

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday 2 September 2010 TRIBUNAL SITTING No. 61 / CASE 4
CASE REFERENCE: 821601**

Information provider:	Content Merchant Ltd, Glasgow
Service provider:	Wireless Information Network Ltd, High Wycombe
Type of service:	Subscription download service
Service title:	'Top Chart Download'
Service number:	82344
Cost:	£2.50 per month
Network operator:	All Mobile Network Operators
Number of complainants:	53

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

BACKGROUND

PhonepayPlus received 53 complaints in relation to the subscription download service called 'Top Chart Download' operating on shortcode 82344. The service cost £2.50 per month and offered unlimited downloads from the Information Provider's wap site.

On 22 September 2009 PhonepayPlus observed a WAP push promotional text message received on the evening of 21 September 2009 on one of its monitoring handsets. This prompted the service to be monitored including the downloading of a ringtone. Information was sought regarding the monitoring experience and comments made by complainants. The information provided by the Service Provider and the Information Provider led to further investigations regarding the marketing database held and used in relation to this service.

The Executive was later notified of a technical error which allegedly occurred on 28 September 2009. The Information Provider suggested that a group of mobile phone numbers from within the marketing data base had been registered by the company as subscribed to the service as opposed to sent marketing material as had been originally intended.

The Executive received evidence suggesting that this service had been promoted to consumers without their consent as required under Privacy and Electronic Communications (EC Directive) Regulations 2003. Furthermore there was evidence suggesting that the service was likely to have misled consumers. The Executive also had concerns in relation to pricing information and the subscription initiation text messages.

Monitoring

The Executive observed that on the night of 21/22 September 2009, the Executive received a promotional WAP push message on one of its monitoring phones that stated "member content" and provided an URL address. On the morning of 22 September 2009 this was observed by the Head of Investigations and tested. The Executive later

accessed the service, subscribed, and then browsed the service for content. The Executive successfully downloaded a music track.

The Investigations Executive requested information relating to that monitoring exercise and received an explanation of the service and message logs. The investigations report identifies discrepancies between the service described by the Information Provider and the experience of the Executive when monitoring the service.

The Executive submitted firstly that the monitoring evidence provides an accurate view of the service flow. It also submitted that it highlights that there were inaccuracies in the responses made by the Information Provider to requests made by the Executive whilst investigating consumer complaints.

The Executive made the following points. Firstly, it stated that the monitoring phone did not visit WAP sites belonging to the Information Provider (Content Merchant) prior to receiving the first WAP push text message containing the words "member content". Secondly, it did not receive a subscription initiation text message, either because it was not sent or was not delivered. The logs submitted by the Information Provider appeared to be in error when including the details of these text messages. It is acknowledged that the logs do not state delivery status of text messages and as such the inclusion of the subscription initiation text message may be due to a delivery failure as opposed to non-delivery.

The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Executive conducted preliminary investigations into the Information Provider's service on 25 September 2009. Following correspondence between the parties the Information Provider provided a full response to the Executive's request for information dated 5 October 2009 and received by the Executive on 24 November 2009. The Executive requested further information on 22 December 2009 and received a response from the Service Provider on 25 January 2010.

The Tribunal made a decision on the alleged breaches raised by the Executive on 2 September 2010, having heard an Informal Representation from the Information Provider and its representative.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE PROVISION OF INFORMATION (Paragraph 3.2.2)

"Service providers must provide to PhonepayPlus without delay such information as it may require for any purpose relating to this Code which may include but is not limited to:

- a. any number ranges (including dialling codes) or other connection arrangements allocated to it by Ofcom or any network operator,*
- b. if the service requires or involves access to any website, the URL of the site,*
- c. the name, address, e-mail address, phone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code, enabling contact to be made with that person at all necessary times, and, if that person is not a*

director of the service provider, the name of the director with primary responsibility for premium rate services, the name and home address of each of the directors and their phone and fax numbers and e-mail addresses.”

1. The Executive submitted that it had requested information under paragraph 8.3.3 of the Code during an investigation concerning a subscription service operated by the Information Provider. It submitted that during the course of analysing responses from the Information Provider, forwarded by the Service Provider, the Executive had been concerned as to the accuracy of the information provided.

The Executive alleged a breach of paragraph 3.2.2 and set out its submissions as follows:

The WAP sites operated by the Information Provider (Content Merchant)

The Executive submitted that it had direct access to the WAP site on 22 September 2009, when it had interacted with a WAP push promotional text message containing the words “member content” and on 29 October 2009 when the trigger word ‘FUN’ (advertised only to current members by text messages) was used by the Executive to obtain another WAP push message and access the service (as seen in Appendix A(i)).

The Executive submitted that it had asked for images of the WAP site and full terms and conditions seen by consumers in the email dated 25 September 2009. The information provided is shown at Appendix A(ii) and is different to that seen by the Executive in its monitoring exercise. The Executive noted that the images of the WAP site provided by the Information Provider were in a different colour and contained different content from that seen by the Executive during the course of its monitoring exercise.

It submitted that the image of the WAP site supplied by the Information Provider had contained a tick box for consumers to actively give consent for marketing material. It submitted that the tick box had not available on the WAP site that was monitored. It further noted that the terms and conditions were such that no tick box was envisaged. The Executive submitted that the information provided by the Information Provider was not the consumer’s experience and therefore not what had been requested.

The Executive noted the explanation given by the Information Provider for these discrepancies was that, “*The site given to PhonePayPlus was the site originally given to WIN for their reference.*” It also noted the Information Provider’s statement that the tick box was no longer necessary as the company had no intention to pass on data to third parties.

The Executive submitted that it had been concerned by the Information Provider’s explanation as the request it had made was clear and requested information relating to the service being operated. Furthermore, the Service Provider had required the Information Provider to answer the request on the basis that it did not possess the information itself. The Executive submitted that this suggested that the Service Provider had not previously had sight of the WAP landing page as operated. Finally, the terms and conditions that were used on the site seen by consumers, as seen when monitoring the service, suggested “by clicking the link you have agreed” consent was given for data to be shared with “preferred partners”.

The Executive submitted that the Information Provider's explanations of the inaccurate information provided had been unsatisfactory. It submitted that the information with which it had been provided was false and that it had been provided to obfuscate the ongoing investigation.

The terms and conditions

The Executive submitted that details of the full terms and conditions in relation to the service had been sought by the Executive in an email dated 25 September 2009. It submitted that the terms and conditions provided by the Information Provider had contained various discrepancies when compared to those presented on the WAP site during the monitoring exercise.

The Executive submitted that the Information Provider had claimed that the terms and conditions focused upon acceptance – “by entering the download link” – whereas those seen by the Executive hung upon the phrase “by clicking the link” and “by using this site”.

The Executive also submitted that the Information Provider claimed that the terms and conditions had not referred to third parties when dealing with marketing data sharing. However those included on the WAP site viewed during monitoring contained terms which were entirely missing from the Information Provider's initial reply.

Finally, the Executive observed a further sentence was missing that read: “thank you for your order”.

The Executive made reference to the Information Provider comments in relation to the information it had provided in a letter dated 25 January 2010.

“a) I did not need to include the section regarding 3rd party data as I made the decision to not be sharing any data with anybody. That is why there is no requirement for a tick box and why the site varied to what the actual consumers viewed.

b) The other section that varied ‘thank you for your order’ is not material to anything involved in the code and again is not included in the campaigns

c) The layout of the site is exactly what is described and is in line with the code of conduct. PhonePayPlus has already witnessed the site given to consumers and can see that the correct code for STOPS is used and the correct pricing structure is given. I gave you the original link to help you as part of your investigation.”

The Executive submitted that these explanations did not justify the inaccurate information provided in response to requests made under paragraph 8.3.3 of the Code in relation to an investigation into live services.

It submitted that the removal of terms when providing information to the Executive regarding third party data was irrational when it had been present for consumers to read when visiting the WAP site. It also submitted that regardless of business decisions made during the operation of the service, it was of the opinion that its request had been factual and stated clearly.

It submitted that the importance of the sentence “thank you for your order” was the implication that the order had already been made and regardless of the importance of the wording removed by Information Provider when responding to the regulator, the failure to provide accurate information was considered inappropriate and unhelpful when considering the service in its entirety.

Message Logs

The Executive submitted that it had questioned the accuracy of both the initial two message logs supplied by the Information Provider on 5 October 2009 and the larger selection of message logs supplied on 25 January 2010.

The Executive made reference to the earlier message logs provided on 5 October 2009 following its request dated 2009. It also made reference to the free-to-receive subscription initiation text message dated 21 September 2009, the WAP data records dated 21 September 2009 and its monitoring exercise.

The Executive submitted that there had been no interaction between the monitoring handset and the Content Merchant WAP sites before the morning of 22 September 2009 and that the message logs in relation to this handset were inaccurate.

It also submitted that no subscription consent was given on 21 September 2009 and therefore no subscription initiation text message should have been triggered. It submitted that, contrary to the log provided by the Information Provider, no subscription text message had been delivered to the handset on 21 September 2009. The message logs were therefore inaccurate when suggesting such a message had been triggered and sent.

The Executive submitted that the Information Provider had deliberately altered the message logs to portray a service that appeared to have operated in a compliant manner. It submitted that it had done so without knowledge that the handset in question had been an Executive monitoring phone and with the purpose of undermining potential complaints from the public. The Executive submitted that the Service Provider had been reliant on the data provided by the Information Provider in this regard as the IP had stated that all free-to-receive messages had been sent via a third party aggregator.

The Executive submitted that all three grounds were examples of inaccurate information provided by the Information Provider and demonstrated a general willingness, on the part of the Information Provider, to submit false data to the Executive.

2. The Information Provider responded to the Executive’s submissions as follows:

The WAP sites operated by the Information Provider (Content Merchant)

The Information Provider stated that services were updated on a regular basis. It stated that content was often updated as well as logos and even the site design. It stated it had provided the service images as they had been at the time of the Executive’s request and of the breach. It stated that no website would ever remain the same and it regularly reviewed its sites.

The Information Provider stated that the images that were sent from the banner ads were of an older version and process (having been loaded onto a different

server). It stated that the Executive had not received the correct version of the service and that this was probably due to a difference in handset specifications in relation to the Executive's monitoring phone.

It also stated that there had been a differentiation between campaigns for tracking purposes. It stated that the reason for this had been to track which advertising worked better. It stated that there may be a slight variation of campaigns even on the same domains.

The Information Provider stated that the tick box had been immaterial overall, along with the wording variation quoted by the Executive in its submissions. It stated that to question based upon these slight variations appeared a degree petty on the part of the Executive.

The terms and conditions

It stated that updating the terms and conditions, in line with the Code, was required on an ongoing basis. It stated that this had not been intended to confuse the Executive but had been done so that the consumers were given the clearest examples of not just the terms and conditions but the latest content as well. The Information Provider stated that it had supplied correct information and could not be held to task based on changes of wording on a live site.

Message logs

The Information Provider stated that it had proved that a download was made by the monitoring phone and as such had proved the accuracy of its message logs.

It also stated that, contrary to the Executive's submission that the message logs were inaccurate, the message was sent. It stated that it was another matter whether it landed on the handset, but it was sent. It stated that the Executive could not suggest that the message logs were inaccurate as the message had been sent by its third party aggregator. It stated that this part of the Code related to providing the information it had and that it had sent an initiation text message as such its message logs and the information provided had been correct.

3. The Tribunal considered the evidence and noted that the Information Provider had admitted that the images of the main page and the content page of the WAP site it had submitted in response to the Executive's request of 25 September 2009 (Appendix A(ii)) had not been seen by any consumer. The Tribunal also found that these images were inconsistent with the Executive's monitoring experience of 29 October 2009 (Appendix A(i)). The Tribunal concluded that the images provided as being the user's experience were not in fact the user's experience and no qualifying explanation was given to the Executive.

In relation to the Executive's second submission, the Tribunal noted that the terms and conditions set out in the Information Provider's response to the Executive's request for information had not matched the images provided within the same response. It further noted that the Information Provider had admitted that the terms and conditions in question had not been seen by consumers at the time of the alleged breaches. The Tribunal also found that the terms and conditions provided in the Information Provider's email response had not matched those observed by the Executive during its monitoring exercise of 29 October 2009 (Appendix A(i)).

In relation to the Executive's third submission, the Tribunal found that the message log provided by the Information Provider in relation to the monitoring phone was false. The Tribunal accepted that the monitoring phone had not received the text messages as appeared on the message logs provided by the Information Provider. It found that the message logs provided by the Information Provider were inconsistent with the Executive's monitoring exercise.

The Tribunal upheld a breach of paragraph 3.2.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO 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 Regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003, 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 submitted that the Information Provider had claimed that no electronic marketing messages had been issued in promotion of this service. Advertising was claimed to have arisen solely from WAP advertising located when browsing the internet using WAP enabled phones. It noted that the Information Provider had provided WAP site images along with message logs, including logs for WAP access, in support of its claims relating to consumer interaction and subscription consent prior to any 'service messages' being issued to the handset.

The Executive submitted that, in light of the monitoring phone experience, it was concerned about the accuracy of the information provided by the Information Provider. It submitted that the service had not been monitored by random browsing of WAP sites looking for unnamed, and unidentified banner advertisements. It further submitted that the monitoring phone had no previous interaction with these WAP sites. It submitted that, without solicitation, the monitoring phone had received an un-named, unidentifiable WAP push message stating "member content" and including a URL address link to the service. The service monitoring was initiated in order to establish the identity of the company sending the promotion and the nature of the service. The WAP push message appeared to have been delivered due to the mobile phone number of the monitoring handset being on a data list obtained by the company by some other means.

The Executive made reference to the consumer complaints and submitted that

none of them supported the claims made by the Information Provider. It stated that the complaints had raised that consumers had not provided consent to receive electronic communications promoting services.

The Executive submitted that there was no evidence of valid consent in the form of user text messages, Furthermore, there was no evidence of any other form of consent being obtained by the Information Provider. It submitted that the marketing material (the WAP push promotional messages) had been issued in contravention of the Regulations.

2. The Information Provider stated that there was a requirement for proportionality to be applied to this case in relation to the volume of messages sent and the number of complaints. The Information Provider stated that a certain level of complaints was expected in retails sales within the industry and it stood by its original assertions that consumers did provide consent. It stated that it could not be held accountable should consumers forget that they had provided consent, did not read terms and conditions or plainly wished to avoid paying for content they had downloaded. The Information Provider stated that the balance of probabilities weighed in its favour on this occasion (six complainants, the remainder of the 53 complainants having been billed in error and refunded).

The Information Provider made the following points:

- There was no consumer evidence of what the complainants received on their handsets and no documentation to back it up
- The only 'evidence' was hearsay from the Executive that mis-understood the technology or how the service worked.
- The WAP Push messages were not part of the Information Provider's marketing programme, which used only WAP banner adverts. .

The Information Provider stated that it did not send promotions via database lists, although it was about to.

3. The Tribunal considered the evidence and found that, on the Information Provider's admission, approximately 19,235 consumers had received a charged text message in error. The tribunal further found that, on the balance of probabilities, the six consumer complaints in question had received unsolicited text messages. The Tribunal also found that, on the balance of probabilities, the monitoring handset had received unsolicited text messages as there was no evidence accepted by the Tribunal of any form of opt-in. It followed that there had been a breach of the Code. The Tribunal upheld a breach of paragraph 5.2.

ALLEGED BREACH THREE 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 monitoring evidence indicated that the first text message relating to this service was a free-to-receive WAP push message stating "member content". This experience was supported in the complainants' comments. The Executive disputed the Information Provider's assertion that this message set out the nature of the service and the helpline number. The Executive further submitted that the first text message received by the monitoring

phone was that containing “member content” and the lack of details and the suggestion of membership was, in the opinion of the Executive, likely to mislead consumers into believing that they were already members of the service and as such engaging with the service without full knowledge or understanding of its nature.

2. The Information Provider stated that it wanted to correct the Executive regarding the format of the service flow. It stated that consumers needed to click through the banner sites, provide their mobile numbers before being sent member content which was also identified by a unique tracking code. It stated that consumers were informed of all the details on the WAP site before accepting terms and conditions prior to receiving “member content”. It stated that this was the message flow that would have occurred on the Executive’s monitoring handset.

The Information Provider stated that it was of the opinion that this could not be misleading as only six people had complained in relation to the service, other than those who had been involved in the technical error. It asked the Tribunal to not uphold this breach on the grounds there was no evidence to back up any single consumer complaint. It stated that it had thousands of subscribers who had not complained and enjoyed the service. It stated that it would set a dangerous precedent if an allegation was upheld on the basis of hearsay and without physical evidence. In addition, it stated that it was of the opinion that the balance of probabilities was in its favour when considering the many happy consumers who enjoyed its product.

3. The Tribunal considered the evidence and concluded that the term ‘member content’ in relation to an unsolicited text message and in the circumstances of this case was misleading in that it misled consumers into thinking that they were members for whom content was available when for many this was not the case. The Tribunal upheld a breach of 5.4.1a 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 submitted that the email sent by the representative of the Information Provider dated 2 October 2009 had indicated that reversed billed texts were sent in error to some mobile phone numbers. It submitted that in response to this incident the Information Provider had sent those affected consumers a free-to-receive text message that read as follows:

*“FreeMsg. We sent you a msg from 82344 recently & u may have been billed in error. If so, pls text callme to 62277 to us ASAP. Sorry for any error.
SP:ContentMerchant”*

The Executive submitted that the Information Provider had given two slightly different reasons for this error. On 6 October 2009 it was claimed that an “*unused database has been manually uploaded to a failed billing list. This meant that*

instead of billing all the failed messages on the 30th of September, this batch has been billed instead".

Subsequently, on 25 January 2009, the Information Provider stated as follows:

"These numbers were numbers that had not accepted terms and conditions and not downloaded but had clicked through via the banner clicks before. I marketed to them to offer them new content but as you know instead of billing the signups all numbers were billed."

The Executive submitted that all relevant message logs supplied by the Information Provider suggested that the error had led to consumers being subscribed and being sent first a subscription initiation text message prior to the charged text message.

The Executive submitted that it had concerns relating to this slight difference because a failed billing list and a subscription upload process would result in different outcomes. The former would result in a further attempt to bill consumers; the latter would result in subscription initiation text messages being sent followed by billing text messages.

It made reference to the complainant evidence and submitted that it demonstrated that no subscription initiation text messages were issued. It submitted that this was supported by the Service Provider message logs provided on 25 January 2010. It noted that the Information Provider claimed that all free-to-receive bulk text messages had been sent by an unnamed third party aggregator, however, this claim had not been substantiated by further evidence from the Information Provider.

The Executive submitted that it was of the opinion that these message logs were inaccurate and the free messages had not been issued.

It made reference to the failed billing list and acknowledged the Information Provider's reference to an "unused database". It submitted that there was no evidence of the source of this database and the suggestion in the Information Provider's response dated 25 January 2010 was that all users had visited the WAP site, albeit they did not consent to the service subscription.

The Executive submitted that according to the Information Provider, the access to the service WAP site had led to the mobile phone number data being captured.

The Executive made reference to the investigations report, the complainant evidence and submitted that both appeared to suggest that the Information Provider had used a marketing database of mobile numbers.

The Executive submitted that recipients of the charged text messages had incurred the charge without having first been informed of the cost of the service. It submitted that six complainants had arisen in relation to this admitted error.

2. The Information Provider stated that it had experienced a technical failure and although it had argued many points it had admitted that the problems had led to customers being billed in error.

It stated that its system was set up to identify new users and sent an initiation text messages before the billable text message. However, it stated that this did

not alter the fact that a problem had occurred but partially addressed the Executive's opinions of the inaccurate message logs.

It stated that all the complaints had been due to this technical error except the six mentioned by the Executive.

The Information Provider stated that it agreed with the Executive that these users did not order its services and, in light of the technical error should not have been billed.

3. The Tribunal considered the evidence, including the Information Provider's admission of sending unsolicited text messages to 19,235 consumers, and concluded that these consumers had not been made aware of the cost of the service prior to incurring a charge. The Tribunal upheld a breach of 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH FIVE SUBSCRIPTION SERVICES (SUBSCRIPTION INITIATION) (Paragraph 7.12.4b-f)

"Subscription initiation

Users must be sent a free initial subscription message containing the following information before receiving the premium rate service:

- b) confirmation that the service is subscription based,*
- c) what the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent,*
- d) the charges for the service and how they will or can arise,*
- e) how to leave the service*
- f) service provider contact details"*

1. The Executive made reference to the complaints received and the monitoring experience. It submitted that no subscription initiation text message was received by the monitoring handset. It stated that the message logs in relation to the monitoring handset and provided by the Information Provider had suggested that the initiation text message had been sent on 21 September 2009. However, it submitted that the Information Provider appeared to have since accepted that the first access had occurred on 22 September 2009 in contradiction of the message logs in its letter dated 25 January 2010.

The Executive submitted that the Information Provider message logs supplied on 25 January 2010 suggested that all users had received the subscription initiation text message. However, it had also suggested that the error which had lead to many users being charged in error was that the wrong list of numbers had been uploaded for the purpose of re-billing failed subscription charges. The Executive noted that such valid re-billing of recipients would not require such a free text message. The Executive submitted that no explanation had been given by the Information Provider as to why this erroneous upload had led to such text messages being issued.

The Executive also submitted that, in support of the monitoring phone evidence, many complainants had given transcripts of the text messages received and none of them had cited a text message matching the words of the example provided by the Information Provider.

The Executive submitted that the message logs provided by the Service Provider had not contained any reference to these free-to-receive text messages and no evidence from the Information Provider's alleged provider of bulk free messages had been forthcoming in relation to this issue.

2. The Information Provider stated that the subscription text messages had been sent via 'Bulkworld Limited' based in India and everything given within its message logs could be validated by this company. It provided contact details for the company. It stated that the text messages were sent and it had been assured by Bulkworld that they were delivered. It stated that there had been no delivery or rejection report. It stated that the message logs provided by the Service Provider would not contain the subscription text messages as it had used 'Bulkworld Limited' for this aspect of the service.

The Information Provider repeated its previous submission that the reason why the users who were billed in error were sent join messages was simply because the numbers were not recognised in its system and as such treated as new customers.

3. The Tribunal considered the evidence and concluded that, on the balance of probabilities, the monitoring handset had not received or been sent an initial subscription text message. It noted that none of the complainants had made reference to receiving a free initial subscription text message and the Information Provider was unable to provide any documentary evidence from its contracting third party to support their claim that such text messages had been sent (other than the evidence provided in the Information Provider's message logs). In the absence of any reliable third party documentary evidence to support the Information Provider's case that such text messages were sent, the Tribunal found, on the balance of probabilities that that the text messages were not sent. The Tribunal upheld a breach of 7.12.4a-f 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 Information Provider was deliberate other than in relation to the 19,235 consumers who the Information Provider purported to have sent a text message in error.
- This was a concealed subscription service, which have previously been singled out for criticism by PhonepayPlus.

In mitigation, the Tribunal noted the following factors:

- The Information Provider had provided refunds to users.
- A number of breaches occurred through error.

The revenue in relation to this service fell within the upper range of Band 4 (£50,000-£100,000).

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 **serious**.

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 £30,000.
- The Tribunal imposed a bar on the Information Provider's subscription based services and related promotional material for a period of six months starting from the date of publication of this decision.
- The Tribunal commented that it expected claims for refunds to continue to be paid by the Information Provider for the full amount spent by complainants, except where there is good cause to believe that such claims are not valid.