

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Monday 26 July 2010 TRIBUNAL SITTING No. 58 / CASE 2
CASE REFERENCE: 835983

Service provider & area:	Colgant Data Services Limited, Ireland
Information provider & area:	N/A
Type of service:	0871 number redirection
Service title:	'Locatrade Business Networks'
Service number:	0871 432 XXXX number range and <u>all</u> other numbers on which this service is available
Cost:	10 pence per minute
Network operator:	YAC Ltd, Ireland
Number of complainants:	3

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

BACKGROUND

On 10 March 2010, PhonepayPlus received a complaint from Essex Trading Standards on behalf of various borough and district council departments within their county. This was followed by further complaints from a borough council in Suffolk and Leeds Trinity University.

The complainants stated that 0871 432 XXXX premium rate numbers were being advertised on Google Maps as being the contact numbers for various councils and universities. It was stated that these premium rate numbers had not been in use by these organisations and it appeared that their original Google profile had been amended without their permission. It was stated that the original profiles had contained the correct non-premium rate numbers for members of the public to call when required. When the 0871 premium rate numbers were called by the members of the public, the Service Provider responsible re-routed any calls to the relevant geographic number and collected the revenue from the calls. Members of the public would have been unaware that a re-routing of their call was taking place, and the borough council complaint reported that the council had been receiving calls from members of the public questioning why they were being directed to call a 0871 number at 10 pence per minute.

The Executive monitored the service and found numerous occurrences of premium rate 0871 432 XXXX numbers being added to Google Map profiles (Appendix A).

The complainants were concerned about this service and the appearance of 0871 numbers on their Google profiles (informing both the Police as well as PhonepayPlus) for the following reasons:

- One local government department reported to have spent money putting out press releases to its constituents, informing them that it does not use '0871' numbers and they should not call these to make contact.

- A concern was raised due to the potential that the re-routed calls to local government departments could have been recorded and contained sensitive information – this has been refuted by the Service Provider having stated that calls were not recorded.

Leeds Trinity University confirmed that it maintained its own Google Map profiles, including non-premium rate telephone numbers. The Executive noted that it had not succeeded in verifying with Google exactly how the 0871 numbers had appeared on Google Maps for these profiles.

The Investigation

The Executive conducted this matter as a Standard Procedure investigation and a revenue withhold was requested and confirmed by the Network Operator. These procedures are in accordance with paragraph 8.5 and 8.5f of the Code.

The Executive sent a preliminary investigation letter to the Service Provider on 9 April 2010, asking questions in relation to the reports of complainants and monitoring carried out by the Executive in accordance with paragraph 8.3.3 of the Code. The Executive received a response submitted by the Service Provider on 19 April 2010.

The Executive additionally made contact with Google on 5 May 2010 and was not provided with a conclusive answer. The potential breaches of the Code, however, were not dependant on a response from Google having been received.

The Tribunal made a decision on the alleged breaches raised by the Executive on 26 July 2010.

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 the 0871 number re-routing service operated by the Service Provider had appeared not to be able to operate compliantly without misleading members of the public.

It submitted that the 0871 numbers had initially been added to the 'Locatrade' website and had then been either added to Google Maps by the search engine, Google, or by the Service Provider directly. It submitted that the failure of a formal response from Google had not resolved this question and the Service Provider had explicitly stated that it was not responsible for adding the 0871 numbers into Google Maps.

It submitted that the above explanation absolving the Service Provider of responsibility appeared to be in contradiction with the information supplied by two of the complainants below:

The Executive submitted that Leeds Trinity University had confirmed that its IT department maintained its presence on Google Maps (i.e. its profile) and that this had been amended without permission by an unknown party.

“Leeds Trinity has registered 2 official Google profiles, one under “Leeds Trinity & All Saints” and the other called “Leeds Trinity University College”. Screenshots attached. These have both been set up by the institution and originally included our correct telephone number of 0113 283 7100. However the profile under “Leeds Trinity & All Saints” has now been changed (without our permission) and now displays 08714326539”

The Executive submitted that Castle Point Borough Council had informed Essex Trading Standards, who then informed PhonepayPlus of the following:

“We contacted Ofcom who gave us the name of the company that had registered the number. After speaking to the company yac.com them [sic] they agreed to disconnect the number, which they said has been sold onto a client. The client agreed to remove the listing from Google. This they did out of good will as they claim what they are doing is not illegal”.

The Executive submitted that the Service Provider stated to the Executive that ‘Locatrade’ had been trying to recreate an online directory enquiries service; however, the Executive submitted that it was of the opinion that, when these 0871 numbers had appeared on Google Maps, members of the public had not been provided with any information to notify them that the number displayed was not the actual number of the council or university in question, and that it was actually a premium rate number for a call re-routing service.

The Executive submitted that it was of the opinion that the manner in which the 0871 numbers had been displayed on Google Maps was likely to have misled members of the public into dialling the Service Provider’s 0871 numbers. It submitted that the Service Provider had held itself out to be ‘*experts in the field of Internet Search Engine Optimisation*’ and, as such, the Executive was of the opinion that the Service Provider should have been aware of this possibility, prior to adding the 0871 numbers to the ‘Locatrade’ service website.

2. The Service Provider stated that it had never tried to mislead the public and any 0871 number that was supplied by its online directory enquiries service did exactly what the public expected in that it connected directly to the organisation that was advertised.

The Service Provider supplied a link and screenshots of the Terms & Conditions available on its website (Appendix B).

The Service Provider stated that, if its 0871 numbers were used by other search engines on the web, such as Google, Yahoo! or MSN, it was not possible for it to display this information, as was the case with the ‘locatrade.com’ website. It stated that Google did not provide space for detailed information relating to the cost of the call.

3. The Tribunal considered the evidence and concluded that there was insufficient evidence to demonstrate that the Service Provider had deliberately altered the details of the council and university profiles in question, by either hacking into the existing Google Map profile or creating a duplicate Google Map profile. The Tribunal also noted that there was a possibility that Google’s own systems had taken the details from the Service Provider’s website in order to create a Google Map profile. The Tribunal found that, on the balance of probabilities, the Service Provider’s own website had informed users as to

the nature of the service and there was insufficient evidence to suggest that the profiles had been created or altered by the Service Provider. The Tribunal did not uphold a breach of 5.4.1a of the Code.

Decision: NOT UPHELD

**ALLEGED BREACH TWO
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 the 0871 premium rate numbers in use by the Service Provider for the ‘Locatrade’ number re-routing service were being promoted on Google Maps company profiles, which are searchable by members of the public (Appendix A). It submitted that the promotion of these numbers had prompted consumers to call the service and subsequently incur minimum charges of 10 pence per minute.

It submitted that it was clear from the promotions seen on Google Maps that members of the public had been afforded no pricing information to make an informed decision when dialling the 0871 numbers.

2. The Service Provider stated that it had displayed the information required by PhonepayPlus’ Code on the ‘Locatrade.com’ website (Appendix B). It stated that, whilst it accepted the content of paragraph 5.7.1 in relation to pricing information, it referred to paragraph 5.7.5 of the Code of Practice, which states the following:

*Premium rate services which do not generally cost more than 50 pence are exempt from all PhonepayPlus requirements on pricing information, unless the services are:
a children’s services (see paragraph 7.5), or
b accessed by automated equipment (such as a burglar alarm or a modem operating in conjunction with software that causes a number to be dialled automatically when the user wishes to access the internet), or
c subscription services (see paragraph 7.12).*

It stated that it felt that it was not in breach of the Code by virtue of paragraph 5.7.5 of the Code.

It stated that, due to the nature of the web and the fact that information from the ‘Locatrade.com’ website could be taken and used elsewhere, it was impossible for the Service Provider to regulate information being used on other platforms, such as Google Maps or other search engines.

3. The Tribunal considered the evidence and noted the explanation for the numbers being given a profile on Google Maps. It found, however, that the Code was clear that for any premium rate service (including those using 0871), pricing information should be given before a charge is incurred. The Tribunal found that no pricing information for the 0871 number was provided on Google Maps, nor prior to charges being incurred by calls made to the number. The Tribunal noted that the Service Provider had been aware that the number would appear on Google Maps and had used this fact as a promotional tool

(Appendix B). The Tribunal also found that there was no evidence submitted by the Service Provider to suggest that calls to the 0871 number were terminated at five minutes resulting in calls not exceeding a total cost of 50p and thereby affording it an exemption, under paragraph 5.7.5, from the pricing requirements of the Code. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH THREE 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 0871 premium rate numbers in use by the Service Provider in relation to the 'Locatrade' number re-routing service were being promoted on Google Maps company profiles (searchable by members of the public) (Appendix A). It submitted that the promotion of these numbers had prompted consumers to call the service and subsequently incur minimum charges of 10 pence per minute.

The Executive submitted that the promotions for the service numbers had not contained the relevant details of the Service Provider.

2. The Service Provider stated that it had made it clear on the 'Locatrade.com' website who was supplying the service in addition to a customer support number.

It stated that it did not feel that it could regulate information that was appearing on other platforms, such as Google Maps, Yahoo!, MSN, etc. It stated that it had made the rules and conditions for 0871 number clear to users (Appendix B).

3. The Tribunal considered the evidence and noted the explanation for the numbers being given a profile on Google Maps. It found that there had been no contact information provided on Google Maps relating to the 0871 number and that this was in contravention of the Code. The Tribunal also noted that the Service Provider had been aware that the number would appear on Google Maps and had used this fact as a promotional tool (Appendix B). The Tribunal upheld 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 **significant**.

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 knowledge of the fact that the premium rate numbers would be displayed on Google Maps and it had taken no steps to ensure the correct pricing and contact information was also displayed.
- The service prompted vigorous consumer complaints and, as such, had caused material consumer harm, particularly as complainants were anxious that their personal details and sensitive information could have been overheard or recorded by a third party.

In mitigation, the Tribunal noted the following factors:

- The Service Provider did co-operate with PhonepayPlus.

The revenue in relation to this service was in the low range of Band 6 (£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 **significant**.

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 fine of £8,000;
- The Tribunal ordered the Service Provider to remedy the breaches by including the correct pricing and contact information wherever the number is displayed so as to inform consumers before a call is made.

Appendix A – Screenshot of a Google Map profile with an 0871 number

Babergh District Council - Google Maps - Windows Internet Explorer

http://maps.google.co.uk/maps?hl=en&q=Babergh%20District%20Council&um=1&ie=UTF-8&sa=N&tab=wl

File Edit View Favorites Tools Help

Web Images Videos Maps News Shopping Mail more

Google maps UK Babergh District Council Search Maps Show search options

Get Directions My Maps

Narrow by: Distance

Babergh District Council

- Babergh District Council** - more info »
Corks Lane, Hadleigh, Ipswich, Suffolk IP7 - 0871 432 5580
Unverified listing
- Babergh District Council South Suffolk** - more info »
Corks Lane, Hadleigh, Ipswich, Suffolk IP7 - 01473 822 801
Unverified listing
- Wincer Kievenaar LLP** - more info »
2 Market Place, Hadleigh, Ipswich IP7 5DN - 01473 827 992
"A legal agreement completed by the Applicant and Babergh District Council under the provisions Section 106 of the Town and Country Planning Act, 1990 is ..." babergh.gov.uk

See all 31 results for Babergh District Council

Can't find what you're looking for?
• [Add a place to the map](#)

Babergh District Council
This is an unverified listing
[Write a review](#) - [more info](#) »
Corks Lane
Hadleigh, Ipswich, Suffolk IP7
0871 432 5580
babergh-south-suffolk.gov.uk
[Street view](#)
[Directions](#) [Search nearby](#) [Save to...](#) [more](#) ▼

Done

start

Inbox - Microsoft Out... 83

Babergh District Coun... Search Desktop EN Desktop 15:36

Appendix B – Screenshot of the 'locatrade.com' website including the terms and conditions

R MORRISON

08714326610
Call Charges - Terms and Conditions
[Click here](#)

Register your business with Locatrade. [Click Here](#)

R Morrison
6 Queens Gardens,
St Andrews
Fife
KY16 9TA
8714326610

Get directions: To here | From here
[View Larger Map](#)

www.locatrade.com

DRIVING ONLINE CUTOMERS TO LOCAL RETAILORS

Premium Rate 0871 Numbers - Terms and Conditions.

Colgant Data Services operate a directory call referral service.

This means that when you dial any of the 0871 numbers listed on our site or in Google Local business results your call will then be transferred to the number of the business or individual you wish to speak to.

Your call will be transferred immediately with the absolute minimum of delay and will cost just 10 pence per minute or billed in seconds if supported by your network provider

Should you experience any difficulty or have any query regarding our call referral service please call 00353876298733 or email info@locatrade.com

Thank you for using Colgant Data Services