

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 25 June 2009 TRIBUNAL SITTING No. 30 / CASE 6

CASE REFERENCE: 805401/AP

Service provider & area:	Digital Select Limited, London
Information provider & area:	Redstone Recovery Limited
Type of service:	Debt Recovery Service
Service title:	Redstone Recovery Limited
Service number:	0906 635 5439
Cost:	£1.50 per minute
Network operator:	Oxygen8 Communications
Number of complainants:	1

**THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER BY AN
EMERGENCY PROCEDURE
UNDER PARAGRAPH 8.6 OF THE CODE**

BACKGROUND

The PhonepayPlus Executive (the 'Executive') received a complaint forwarded by Stockport Metropolitan Borough Council which related to a debt recovery service operating on the premium rate number 0906 6355439. The complainant stated that he had received a letter from Redstone Recovery Limited (the 'Information Provider') claiming that it was acting on behalf of its client and attempting to retrieve an outstanding debt of £4,321.00. This correspondence informed the complainant that he had seven days to pay this amount and failure to do so would result in legal proceedings. The correspondence also informed the complainant that it could direct any queries to the premium rate telephone number 0906 6355439. It was subsequently established by Stockport Metropolitan Borough Council that the Information Provider's address as provided on the letter did not exist.

The Executive monitored the premium rate telephone number and was put on hold for approximately four minutes at a cost of £1.50 per minute and was then diverted to an answering machine enabling callers to leave a voice message. The Executive noted on calling the premium rate telephone number that the cost of the call was stated, but the correspondence received by the individual complainant failed to provide this information.

Complaint Investigation

Emergency Procedure

The Executive decided to investigate the service using the Emergency Procedure under paragraph 8.6 of the Code. A Formal Emergency Procedure letter was issued by the Executive dated 21 May 2009 addressed to Digital Select Limited (the 'Service Provider'). A response was made by the Service Provider in a letter dated 21 May 2009.

A breach letter was raised by the Executive dated 28 May 2009 alleging breaches of paragraphs 5.4.1.a, 5.4.2 and 5.7.2 of the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code'). The Service Provider responded to the breaches in a letter dated 10 June 2009.

The Tribunal made a decision on the breaches raised by the Executive on 25 June 2009 having heard informal representations from the Service Provider.

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 made reference to a statement made by the Trading Practices Officer in Stockport who has been dealing with these complaints, the statement stated the following:

"I have received nine complaints regarding Redstone Recovery. Each complainant has received a letter either through the post or by hand stating the "debtor" owes amounts from £3000 to £5000. The letters are a template with the address and the amount owed being handwritten. The letter does not state who Redstone are collecting on behalf of or on what the complainant has defaulted on. Those who have received a demand letter claim they are not in debt. I visited the address at the head of the letter. There is no "Unit 6" on the industrial estate and the landlord has assured me that Redstone are not located there and never have been."

The Executive submitted that the Trading Practices Officer had indicated that other Trading Standard Departments across the country had received similar complaints and that they were in the process of gathering this information for the Executive.

The Executive submitted that it was of the opinion that recipients of this correspondence had been misled into believing they had incurred an outstanding debt and as a consequence, were misled into calling the premium rate number at a cost of £1.50 per minute.

2. The Service Provider stated that it was unaware the Information Provider had been operating the service in the manner set out in the Executive's submissions. It had believed that the service was still being tested.

The Service Provider had provided details to the Information Provider on the terms and conditions required in relation to advertisements. It stated that the Information Provider had been made fully aware of what was required to remain compliant with the Code.

The Service Provider stated that it had not received any promotional material from the Information Provider and that, had the Executive not requested it to terminate the service, the Service Provider would have suspended and terminated the service the following day as the service, as by that stage, the service would have generated revenue for 500 minutes.

The Service Provider stated that its policy was to allow the Information Provider to generate revenue for a maximum of 500 minutes before suspending or terminating the service if no promotional material had been received; this allowed the Information Provider the opportunity to create the promotion material with the allocated number and test that the number was setup as required. The Service Provider stated that this policy served to ensure that there was minimum consumer harm. The Service Provider stated that it was a contractual requirement for the Information Provider to provide copies of their promotional material.

3. The Tribunal considered the evidence and concluded that it was satisfied that recipients of the correspondence had been misled into believing that they had incurred an outstanding debt and as such were misled into calling the premium rate number. The Tribunal therefore decided to uphold a breach of paragraph 5.4.1a of the Code.

Decision: UPHELD

**ALLEGED BREACH TWO
FAIRNESS - DELAY (paragraph 5.4.2)**

'Services must not be unreasonably prolonged or delayed.'

1. The Executive submitted that it had monitored the service on several occasions and each time had been kept on hold for approximately four minutes before being put through to an answering machine. The Executive submitted that although recipients of this letter had been informed of the cost of the call in the IVR message, the Executive was of the opinion that individuals making the call would have remained on hold because they would be concerned about the issue of the outstanding debt.
2. The Information Provider stated that it was unaware that the Information Provider was operating the service in this way and that it had believed that the service was still being tested. Furthermore, it stated that it had setup the service to play the introduction message, which included announcing details on call costs to ensure the service complied with the Code.
3. The Tribunal considered the evidence and found that the Executive had tried on several occasions to speak to an individual and had always been put on hold for four minutes and subsequently put through to an answering machine. The Tribunal concluded that service had been unreasonably prolonged and delayed. The Tribunal therefore decided to uphold a breach of paragraph 5.4.2.

Decision: UPHELD

ALLEGED BREACH THREE

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 Stockport Metropolitan Borough Council had provided the Executive with an example of the correspondence received by complainant(s). The Executive noted that the last paragraph in this correspondence had stated:

“By agreeing a payment plan with us to clear this debt today call this number above, so further action could be prevented.”

The Executive submitted that the letter had failed to inform users what the charge would be for calling the premium rate number.

The Executive submitted that on calling the premium rate number users were informed at the beginning of the IVR message that the cost of the call was £1.50 per minute and that network charges may vary, however it was the opinion of the Executive that pricing information should also have been provided on the correspondence.

2. The Service Provider stated that it had not received any promotional material from the Information Provider and had not been aware that the service was being promoted in this manner. The Service Provider stated that it had ensured there was an introduction message that complied with the Code, ensuring that callers were informed of the call costs immediately.
3. The Tribunal considered the evidence and found that, in spite of users being informed of the cost of the call at the beginning of the IVR message, the letter had failed to inform users as to the cost of phoning the premium rate number. In the absence of this information the Tribunal concluded that users had not been fully informed of the cost of using the service in a clear and straight forward manner. The Tribunal therefore decided to uphold a breach of paragraph 5.7.1 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. The service offered no further insight into the debt purported to be outstanding by the Information Provider;

- The behaviour of the Information Provider was deliberate with regards to the issuing of the letter;
- There was material consumer harm as the letter would have caused distress especially in view of the current economic climate and recession;
- The cost paid by individual consumers was high. Users were left on hold for four minutes and incurred charges of up to £6.00.

In mitigation, the Tribunal noted the following factors:

- The Service Provider co-operated with the Executive during the investigation.

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

The Tribunal therefore decided to impose the following sanctions:

- A Formal Reprimand;
- A fine of £2,000;
- Claims for refunds are to be paid by the Service Provider for the full amount spent by complainants, except where there is good cause to believe that such claims are not valid.