

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

## TRIBUNAL DECISION

Thursday, 12 November 2009  
TRIBUNAL SITTING No. 40 / CASE 3  
CASE REFERENCE: 808216/CB

Information provider:	Mobiya Limited, Oxfordshire
Service provider:	Oxygen8 Communications Limited, West Midlands
Type of service:	Contact and Dating
Service title:	Txt Dater
Service numbers:	66121 and 88833
Cost:	66121 – 25p per message 88833 - £1.50 per message
Network operator:	Mobile Operators
Number of complainants:	0 (result of internal monitoring)

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

#### BACKGROUND

On 17 June 2009, the PhonepayPlus Research team conducted initial monitoring of the 'TXT DATER' service as accessed via the dailysport.com website. The service was promoted via a banner advert stating '*15,000 Massage & escort girls throughout the UK – updated every 30 seconds!*'

On 25 June 2009, the Executive carried out further monitoring of the service which went into greater depth, and also undertook research as to how the '*Mobiya classified*' service appeared to operate. Consumers were charged £1.50 to receive a text message containing contact details of the user profile that they had selected. The Service Provider had contracted to supply the shortcodes for this service to the Information Provider who, in turn, used 'Sport Newspapers Limited' to promote the service.

The '*TXT DATER*' service was meant to operate as a contact and dating service where individual users could upload their profiles and contact one another in private; this appeared to have been abused by individuals advertising as prostitutes in order to gain clients. In addition to this the '*contact and dating*' service appeared to have been poorly managed by the Service Provider and Information Provider who had allowed the service to be used for these types of advertisements, this poor service management was further demonstrated when taking into account the references to "escort girls" in the banner advert and the nature of the advertisements this type of service would therefore be likely to attract.

#### The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.7 of the Code.

The Executive sent a formal investigation letter dated 9 September 2009 to the Service Provider, raising a potential breach of paragraph 5.3.1g of the PhonepayPlus Code of Practice (11<sup>th</sup> Edition Amended April 2008) ('the Code'). The Service Provider provided the service/Information Provider pass-through forms on 15 August 2009. The Information Provider pass-through was granted by the Executive and the formal investigation letter was re-issued on 15 August 2009. A full response was received from the Information Provider on 16 August 2009.

The Tribunal made a decision on the breaches raised by the Executive on 12 November 2009, having heard Informal Representation from the Information Provider and its representative.

## **SUBMISSIONS AND CONCLUSIONS**

### **ALLEGED BREACH ONE**

#### **HARM AND OFFENCE (PROSTITUTION) (Paragraph 5.3.1g)**

*“Services and promotional material must not, or must not be likely to:  
g promote or facilitate prostitution”*

1. The Executive submitted that the Txt Dater service was monitored by the PhonepayPlus Research and Investigations teams extensively during June 2009.

It submitted that the monitoring had identified that the service had promoted the profiles of individuals who were advertising prostitution services and that, therefore, the premium rate service was facilitating prostitution by providing the means (via premium rate text message) to supply contact details of prostitutes to consumers thereby enabling direct contact to be made.

The Executive referred to quotes taken from a small sample of profiles that were seen to be promoting prostitution, two of these examples read as follows:

*“Horny Hot Blonde..... £40 for a full personal service, extra £10 for O.W.O.....bring your horny thoughts to me and we can put them in action”*

*“Xxx Sexy Gemma £100ph OUTCALLS this week, a classy new OUTCALL escort in the LS1 area.....No \*A Levels\*, Bondage, or couples. Rates 30 mins - £80, 1 hour - £120, 2 hours £220”*

The Executive submitted that having identified many profiles of this nature on the Txt Dater service it had then followed the process put in place by the Information Provider to obtain the contact details for three of the profiles. One response read as follows:

*“We have received your response to advert GPDAGAM please contact the advertiser directly on this number XXXXXXXXXXXX Text your own FREE ad to 66121 now”*

In light of having monitored many promotions on the Txt Dater service, and having used the service and received the mobile numbers for three of the contacts who had advertised prostitution services, the Executive was of the opinion that a breach of 5.3.1g of the PhonepayPlus Code of Practice had occurred.

2. The Information Provider stated that its core business was providing technology services to media partners and it was not a major player in the dating or adult entertainment business.

It stated that as part of its service it aggregated classified advertisements from websites and newspapers. The adverts were then indexed and screened before being published on branded websites.

It stated that the Txt Dater service had been under trial in partnership with a national newspaper (the Daily Sport) which had promoted the Txt Dater brand on its website. The Information Provider had provided the technology to index and publish the content and operated the shortcode for consumers to contact each other about the adverts.

The Information Provider stated that, perhaps somewhat naively, it had allowed inappropriate adverts to be fed into the system from other UK affiliate web sites for re-publication on the Txt Dater web site. It stated that it had worked with a number of media partners who provided most of the adverts that had been shown in evidence.

It stated that the Txt Dater service had been a few months old and still under development. The Daily Sport and the Information Provider had viewed the service as an experimental trial and, therefore, not all of the normal stringent production filtering and screening processes were in place to block prohibited consumer-generated content. The Information Provider stated that it had not created or edited any of the content shown in evidence and at no time had it solicited advertisements promoting prostitution.

The Information Provider stated that the board of directors and management sincerely apologised for the alleged breach of the PhonepayPlus Code of Practice.

3. The Tribunal considered the evidence and concluded that the advertisements viewed by the Executive on the Txt Dater website had advertised prostitution services. Furthermore, during the course of its monitoring, the Executive had received several text message responses from the service which had provided contact details for specific individuals who were advertising prostitution services. The Tribunal found, therefore, that the Txt Dater service had promoted and facilitated prostitution by providing a platform for these advertisements and enabling consumers to respond directly to those advertising prostitution services. The Tribunal upheld a breach of paragraph 5.3.1g of the Code.

### **Decision: UPHELD**

### **SANCTIONS**

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

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

- The behaviour of the Information Provider was careless: it had operated the service without due care and attention and had failed to put in place the necessary monitoring

for this type of service, particularly in light of the fact that the banner advert had promoted it as a massage and escort service.

In mitigation, the Tribunal noted the following factors:

- In some respects the breach had been caused by third parties as the advertisements had been posted by affiliates and individuals and the Information Provider was not responsible for producing the content of the advertisements. However, the Tribunal noted that the Information Provider had failed to have proper systems in place to screen adverts, which could have prevented this breach from occurring and the conduct of third parties could only be considered minor mitigation for this breach.
- The Information Provider did co-operate with the Executive as it immediately disconnected the service upon notification of the issue by the Executive.

The revenue in relation to this service was in Band 1 (£1-£5,000).

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 **moderate**.

Having regard to all the circumstances of the case, including the number and seriousness of the Code breaches, and the revenue generated by the service, the Tribunal decided to impose the following sanctions:

- Formal Reprimand;
- A fine of £2,000