

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 24 June 2010 TRIBUNAL SITTING No. 56 / CASE 3
CASE REFERENCE: 838848

Service provider & area:	Digital Select Limited, London
Information provider & area:	James Cardle trading as Morton House
Type of service:	Parcel delivery service
Service title:	N/A
Service number:	0906 664 1142
Cost:	£1.50 per minute
Network operator:	Oxygen8 Communications Limited
Number of complainants:	2

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

BACKGROUND

PhonepayPlus received two complaints from members of the public in relation to a parcel delivery service operating on the premium rate number 0906 6641142. Complainants stated that they had received a delivery notice (a yellow card) via their home letterbox that stated that an item was being held and could not be delivered as there was a fee payable. The yellow card contained an address and the premium rate number and recipients were encouraged to either call the premium rate number (costing £1.50 per minute) or send a cheque/postal order to the stated address.

PhonepayPlus' concerns with this service related to lack of contact and pricing information, as well as the potential for consumers to be misled into calling the premium rate number.

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 3 June 2010. The Executive received a response to the breaches raised in the letter on 10 June 2010.

The Tribunal made a decision on the alleged breaches raised by the Executive on 24 June 2010, having heard an Informal Representation from the Service Provider.

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 it was of the opinion that the promotional material and service had been misleading. The Executive made reference to the yellow card (Appendix A) and submitted that it had read as follows:

“We have in our possession an item addressed to you. Unfortunately we can’t deliver your item as there is a fee to pay.”

It submitted that the card also provided a reference number and indicated that there was an outstanding balance of £2.39. It submitted that the recipient of the card was then given the option to either send a cheque or postal order to the address stated on the card or to call the ‘0906’ premium rate number in order to re-arrange delivery of the parcel.

The Executive submitted that it had asked the Service Provider to demonstrate that there had been a parcel waiting (with reference number 801/411) to which the reply was that the Information Provider (its client) had failed to respond to this request.

The Executive submitted that it was of the opinion that recipients of the card were likely to have been misled into believing that there was an item awaiting delivery and to have been misled into calling a premium rate number in order to make arrangements to have this item delivered. The Executive submitted that it was common practice for *bona fide* delivery and courier companies to use similar cards when attempting to deliver items to customers.

2. The Service Provider stated that it was the Information Provider that had been responsible for the promotion and operation of the service and so it had requested the Information Provider to provide evidence that a delivery was waiting for the consumer. It stated that the Information Provider had not responded to its request for information.

It further stated that the Information Provider had originally informed it that the service was to be used for a general customer support and sales number, including the tracking of orders and general customer queries. It stated that the Information Provider had provided it with promotional material that was compliant and it had been not aware of any other promotional material, including the delivery notice supplied by the Executive as part of its submissions (Appendix A).

The Service Provider stated that it had informed the Information Provider of the requirements of the Code and had detailed that every advertisement copy needed to be approved by the Service Provider before it could be used. In addition, it stated that it had advised the Information Provider to ensure that the service was set up with an introduction message, informing users of the name of the service, cost to use the service, age restrictions and that the bill payer’s permission was required.

The Service Provider stated that, as the Information Provider had not provided evidence that a parcel was waiting for the consumer, it did not dispute that a breach of paragraph 5.4.1a of the Code had occurred.

3. The Tribunal considered the evidence and noted the Service Provider’s acceptance of the breach. It concluded that recipients of the delivery notice were likely to have been misled into believing that there was an item awaiting delivery and likely to have been misled into calling a premium rate number in order to make arrangements to have this item delivered. The Tribunal noted that there was no evidence that a parcel had ever existed. The Tribunal upheld a breach of paragraph 5.4.1a of the Code.

Decision: 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 promotional material had promoted an ‘090’ premium rate number but had failed to inform users that calling this number would cost £1.50 per minute. The Executive noted that, upon calling the premium rate number, there was an IVR recorded message that stated:

“Welcome to Morton House, callers must be over 18 and have the bill payer’s permission, calls cost £1.50 per minute plus network extras”.

The Executive submitted that, notwithstanding the above message, callers would have incurred a charge prior to being informed of the cost in contravention of paragraph 5.7.1 of the Code.

2. The Service Provider stated that the Information Provider was responsible for the promotion and operation of the service.

The Service Provider stated that it had been under the impression that the promotional material provided to it by the Information Provider was the only promotional material in use and it had not been aware of any other promotional material, including the delivery notice supplied by the Executive as part of its submissions (Appendix A). It stated that the promotional material supplied by the Information Provider to the Service Provider appeared to have met all the requirements of the Code.

The Service Provider stated that it had informed the Information Provider of the requirements of the Code and that it had advised the Information Provider that all advertising copy needed to be approved by the Service Provider before use. In addition, it stated that it had advised the Information Provider to ensure that the service was set up with an introduction message, informing users of the name of the service, cost to use the service, age restrictions and that the bill payer’s permission was required.

It further stated that it did not dispute that a breach of paragraph 5.7.1 had occurred. However, in mitigation, it noted that the cost of the call was announced in the introduction message played to callers within the first ten seconds of connection, resulting in consumers being fully aware of the cost of the service whilst incurring only a minimal fee.

3. The Tribunal considered the evidence and noted the Service Provider’s acceptance of the breach. It concluded that consumers who phoned the premium rate number were not fully informed, clearly or straightforwardly, of the cost of making the call prior to incurring the charge. 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 there had been a breach of paragraph 5.8 of the Code on the following grounds:

Ground 1

The Executive submitted that the promotional material had promoted an '090' premium rate number but had failed to provide a non-premium rate UK customer service phone number.

Ground 2

The Executive submitted that the Service Provider has identified the Information Provider as 'James Cardle trading as Morton House'. The Executive made reference to the yellow card, which contained the following words:

Address:

Morton House
14 Hilldale View
Heckmondwike
West Yorkshire
WF16 9GD

It submitted that this was the only reference to 'Morton House' on the promotional material and that, accordingly, the identity of the Information Provider was not obvious. It submitted that recipients of this card were more likely to understand the above as an address, rather than a company name.

2. The Service Provider stated that the Information Provider was responsible for the promotion and operation of the service.

The Service Provider stated that it had been under the impression that the promotional material provided to it by the Information Provider was the only promotional material in use and it had been not aware of any other promotional material, including the delivery notice supplied by the Executive as part of its submissions (Appendix A). It stated that the promotional material supplied by the Information Provider to the Service Provider appeared to have met all the requirements of the Code.

The Service Provider stated that it had informed the Information Provider of the requirements of the Code and that it had advised the Information Provider that all advertising copy needed to be approved by the Service Provider before it could be used. In addition, it stated that it had advised the Information Provider to ensure that the service was set up with an introduction message, informing users of the name of the service, cost to use the service, age restrictions and that the bill payer's permission was required.

It further stated that a UK address for the Information Provider had been present on the promotional material and, although the Executive was of the opinion that these details were likely to be interpreted by recipients as part of an address, recipients would still have been able to contact the Information Provider at the address displayed.

3. The Tribunal considered the evidence and concluded that the identity and contact details of the Information Provider had not been otherwise obvious and had not been clearly stated on the delivery notice. The Tribunal upheld a breach of paragraph 5.8 of the Code on both grounds.

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 service was valueless to consumers. There was no evidence that an item had ever existed.
- The behaviour of the Information Provider was deliberate and wilful with regard to the delivery of the delivery notice inciting recipients to phone a premium rate number needlessly.
- This type of 'delivery service' had been found in breach of the Code and singled out for criticism by PhonepayPlus.
- The Service Provider's breach history.
- Insufficient due diligence on the part of the Service Provider in the circumstances of this case.

In mitigation, the Tribunal noted the following factors:

- The Service Provider did seek compliance advice; however, this had not been in relation to the same service found in breach of the Code.
- The Information Provider did undertake a measure of due diligence, although this had been shown to be insufficient.
- The Service Provider did co-operate with PhonepayPlus and suspended the service when requested to do so.
- The Service Provider stated that it has offered refunds to users.

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 **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 £4,000 (compromising a £2,000 fine and £2,000 uplift for a similar breach history);
- The Tribunal commented that it expected claims for refunds to continue to be paid by the Service Provider for the full amount spent by complainants, except where there is good cause to believe that such claims are not valid.