

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 11 June 2009 TRIBUNAL SITTING No. 29 / CASE 2

CASE REFERENCE: 802099/MS

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| Service provider & area: | Unilef Limited, London |
| Information provider & area: | N/A |
| Type of service: | Employment information service, fixed line. |
| Service title: | N/A |
| Service number: | 0906 515 0072 |
| Cost: | £1.50 per minute |
| Network operator: | British Telecom |
| Number of complainants: | 2 |

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

BACKGROUND

The PhonepayPlus Executive (“the Executive”) received two complaints regarding a service operating on the premium rate number 0906 5150072. These complainants stated that they had seen the promotion and number on the website londonjobs.co.uk. The Executive noted that the service was also being promoted on the websites thesun.co.uk/jobs andunilef.com.

The Executive established, during the course of its investigation, that the service was operating as an employment and advice line and was aimed at foreign persons in the United Kingdom who may have been seeking work within the building trade (such as builders, plumbers, plasterers). Complainants stated (and it was observed by the Executive during monitoring), that no pricing information was provided on connection to the call. The Executive noted that the promotional websites for the service did similarly not appear to have offered any pricing to consumers.

Complainants stated (and it was observed by the Executive during monitoring), that the service put callers on hold for lengthy periods of time whilst being held in a queue waiting to speak with a ‘live operator’.

The Service

Two members of Executive monitored the service on 27 April 2009. One member was kept on-hold for nine minutes without being connected to an operator before deciding to hang up the phone and the other was kept on hold for 4 minutes before hanging up. Also, one of the complainants had stated that he had called the service and was kept on-hold for around eight minutes, before deciding to hang up. Whilst on-hold, callers heard nothing but silence, interrupted approximately every 30 seconds by an automated voice

informing them that they were being held in a queue. Calls to the service were charged at £1.50 per minute.

The service was terminated by British Telecom on 29 April 2009 following initial contact from the Executive on 28 April 2009 outlining concerns over the service.

The Executive requested that the Service Provider provide a summary of the nature of the service. In response the Service Provider stated the following:

“our company service is providing information regarding jobs, CSCS (Construction Skills Certification Scheme), tax advice, and other documents”

The Service Provider offered the following information which was an estimation of the percentage of calls taken:

*“CSCS information 20% of callers rang us;
UTR information 10% of callers rang us;
Jobs information on April 50% of callers rang us;
Regarding Bank account information 20% of callers rang us”.*

The Service Provider stated that whilst none of the operators were ‘qualified’, they had worked previously as advisors in call centres, and that the service offered simple advice such as where and how callers could get a CSCS card etc. The Service Provider stated that if having called the service callers were still unsure of what to do, the caller would be invited to the office to receive help in person to sort out the documents.

The Service Provider stated that it was aware of The Employment Agencies Act 1973, but that in its opinion it was not running an employment business or an employment agency. The Service Provider stated that it had three operators available to take live calls on the service and when asked by the Executive about the approximate number of employment opportunities which had been made available to consumers though calling the service, the Service Provider stated the following:

“we have provided 8 persons contact details for a few companies. As far as we know they are successfully working. Also, we helped people open bank accounts, book CSCS exams, apply for UTR”

In response to the Executive’s query as to whether the service was available 24 hours a day, the Service Provider stated that the service operated from 9am to 6.30pm but no information was provided as to what would happen if a consumer called outside of these hours.

The Service Provider stated that, apart from the websites already referred to, the service was also promoted in The Sun newspaper (once in April 2009), and the Evening Standard newspaper (twice in April 2009).

Complaint Investigation

Standard Procedure

The Executive decided to investigate the service using the standard procedure under paragraph 8.5 of the Code. A breach letter was raised by the Executive dated 1 May 2009 raising breaches of paragraphs 5.2, 5.4.2, 5.7.1 and 5.8 of the Code. A formal response to the Executive's breach letter was provided in a letter dated 5 May 2009 received from the Service Provider.

The Tribunal made a decision on the breaches raised by the Executive on 11 June 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 s.6 of the Employment Agencies Act 1973 the charging of fees to persons for finding or seeking to find them work, whether employed or self-employed (subject to certain exceptions which were not deemed to be relevant in this instance) was not permitted. The Executive stated that the Service Provider's premium rate charge amounted to a fee for this purpose.

The Executive made reference to section 6(1) of the Employment Agencies Act 1973 ("the Act") which read as follows:

s6. Restriction on charging persons seeking employment, etc

- (1) *Except in such cases or classes of case as the Secretary of State may prescribe, a person carrying on an employment agency or an employment business shall not demand or directly or indirectly receive from any person any fee for finding him employment or for seeking to find him employment.*

The Executive stated that the service had been promoted as offering employment opportunities to persons within the construction and building industry.

2. The Service Provider stated that it was aware of The Employment Agencies Act 1973, but that in its opinion it was not running an employment business and did not have agency status.

The Service Provider stated that it provided the details of other companies when callers contacted them in relation to employment, adding that it had provided

eight persons with contact details of companies providing employment, and that as far as it was aware, the eight callers were now successfully employed.

3. The Tribunal considered the evidence and concluded that on the basis of the Service Provider's own description of its activities it had acted as an Employment Agency within the meaning of section 13(2) of the Act. This section states that;

"For the purposes of this Act "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them".

The Tribunal further concluded that the premium rate call charge amounted to a fee which was charged for finding work for the callers and that such a charge therefore amounted to a contravention of section 6(1) of the Act. The Tribunal therefore decided to uphold a breach of paragraph 5.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO DELAY (Paragraph 5.4.2)

'Services must not be unreasonably prolonged or delayed'

1. The Executive stated that one of the complainants had been kept on-hold on the service for approximately eight minutes before hanging up, and that two separate members of the Executive had also called the service and were kept on-hold for approximately nine minutes and four minutes respectively, before hanging up. The Executive submitted that none of these calls had resulted in either interaction with a live operator or the provision of pre-recorded employment information.

The Executive submitted that in light of these instances it was of the opinion that consumers who had called this service had been unreasonably prolonged or delayed in reaching the service.

2. The Service Provider did not respond to this alleged breach of the Code other than to state that the on-hold facility had been switched off.
3. The Tribunal considered the evidence and was satisfied from the evidence of the complainant who had called the service, and the Executive's monitoring, that users had been kept on hold for an unreasonably long period of time. The Tribunal therefore concluded that the service had been unreasonably prolonged and delayed. The Tribunal decided to uphold a breach of paragraph 5.4.2 of the Code.

Decision: UPHELD

**ALLEGED BREACH THREE
GENERAL PRICING PROVISIONS (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 the websites promoting the service did not appear to have included any form of pricing information.
1. The Service Provider stated that it had now changed its promotions so as to provide clear and straightforward pricing information for consumers.
3. The Tribunal considered the evidence and concluded that thesun.co.uk and londonjobs.co.uk websites promoting the service had not contained any pricing information, nor had there been any pricing information provided during the telephone calls. The Tribunal therefore decided to uphold a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

**ALLEGED BREACH FOUR
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. The customer service phone number required in Paragraph 3.3.5 must also be clearly stated unless reasonable steps have previously been taken to bring it to the attention of the user or it is otherwise obvious and easily available to the user.'

1. The Executive submitted that the websites promoting this service did not appear to include any contact details.
2. The Service Provider did not provide a response to this alleged breach of the Code.
3. The Tribunal considered the evidence and concluded that in light of the evidence provided by the Executive it was satisfied that the thesun.co.uk and londonjobs.co.uk websites promoting the service did not contain the contact information required by the Code. The Tribunal therefore decided to uphold a breach of paragraph 5.8 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 Service Provider was deliberate in relation to its design and promotion of the service;
- The service caused material societal harm especially in view of the current economic climate and recession;
- The cost paid by individual consumers was high. Consumers were kept on hold for a considerable period of time leading to high charges being incurred.
- The service was harmful to a vulnerable group of individuals, in this case individuals who were seeking employment many of whom who were foreign nationals who may have been unfamiliar with UK employment law matters and therefore seeking advice.

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 **serious**.

The Tribunal therefore decided to impose the following sanctions:

- A Formal Reprimand;
- A £3,500 fine;
- A bar on this service and any similar service and related promotion material until compliant to the satisfaction of the Executive. However, the Tribunal commented that, based on the evidence it had seen, it doubted that the design of the service could ever be compliant.
- 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.