

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 8 July 2010 TRIBUNAL SITTING No. 57 / CASE 2
CASE REFERENCE: 835326

Service provider & area:	Phonenumbers4u Limited, Orpington, Kent
Information provider & area:	Mr Daniel Hill trading as Blue Track, Sunderland
Type of service:	Fixed-line / 070 number
Service title:	N/A
Service number:	07099830074, 07099830075, 07099830094, 07099837499, 07099837501, 07099837506, 07099837507, 07099837513, 07099837514, 07099837515, 07099837516
Cost:	50p per minute
Network operator:	Switch Services Limited
Number of complainants:	2

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

BACKGROUND

PhonepayPlus received a complaint regarding the number 070 99837507.

PhonepayPlus monitored the service and established that calls to this 070 number were being routed through to a live adult (sexual) 1-2-1 chat service belonging to a different, unrelated company called Livelines UK Limited (an established live entertainment provider known to PhonepayPlus).

During the course of its investigation, PhonepayPlus contacted Livelines UK Limited and it denied using the 070 number. Furthermore, PhonepayPlus was informed by the Service Provider that the 070 number in question had been set up for its client, Daniel Hill trading as 'Blue Track' (the Information Provider), as a reseller and that it had recently discovered that the number was being routed through to an adult service. As such, the Information Provider was depriving Livelines UK Limited of its revenue in relation to its adult services by channelling traffic through the 070 number in question.

The Executive recognised that the service was not on the designated number range for adult service and that the Information Provider did not have Prior Permission to operate such a live 1-2-1 chat service.

The Investigation

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

The Executive issued a breach letter to the Service Provider dated 9 June 2010. The Executive received a response to the breaches raised in the letter on 11 June 2010. An Information Provider pass-through dated 17 June 2010 was provided to and accepted by the Executive.

The Tribunal made a decision on the alleged breaches raised by the Executive on 8 July 2010.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

DESIGNATED NUMBER RANGE (Paragraph 3.3.1)

“Where certain codes or number ranges have been designated by either Ofcom or a network operator for use only for particular purposes or for the provision of particular categories of service, or where Ofcom or a network operator has restricted certain codes or number ranges from being used for particular purposes or for the provision of particular categories of service, those codes or number ranges must not be used in contravention of these restrictions. Ofcom’s designations will have precedence over any issued by a network operator.”

1. The Executive submitted that Ofcom has designated 070 prefixed numbers for use only as personal ‘follow me’ numbers. It submitted that 070 prefixed numbers should not be used for Sexual Entertainment Services.

The Executive submitted that the Code defines Sexual Entertainment Services under paragraph 7.11.1 as:

“services of a clearly sexual nature or any services for which the associated promotional material indicates, or implies, that the service is of a sexual nature.”

It also made reference to the Ofcom definition of Controlled Premium Rate Services (‘CPRS’) that includes all Sexual Entertainment Services regardless of call price. The designated prefixes for Sexual Entertainment Services are 098, 0909 & 0908.

The Executive submitted that remit of PhonepayPlus had been extended by Ofcom to cover all “controlled” Sexual Entertainment Services as of 5 April 2007 and that Sexual Entertainment Services should not be operating on 070 numbers.

It submitted that, under paragraph 3.3.1 of the Code, it is a requirement that prefixes or number ranges designated by Ofcom for the provision of particular premium rate service categories must be used for the provision of those services.

It submitted that it was of the opinion that Sexual Entertainment Services accessible on non-designated prefixes evades consumer recognition of a service and dilutes consumer understanding of the numbering for premium rate services as a meaningful public indicator of content and charging. It submitted that these numbers cannot be barred by consumers and cannot comply with the provisions in the Code that offer important protection to children.

1. The Information Provider stated that the telephone lines were given out to callers as a 1-2-1 chat service and, although not all calls were of an adult nature, users could receive an adult chat from the telephone lines in question.

The Information Provider stated that users would have been told that it was a chat service to avoid any confusion as to the nature of the service. Furthermore, users were advised of the cost of the service.

The Information Provider stated that there would not have been any chance of a minor calling the service as the telephone lines had not been promoted in print, via text message, on the web or anywhere else. It stated that, when the telephone numbers were given out on a premium rate text message exchange

service, all those taking part in that exchange service would have been 18 year old or older and already on a premium rate service at the time.

3. The Tribunal considered the evidence and noted the Information Provider's acceptance of the breach. It concluded that the Information Provider had failed to run a Sexual Entertainment Service on the correct 090 designated prefix, in contravention of the Code. The Tribunal upheld a breach of paragraph 3.3.1 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

PRIOR PERMISSION (Paragraph 6.1.1)

"No live services may be provided without prior permission from PhonepayPlus, save that PhonepayPlus may identify categories of live services which are exempt from the prior permission requirement. Such exemptions may be withdrawn or modified by PhonepayPlus at any time on reasonable notice and a list of exempt categories will be published by PhonepayPlus from time to time."

1. The Executive submitted that a live 1-2-1 chat service not only requires permission from PhonepayPlus to operate, but is also required to have all incoming calls recorded on PhonepayPlus-approved recording equipment. It stated that the incoming calls must also be stored for a period of one year.

It submitted that service providers are also required to lodge a bank bond to cover any unpaid claims for compensation from consumers which may arise (for example, for consumers who have had their phones used without their permission). This bond is usually set in the region of £20,000 for this type of service during the first year of operation (dropping to a minimum of £5,000 after one year of operation where no "problems" have arisen).

The Executive submitted that Prior Permission for these services was not sought from the Executive prior to its operation.

2. The Information Provider stated that it did not have Prior Permission to host these services and that the required bond had not been in place. It stated that, had there been any complaints, the Service Provider or the Network Operator would have issued any refunds that were due out of the monthly invoices. It stated that no complaints were received.
3. The Tribunal considered the evidence and noted the Information Provider's acceptance of the breach. It concluded that the Information Provider had not had or sought Prior Permission from PhonepayPlus to operate a live 1-2-1 chat service at the time that the letter was sent. The Tribunal upheld a breach of paragraph 6.1.1 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 Information Provider was wilful.
- This improper use of 070 numbers has been found in breach of the Code and singled out for criticism by PhonepayPlus.
- The Information Provider deprived a legitimate operator of a premium rate service of significant revenue.
- The Information Provider operated outside of the designated number range to the detriment of the industry, thereby undermining consumer trust in 070 numbers and the regulation of premium rate.

In mitigation, the Tribunal noted the following factors:

- The Service Provider did co-operate with PhonepayPlus.
- The Service Provider stated that it had offered refunds to users.

The revenue in relation to this service was in the upper range of Band 5 (£5,000-£50,000).

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 £45,000.