

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 30 April 2009 TRIBUNAL SITTING No. 26 / CASE 3
CASE REFERENCE: 764291/DL

Information provider & area:	SMS Digital Future Limited
Service provider & area:	2ergo Limited
Type of service:	SMS Auction service
Service title:	SMS Auction Club
Service number:	65556
Cost:	£1.50 per service message, up to £24.00 per month.
Network operator:	Mobile Operators
Number of complainants:	45

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

BACKGROUND

PhonepayPlus was alerted by the public to the receipt of promotional messages followed by charged service messages which were apparently unsolicited. These messages related to a 'live auction', accessed by way of SMS text message bids made in response to chargeable SMS text auction updates which had been sent to consumers handsets by the Information Provider.

The 'SMS Auction Club' was promoted within an in-flight magazine and on the Internet. The messages related to a website called "for-auction.info". The complainants stated that they had not viewed any promotion or engaged with the service prior to receiving messages, promotional or otherwise, on their handsets.

The Service

The service was promoted as an SMS auction. According to the Information Provider, this service was promoted in the Easy Jet on-board magazine, and through its website www.for-auction.info. According to the Information Provider there were 3 tiers to the service entry after seeing the promotion. These included a Web entry (or e-mail entry as an alternative), followed by a WAP confirmation and then finally an SMS MO opt-in.

Once the user was subscribed, the service appeared to work by providing the user the opportunity to bid on items using PSMS in an (and up to) 8 stage bidding process subscription charged at £6 per week.

Complaint Investigation

Standard Procedure

The Executive issued the original breach letter on 25 September 2008 raising breaches of paragraphs 5.2, 5.4.1a, 3.3.3, 5.7.1, 5.8, 7.12.3a and 7.12.5 of the PhonepayPlus Code of Practice (11th Edition, Amended April 2008) (“the Code”). This breach letter was forwarded to the Information Provider by the Service Provider. The breach letter was re-issued to the Information Provider following acceptance of the Information Provider pass through on 7 October 2008. The Information Provider responded to the breaches in a letter dated 9th October 2008. The Executive issued Requests for Information to the Service Provider relating to the Information Provider’s response and received a helpful reply that has impacted upon some of the breaches raised in the formal investigation letter. Following the Information Provider’s response to the breach letter the Executive sent an addendum on 31 March 2009 raising a breach of paragraph 8.3.3 of the Code.

The Tribunal made a decision on the breaches raised by the Executive on 30 April 2009.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

LEGALITY (Paragraph 5.2)

‘Services and promotional material must comply with the law. They must not contain anything which is in breach of the law, nor omit anything which the law requires. Services and promotional material must not facilitate or encourage anything which is in any way unlawful.’

1. The Executive submitted that under Paragraph 22(2) of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the “Regulations”), it is an offence to send unsolicited promotions using electronic mail (including text messages) for direct marketing purposes, unless (1) the recipient has specifically consented to receiving such promotions. This is sometimes called ‘a hard opt-in’, or (2) the recipient’s details were obtained whilst purchasing a similar or related product or service to that now being promoted and the recipient was given the opportunity, when his details were collected, to opt out (without charge) of receiving further communications, and is given the same opportunity in each subsequent communication. This is sometimes called a ‘soft opt-in’.

The Executive considered there to be a breach of paragraph 5.2 of the Code on the following Grounds:

Ground 1

The Executive made reference to an ‘auction log’ supplied by the Information Provider dated between 5 and 22 March 2008. The Executive had analysed the ‘auction log’ and examined the number of messages that had been successfully delivered to the users and how many had been rejected. The Executive submitted that this analysis undermined the Information Provider’s argument that

all users had been fully opted-in to the service prior to the issuance of service messages.

The Executive submitted that a large proportion of service messages sent had been rejected or 'not received'. The Executive considered that if the users had all fully opted-in to the service and were expecting to receive auction updates then a majority of the messages would have been delivered successfully.

The Executive considered that the Information Provider's claims regarding opt-in information were undermined by the quantity of messages that had been rejected during the course of one auction and it appeared from the logs that recipients with no knowledge or expectation of the auction updates had been sent messages encouraging the recipient to engage with a premium rate service (i.e. promotional material).

The Executive submitted that there was a high percentage of charged users who had failed to interact with the service and who had only responded in order to attempt to get out of the service and that this demonstrated the number of users who appeared to have not been clearly informed about the nature and costs of the service. The Executive submitted that the Information Provider had not been able to demonstrate direct or implicit consent on the part of the complainants and other service users to receive either the WAP PUSH or text message and as a result these promotional messages were considered by the Executive to have been unsolicited.

Ground 2

The Executive submitted that the discrepancies on the Web and WAP logs undermined the evidence in support of the Information Provider's submissions that all users had entered their mobile numbers on the website and engaged with the three tiers of entry. In particular, the evidence provided by the Information Provider showed long delays between the WAP messages being sent and being received/activated by the user and the website registration evidence appeared to show clusters of users registering on the same day. The Executive made reference to the complainant's comments which explicitly disputed that they had subscribed to the "SMS Auction Club". and it therefore submitted that the service messages, encouraging the recipient to engage with a premium rate service (i.e. promotional material), had been received by consumers without consent.

Ground 3

The Executive made reference to the message logs of various mobile phone numbers and submitted that its analysis of the message logs provided no evidence to suggest that there had been valid opt-ins for service messages from 'SMS Auction Club' on short-code 65556. The Executive further submitted that its analysis undermined the opt-in information provided by the Information Provider in relation to the "SMS Auction Club" service. The Executive considered that there was insufficient evidence of users entering their numbers on the website prior to receiving service messages encouraging them to participate in a premium rate service. The Executive also submitted that the message logs pre-dating migration to shortcode 65556 related to 'SMS Auction Club' text messages that were issued and charged on shortcode 86500 and that the service messages on this message log, supplied by the Service Provider for the 86500

shortcode, referred to another website and not www.for-auction.info. The Executive submitted that this undermined the Information Provider's statement that all numbers were entered via the website www.for-auction.info and that it suggested that the numbers had been obtained from a third party.

2. The Information Provider responded to the Executive's allegations as follows:

Ground 1

The Information Provider stated that there was no lack of valid consent and consumers had not been misled. The Information Provider claimed it had obtained valid opt-ins from each subscriber. The Information Provider gave the following examples of why rejections were commonplace: a message may not reach the phone while it's out of network range (the main reason); messages expire after a certain amount of time (most expire after 24 to 48 hours), some messages time out going through the gateway and some messages may not be routed properly.

The Information Provider stated that the evidence of "negative messages" (including requests to stop the service) in the message logs only served to indicate that users wanted to opt out soon after they had entered the service, the consumers use of the STOP command served to demonstrate the Information Provider's compliance with the Code and Network Operator requirements as well as suggesting that consumers had been mindful of the service, pricing and opt-out information previously given to them.

The Information Provider stated that it was the consumer's decision whether or not to take part in the online auction and that there would never be a scenario where all users participated in a specific auction.

Ground 2

The Information Provider stated that all users had entered via the website and that it had provided web-opt evidence in support of its assertions. The Information Provider stated that in contrast the alleged complainants appeared to have no verifiable evidence to substantiate their allegations that they had not opted-in via the website.

The Information Provider stated that in relation to the WAP log, it was not unusual for users to request an advertisement and then, having received the same, to delay opening it before entering the service. The Information Provider stated that it had seen this occur on a number of occasions. There had also been occasions where the broadcasting service had been down which would attribute to the same occurrence.

Ground 3

The Information Provider referred to a particular number highlighted by the Executive and stated that that it could not explain why another short-code and website address were present on the call log and that it believed that there must have been a routing failure which was not within its control.

The Information Provider stated that all numbers for its auction service were entered through www.for-auction.info and had not been obtained through any

sharing arrangement with Wireless International Limited or any other third party. The Information Provider stated that there had been no other place for users to enter its auction service and that there were valid opt-ins for all users on 65556, as they were moved from 84253, where the opt-in had taken place. The Information Provider stated that the only way users were encouraged to enter the service was through the advertising and on the website. The decision to enter the service was on each occasion a fully informed decision on the user's part.

3. The Tribunal considered the evidence and concluded that there was an absence of credible opt-in evidence and that on a balance of probabilities it accepted the evidence of the complainants that they had not consented to receiving the messages which had been sent to them. The Tribunal therefore found that the messages had been sent in contravention of paragraph 22(2) of the Regulations. The Tribunal decided to uphold a breach of paragraph 5.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

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 considered there to be a breach of paragraph 5.4.1a of the Code on the following Grounds:

Ground 1

The Executive repeated its earlier submission (in relation to 5.2 of the Code) that users had not registered their details on the website and that the WAP PUSH message and landing page had not appeared to consumers in the way described by the Service Provider, and that consequently, the first message received by complainants, that could be confirmed by the Executive as relating to the service, was the message: *"FreeMSG: Important! Please reply with OK to confirm."* The Executive further submitted that replying 'OK' activated the service and the associated charges. The Executive considered that the consumer expectation on receiving the above message in isolation was that there was an important message waiting for them, that this message was not a commercial venture but an alert and that by replying to the message they would receive more information – rather than be entered into the service itself.

The Executive submitted that it appeared that the promotional message had misled consumers by omission, by failing to make clear that by responding 'OK' the user was activating a subscription service for which the consumer was charged £1.50 per message. The Executive submitted that as a result of the Information Provider's failure to give any detail or any indication that the service was a charged service via the free service message, the consumer was misled into opting into a service and being charged for a service which they did not fully understand.

The Executive highlighted that the consumer's apparent lack of understanding about the service was supported by its analysis of the 'auction logs' supplied by the Information Provider which showed a large number of "negative messages" (including requests to stop the service) being sent by users of the service.

The Executive further submitted that there was a high percentage of charged users who had failed to interact with the service and who only responded in order to attempt to exit the service. The Executive said, this demonstrated the significant number of users who appeared to have not been clearly informed regarding the nature and costs of the service. The Executive considered that its analysis supported the submission that consumers that had received charged service messages as a result of having been misled into responding to the first message rather than by consenting to a subscription service with knowledge of how it functioned.

Ground 2

The Executive accepted that the SMS Auction Service had run as described on the website and on the WAP landing page. The consumer expectation, provided that the service was being accessed with the necessary knowledge and understanding, was to engage in a live SMS auction for the cost of £12.00 per auction. The Executive submitted that the consumer expected the opportunity to bid in real-time for items, such as a mobile phone or an iPod music player. The Executive made reference to its analysis of the "auction logs" and submitted that the analysis suggested that users of the service offered by the Information Provider had been misled in relation to the "live" aspect of the auction.

The Executive observed that there was a significant delay in the auction process. Individual users would have only observed the message they received and not have seen the message in the context of the "real-time" running of the auction. In both auctions the second message, triggering the actual start of the bidding, was sent out *prior* to the first message reaching all recipients. As a result the Executive submitted that consumers were misled into believing the 'SMS Auction Club' involved "real-time" auctions and that the quickest and highest bids would be acknowledged by the Information Provider. The Executive submitted that the technology used by the Information Provider rendered it is impossible to deliver the service as described to the users.

1. The Information Provider responded to the Executive's allegations as follows:

Ground 1

The Information Provider stated that the Executive reasoning was premised on the Tribunal upholding its contention that "*FreeMSG: Important! Please reply with OK to confirm.*" was the first message received by complainants. The Information Provider stated that this clearly was the first text message but it could not be viewed in isolation from the volume of information given to the consumer prior to opt-in.

The Information Provider further stated that all users had received the service message prompt and welcome message after going through the sign in process via the website and WAP page, also the information on the website and in the WAP advertisement had stated that the initial auction was free of charge and that the following auctions would be charged.

The Information Provider stated that not every user would participate in every auction, even though they had signed up to the service.

Ground 2

The Information Provider stated that the auction had run in “real time” and was “live” and that any delay was not intentional and if such delay had arisen, was generic to all modes of electronic communication.

The Information Provider further stated that all messages had been sent out on time to all handsets contemporaneously with the auction start and following rounds and that the Information Provider had no control over delays at a network level.

3. The Tribunal considered the evidence and concluded in relation to Ground 1 that on the basis of complainants’ evidence that they had not seen the website or received a WAP message, the text message sent to them was the first communication they had received and was therefore misleading because it did not provide sufficient information for users to understand the implications of replying ‘OK’ to that message. The Tribunal noted that there was strong complainant evidence demonstrating actual confusion on the part of the consumer. In relation to Ground 2, the Tribunal concluded that the service was misleading because the auction was not a ‘real time’ live auction as it purported to be. The Tribunal expressed doubt that the service as designed could ever be truly ‘live’. The Tribunal decided to uphold a breach of paragraph 5.4.1a on both Grounds.

Decision: UPHELD on both Grounds.

ALLEGED BREACH THREE

ADEQUATE TECHNICAL QUALITY (Paragraph 3.3.3)

‘Service Providers must use all reasonable endeavours to ensure that all of their services are of an adequate technical quality.’

1. The Executive submitted that having analysed the “auction logs”, which showed a delay in issuance of service messages for the “real-time” auctions, it was of the opinion that the Service Provider had not used all reasonable endeavours to ensure that the platform used to issue the service messages for the SMS Auction Club service was of an adequate technical quality to perform the described auction. The executive elaborated that the ‘SMS Auction Club’ service had been presented as a “real-time” auction costing users £12.00 per auction (for 8 rounds at £1.50 per message).

The significant delay identified in the Executive’s analysis meant the auction started for some users long before others later down the ‘list’ of mobile numbers. Furthermore in regard to the potential speed at which users were able to respond to the SMS auction messages, the Executive submitted that the auction was not

run in “real-time” with only a small number of paying subscribers holding any chance of engaging in the auction at all.

2. The Information Provider stated that all reasonable endeavours had been used to ensure that the technology was “adequate” for its purpose and that it employed suitably qualified, industry recognised professionals. The Information Provider stated it was of the belief that no matter how well built and well intentioned a service was, there was no escaping the possibility that problems at a network, human or technological level would give rise to a difficulty.

The Information Provider further submitted that it had spent money from its own limited resources in developing its service, and it was constantly testing the service. When problems were identified, the Information Provider moved to resolve them as quickly as possible. The Information Provider stated that there were events which were wholly outside of its control could arise and that this was clearly explained in its terms and conditions, which were available on the website.

3. The Tribunal considered the evidence and found that there were clear instances of delays in the receipt of messages and instances where messages had been received out of order. The Tribunal therefore concluded that the service was not ‘real time’ or ‘live’ for a number of users and that the Service Provider had not ensured that the service was of adequate technical quality. The Tribunal therefore upheld a breach of paragraph 3.3.3 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR

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 repeated its earlier submission that users had not registered their details on the website as was suggested by the Service Provider and that the WAP PUSH message and landing page had not appeared to consumers in the way described by the Service Provider, and that consequently, the first message received by complainants was the message: *“FreeMSG: Important! Please reply with OK to confirm.”* The Executive submitted that consumers that had received this message in isolation would not have been made fully aware of the costs of the service prior to incurring charges, as the promotional message, above, did not contain any details of costs. The Executive further submitted that there appeared to be further aggravation by the fact that in the first message that contained pricing information, the pricing was set out in a confusing format that read as follows: *‘4 msgswk.£1.50 msg’* indicating that the price was £1.50 per message and there would be 4 messages per week – making a total cost of £6 per week.
2. The Information Provider denied that no pricing information had been provided to users prior to incurring a charge. The Information Provider stated that Executive

contention was based on the premise that the text message was the first communication received by the consumer and that the Information Provider had set out at length why that was not the case.

The Information Provider stated that all users involved in the service would have seen the website and thereby had access to the information on it, including pricing information which clearly stated that the service was a subscription service, the frequency of messages and Stop information.

The Information Provider further stated that it was technically impossible for a consumer to start receiving messages without having first entered the service via the WAP advertisement, triggering the WAP user message and the text user message (confirmation). The Information Provider stated that the message “FreeMSG: Important. Please reply with OK to confirm” would not have been received in isolation, and it was the third stage in an extended sign up process and would not have arisen unless the user clicked on “Enter” within the WAP page.

The Information Provider stated that there was no confusion regarding pricing as users were given the relevant details on the website and in the WAP page. The Information Provider stated that in regard to the style of the message, the fact that the Executive had had no difficulty in understanding it to mean 4 messages a week at £1.50 or £6.00 a week was in itself an indication of its clarity.

3. The Tribunal considered the evidence and concluded that there was not sufficient evidence of confusion amongst consumers for it to conclude that the first message which contained pricing information was not ‘clear and straightforward’ as required by the Code. However, the Tribunal noted that the format used was not as clear as it could be and could have the potential to cause confusion and it that it might well have come to a different conclusion if there had been evidence of actual confusion. The Tribunal did not uphold a breach of paragraph 5.7.1 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH FIVE

PRICING INFORMATION (PROMINENCE) (paragraph 5.7.2)

‘Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination.’

1. The Executive submitted that notwithstanding the Executive’s concerns that the website was not the primary piece of promotional material, (the primary promotion being the text message ‘Reply with OK to confirm’) and that the complainants had not registered on the website, the Executive accepted that the website was in the public domain and may have been viewed as an independent promotion. The Executive further submitted that on the website ‘for-auction.info’ where the service had been promoted, the pricing appeared in two places on the landing page, however the Executive believed that these two methods of promotion had failed to provide written pricing information in a manner required

by paragraph 5.7.2 of the Code. For the pricing information which appeared near the top of the landing page, which was in the form of an advert for “the auction club”, the Executive’s submissions were that:

- *the colours used in this advert made the wording very difficult to read.*
- *the quality of the text was bad. The text was faded and blurred and difficult to read*
- *the advert looked like an advert for another service and was not easily recognised as being related to the service it was supposed to advertise. This was especially highlighted by the fact that the two appeared to show different names. The advert was called ‘the Auction club’ and the service itself was called ‘SMS Flash Auction’. In the opinion of the Executive a user would not automatically link the two.*

In respect of the pricing information which appeared further down the page, below the box where the user would enter their mobile number, the Executive submitted that the users needed to scroll right down the page to see this pricing information requiring consumers to ‘work’ to find the cost information on the landing page of the website.

2. The Information Provider stated that the website pricing was clearly indicated and that it believed that users would have had prior knowledge of the pricing as it did not believe that anyone would have entered their number without first having familiarised themselves with the full details of the service. The Information Provider submitted that the pricing appeared at the top of the landing page (which is a prime position) and appeared under the “How To Take Part” section and in the terms and conditions.
3. The Tribunal considered the evidence and concluded that even if the pricing information at the top of the landing page was not sufficiently clear, the pricing information was clearly presented again at the point where users would enter their phone number and as such the user could see the pricing information without close examination before entering in his or her mobile phone number. The Tribunal therefore decided not to uphold a breach of paragraph 5.7.2 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH SIX

CONTACT INFORMATION (paragraph 5.8)

‘For any promotion the identity and contact details in the UK of either the service provider or information provider, where not otherwise obvious, must be clearly stated.’

1. The Executive submitted that paragraph 5.8 required that any promotion must provide the identity and contact details of the Service Provider or Information Provider and that the promotional message “*FreeMSG: Important. Please reply with OK to confirm*” contained no identity or contact details.

2. The Information Provider stated that it had acknowledged and apologised for its failing in respect lack of identity and contact information in this text message. The Information Provider stated in mitigation that it had provided contact information on both the website and in the WAP page and that this information had not been disguised and could not be mistaken.
3. The Tribunal considered the evidence and concluded that there were no identification or contact details provided in the text message. The Tribunal also noted the admission of the Information Provider and decided to uphold a breach of paragraph 5.8 of the Code.

Decision: UPHELD

ALLEGED BREACH SEVEN

SUBSCRIPTION – PROMOTIONAL MATERIAL/SUBSCRIPTION BASED (paragraph 7.12.3a)

‘Promotional material must clearly indicate that the service is subscription-based. This should be prominent and plainly visible.’

1. The Executive repeated its previous submission that users had not registered their details on the website and that the WAP PUSH message and landing page had not appeared to consumers in the way described by the Service Provider, and that consequently, the first message received by complainants was the message: *“FreeMSG: Important! Please reply with OK to confirm”*. The Executive further submitted that replying ‘OK’ activated the service and the associated charges. The Executive considered that the consumer expectation on receiving the above message in isolation was that there was an important message waiting for them, that this message was not a commercial venture but an alert and that by replying to the service they would receive more information – rather than be entered into the service itself . The Executive submitted that the first message that complainants received did not make it clear that the service provided on the relevant short-code was subscription-based.
2. The Information Provider stated that the Executive’s case was premised on its assertion that the free service message was the first message received by complainants. The Information Provider stated that the website and WAP advertisement had both stated that the service was subscription based before a user chose to enter the service. The Information Provider further stated that if complainants did enter by clicking on Enter, they would have seen a WAP based message confirming that it was a subscription service furthermore the complainants received a welcome message that included the term “Sub Service”, which coupled with the information on the website and WAP page reminded them of the subscription element.
3. The Tribunal considered the evidence and concluded that the first message sent by the Information Provider and received by the complainants did not indicate that the service was a subscription based service. The Tribunal considered that this was particularly important as replying with ‘OK’ to the message activated the

service. The Tribunal therefore decided to uphold a breach of paragraph 7.12.3a of the Code.

Decision: UPHELD

ALLEGED BREACH EIGHT

SUBSCRIPTION REMINDERS (paragraph 7.12.5)

'Once a month or every time a user has spent £20 if that occurs in less than a month, the information required under paragraph 7.12.4 above must be sent free to subscribers.'

1. The Executive made reference to the message logs supplied by the Information Provider and submitted that it did not appear that a reminder message had not been sent in accordance with 7.12.5 of the Code.
2. The Information Provider stated that all users had received a free message before every auction that read as follows;
'The auction for 8 Apple iPod is starting in 30 mins. To bid,send BID 10 (to bid £10) to 84253. Stop to end. Cust Care: 08444994518'

The Information Provider stated that this message reminded the consumer that they were engaged in a service and that on average they had received this message twice a month, the first one being before they had spent £20. The Information Provider also stated that the message contained Stop information and a customer care number.

3. The Tribunal considered the evidence, including the message logs, and concluded that the "reminder" message sent by the Information Provider did not contain all the information required by paragraph 7.12.4 . The Tribunal therefore decided to uphold a breach of paragraph 7.12.5 of the Code.

Decision: UPHELD

ALLEGED BREACH NINE

REQUEST FOR INFORMATION (paragraph 8.3.3)

'During investigations, or as part of the adjudication process, PhonepayPlus may direct any service provider or network operator concerned to disclose to the Executive, subject to the confidentiality provision set out in paragraph 1.5 and within a reasonable time period, any relevant information or copies of documents.'

1. The Executive submitted that the Information Provider had supplied the Service Provider with information relating to the consumer opt-in to the service that had not fully disclose the reality of the service, as it appeared that users had been issued unsolicited marketing messages rather than formally opting-in to the service by way of registering their details on the website. The Executive further submitted that the web opt-in lists that were supplied for all users in relation to the Executive's request, had shown that in a small number of instances the

issuance of the WAP push messages appeared to be months prior to when the web opt-in lists showed the relevant users had registered on the website, as such the Executive deemed the information to be inaccurate.

2. The Information did not respond to the breach raised by the Executive under paragraph 8.3.3
3. The Tribunal considered the evidence and concluded that the Information Provider had not provided all the information requested by the Executive and as such the information was insufficient and not forthcoming. The Tribunal therefore decided to uphold the breach of paragraph 8.3.3 of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal's initial assessment was that, overall, the breaches taken together were **very 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 and deliberate;
- There was material consumer harm being that there were 45 complaints and significant inconvenience and annoyance to a substantial number of consumers;
- The cost paid by individual consumers was high; some complainants indicated receipt of unsolicited charges of approximately £100.00;
- The service is a concealed subscription service and such services have been singled out for criticism by PhonepayPlus; and
- The Information Provider failed to disclose all the information and did not co-operate with the Executive's investigation.
- The Information Provider's breach history.

There were no mitigating factors for the Tribunal to consider.

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

The Tribunal therefore decided to impose the following sanctions:

- A formal reprimand;
- A £150,000 fine with an uplift of £25,000 for the Information Provider's breach history, giving a total fine of 175,000;
- The Tribunal imposed a bar on this service and any similar service until compliant to the satisfaction of the Executive.
- The Tribunal also ordered that claims for refunds are to be paid by the service provider for the full amount spent by users, except where there is good cause to believe that such claims are not valid.

