunal therefore upheld a breach of paragraph 5.4.1b of the Code in respect of that service only.

**Decision: UPHELD**

**ALLEGED BREACH THREE  
DELAY (Paragraph 5.4.2)**

*'Services must not be unreasonably prolonged or delayed.'*

1. The Executive had noted during its monitoring that all three services operated an automated recorded message answering the questions set out on the service websites. It submitted that throughout the 20 minute automated recorded message for the child benefit service, callers were told that should they require additional information, the contact details of the Child Benefits Centre would be provided 'shortly'. The Executive submitted that this information was only given to callers at the very end of the call and there had been no option to access the address information via an IVR option.
2. **childbenefit.org.uk (Digital Select Limited - Service Provider and Information Provider)**  
The Service Provider stated that the child-benefit.org.uk service used the same audio template as the ukpi.org service, which had been the subject of a previous adjudication and compliance advice. It further submitted that, in order to minimise any potential confusion to the caller, the audio message on the premium rate number covered each subject on a topic by topic basis in the same sequence as appeared on the service website and on the 0871 recorded message. The Service Provider also stated that the premium rate calls did not exceed the £30 threshold for recorded information services set by PhonepayPlus and that the audio message was truncated at the end of the premium rate information message, in order to ensure that this threshold could not be exceeded.

**housing-benefits.org (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that the housing-benefits.org service used the same audio template as the ukpi.org service, which had been the subject of a previous adjudication and compliance advice. It further submitted that, in order to minimise any potential confusion to the caller, the audio message on the child-benefit.org.uk premium rate number covered each subject on a topic by topic basis in the same

sequence as appeared on the service website and on the 0871 recorded message. The Service Provider also stated that the premium rate calls did not exceed the £30 threshold for recorded information services set by PhonepayPlus and that the audio message was truncated at the end of the premium rate information message, in order to ensure that this threshold could not be exceeded.

#### **ukpi.org (Digital Select Limited - Service Provider)**

The Service Provider made reference to the Executive's submissions in relation to the alleged breach of paragraph 5.4.1b of the Code and stated that no breach of paragraph 5.4.2 of the Code had been raised by the Executive in relation to the ukpi.org service in the previous adjudication or previous compliance advice. The Service Provider stated that, had the Executive felt that if its service was in breach, then it would have been addressed at that time. The Service Provider also stated that the premium rate calls did not exceed the £30 threshold for recorded information services set by PhonepayPlus and the audio message was truncated at the end of the premium rate information message, in order to ensure that this threshold could not be exceeded.

3. The Tribunal considered the evidence and concluded that the premium rate recorded message of each service had been so constructed to retain the consumer on the service for an unreasonably prolonged period. The Tribunal took into account the fact that the caller had no opportunity to obtain an answer to a specific question as would have been the case had an IVR been in place. The Tribunal also found that the consumer had been induced to hang on by being informed that he or she would be given a phone number for free advice but this number was only given towards the end of the recorded message. The Tribunal therefore upheld a breach of paragraph 5.4.2 of the Code.

**Decision: UPHELD**

#### **ALLEGED BREACH FOUR DELAY (Paragraph 5.7.2)**

*'Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Spoken pricing information must be easily audible and discernible.'*

1. The Executive submitted that the 0906 number and the call cost of £1.50 per minute for all three services was stated in small font at the very bottom of each service's landing webpage. The Executive also submitted that users would have had to scroll down to view this information and that the information was not prominent as the text was light grey on a white background.

#### **2. childbenefit.org.uk (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that the Executive had raised an alleged breach of paragraph 5.7.2 of the Code in a previous adjudication in relation to the ukpi.org service, and had been found not to be in breach. The Service Provider stated that the child-benefit.org.uk service was a duplicate of the ukpi.org service (other than the content provided) and so the Tribunal should also reject the alleged breach.

#### **housing-benefits.org (Digital Select Limited - Service Provider and Information Provider)**

The Service Provider stated that the Executive had raised an alleged breach of paragraph 5.7.2 of the Code in a previous adjudication in relation to the ukpi.org service, and had been found not to be in breach. The Service Provider stated that the child-benefit.org.uk service was a duplicate of the ukpi.org service (other than the content provided) and so the Tribunal should also reject the alleged breach.

### **ukpi.org (Digital Select Limited - Service Provider)**

The Service Provider stated that the Executive had raised an alleged breach of paragraph 5.7.2 of the Code in a previous adjudication in relation to the ukpi.org service, and had been found not to be in breach. The service Provider made reference to the Tribunal's conclusion that it had been unable to uphold a breach of paragraph 5.7.2 of the Code as the promotion of the 0906 premium rate number on the 0871 number had been compliant with the Code as on the website that pricing information had been of the same size and in the same position as the 0906 premium rate number.

3. The Tribunal noted that paragraph 5.13 of the Code provides "*Wherever a premium rate service promotes or is promoted by, a non-premium rate electronic communication service, both services will be considered as one where, in the opinion of PhonepayPlus, it is reasonable to do so.*" The Tribunal concluded that, in this case, it was reasonable to consider the 0871 non-premium rate number as promoting the 0906 premium rate number and the various websites were to be considered as a promotion of the 0906 service. Accordingly, the promotion of the 0871 number on the website should have contained pricing information about the 0906 premium rate number which was easily legible, prominent, horizontal and presented in a way that does not require close examination. Pricing information of such prominence should have been available to consumers at the time they were considering making use of the 0871 service. The Tribunal found that the pricing information on the website in relation to the 0906 number was not sufficiently prominent having regard to its position, its size and its design. The Tribunal therefore upheld a breach of paragraph 5.7.2 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 behaviour of the Information Provider was wilful as the service was designed to mislead and prolong the amount of time the consumer spent on the premium rate call.
- There was material consumer and societal harm as the service had the likely effect of undermining consumer confidence in official government websites.
- The cost paid by the individual was high, particularly when the information could be obtained free elsewhere. Calls to the 0906 numbers were charged at £1.50 a minute and callers could be kept on hold for up to 19 minutes.
- The service was harmful to people who were likely to be on housing benefit and, as such, were financially vulnerable.

In mitigation, the Tribunal noted the following factors:



- The Tribunal did not take into account the compliance advice sought by the Service Provider (who also acted as Information Provider in relation to housingbenefits.org.uk and childbenefit.org.uk) in relation to a previous adjudication as it had been under an obligation to obtain that advice as a result of the previous Tribunal sanction. The Tribunal further noted that in the previous adjudication the Service Provider which had been required to take compliance advice had been Stealthnet Limited, a separate legal entity with a separate responsibility to seek compliance advice. The operation of the service had been subsequently moved to the current Service Provider - Digital Select Limited.
- The Service Provider did co-operate with the Executive.

Having taken into account the aggravating factors and the mitigating factors, 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 Service Provider seeks and implements compliance advice to the satisfaction of the Executive, whichever is the longer.