

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday 8 July 2010 TRIBUNAL SITTING No. 57 / CASE 1
CASE REFERENCE: 830425**

Service provider & area:	Phonenumbers4u Limited, Orpington, Kent
Information provider & area:	Eurocover
Type of service:	Fixed-line – Debt recovery
Service title:	N/A
Service number:	0904 1941410
Cost:	£1.50 per minute
Network operator:	Switch Connect Limited, Bristol
Number of complainants:	1 (an additional 6 complaints were received from Consumer Direct)

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

BACKGROUND

PhonepayPlus received one complaint and was forwarded six further complaints by Consumer Direct in relation to a debt recovery service operating on the premium rate number 0904 1941410. All of the complainants stated that they had received a letter from the Information Provider known as 'Eurocover', claiming that the recipient had an outstanding debt (Appendix A). This correspondence informed the complainant that he or she had seven days to pay the amount due and failure to do so would result in legal proceedings. The correspondence also stated that the complainant could direct any queries to the premium rate telephone number 0904 1941410.

PhonepayPlus monitored the premium rate telephone number and spoke to an operator on two occasions at a cost of £1.50 per minute and on one occasion was diverted to an answering machine enabling callers to leave a voice message. PhonepayPlus noted on calling the premium rate telephone number that the cost of the call was stated, but the correspondence received by the individual complainant had failed to provide this information.

PhonepayPlus was concerned in relation to the harm that such a letter could cause to consumers and the lack of pricing information and contact information.

The Investigation

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

The Service Provider responded to both of the Executive's requests for information dated 4 March and 25 March 2010.

The Executive issued a breach letter to the Service Provider dated 4 May 2010. The Executive received a response to the breaches raised in the letter on 10 May 2010.

The Tribunal made a decision on the alleged breaches raised by the Executive on 8 July 2010, having heard an Informal Representation from the Service Provider.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE REQUEST FOR 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,*
- d 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 sent a further request for information to the Service Provider on 25 March 2010 and that, subsequent to the Service Provider’s response, it was of the opinion that the following questions had not been sufficiently answered:

i) Question 5 – Following your response to question (8) of our letter dated 4 March 2010, please inform us of the customer helpline number allocated to the information provider (in addition to 08006348585) and provide evidence that the numbers were made available to consumers.

It submitted that the Service Provider had responded to this question as follows:

*“Whilst we provided this helpline number to the IP as is normal practice for us (see attached) we cannot confirm that the IP – Mr * ***** used this number. Although, we can confirm we gave this number to the Executive on the 18th January as requested for the number checker. This is the helpline number that we have used for 3 years as a generic customer helpline across all clients.”*

The Executive submitted that the Service Provider’s response indicated that the Information Provider had been allocated a standard customer helpline number, a premium rate number and also a main free helpline number (0800 6348585). It stated that the Service Provider had failed to inform it of the standard customer helpline number or clarify whether this number was the same as the main free helpline number.

2. The Service Provider stated that the customer service number allocated to the Information Provider and the freephone number, as provided to the Executive on the 18 January 2010, had been one and the same (0800 634 8585).

The Service Provider stated the same customer service number 0800 634 8585 was evidenced by Executive in association with the Information Provider’s account details and that this had been a generic customer service number used across all of the Service Provider’s clients over the last three years.

3. The Tribunal considered the evidence and concluded that, on the basis that the Service Provider had clarified the situation in its response to the Executive's submissions, it was not satisfied, on the evidence, that the Service Provider had been associated with or was itself the Information Provider in relation to this case. The Tribunal did not uphold a breach of paragraph 3.2.2 of the Code.

Decision: NOT UPHELD

**ALLEGED BREACH TWO
HARM AND OFFENCE (INDUCEMENT OF FEAR AND ANXIETY OR DISTRESS)
(Paragraph 5.3.1b)**

*“Services and promotional material must not, or must not be likely to:
b induce an unacceptable sense of fear, anxiety or distress”*

1. The Executive submitted that all seven complainants alleged that they received a letter from a company calling itself 'Eurocover' and stating that an outstanding debt was due. Furthermore, the letter stated that a failure to call the premium rate number promoted in the letter within seven days would result in bankruptcy proceedings, contact with the recipient's employer and contact with one or more credit reference agencies, resulting in the consumer being unable to obtain further credit.

It submitted that the letter received by the complainant who had contacted PhonepayPlus had been dated "as postmarked" but had been received after the postmarked date.

The Executive submitted that it was of the opinion that, given the nature of the debt recovery service, the threats contained in the letter addressed to the complainants and the sense of urgency resulting from receipt of the letter were factors that were likely to have induced an unacceptable sense of fear and anxiety amongst the complainants affected. It submitted that this sense of fear and anxiety coerced some consumers into calling the premium rate number and that this was evidenced by the call logs.

2. The Service Provider stated that the one letter/promotion that it had seen appeared to have been postmarked 8 December 2009 and, as such, it accepted that this letter would have been received after that date. It stated that the term "date as postmark" was, however, fairly standard.

It stated that it agreed that this was an unacceptable promotion in terms of its wording.

The Service Provider stated that it had not seen this promotion nor had it, at any point, had any knowledge that this was how the Information Provider had intended to use the number. It stated that such a service was not one it would condone or allow to have been promoted and that it had been told by the Information Provider that the number was to be used as a customer support line.

The Service Provider stated that it had asked on several occasions to see the promotional material but it was not forthcoming and, whilst it was not condoning the promotion in any way, it was of the opinion that any fear, anxiety or distress that had been caused would be minimal had a recipient of the letter had no reason to believe that he or she owed a debt.

3. The Tribunal considered the evidence and noted the Service Provider's acceptance of the breach. It concluded the letter informing recipients that a financial debt was owed was likely to have induced an unacceptable sense of fear, anxiety or distress in recipients who were not aware that this was a scam. The Tribunal upheld a breach of paragraph 5.3.1b of the Code.

Decision: UPHELD

**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 all seven complainants stated that they received a letter from a company calling itself 'Eurocover', stating that an outstanding debt was due. The letter claimed that 'Eurocover' was a subsidiary of 'Eurorecover Ltd', which was itself authorised and regulated by the Financial Services Authority (FSA). The letter also claimed that previous letters had been sent to the complainants to which they had allegedly failed to respond.

The Executive submitted that the letter had stated that a failure to call the premium rate number contained in the letter within seven days would result in bankruptcy proceedings, contact with their employer and contact with one or more credit reference agencies, resulting in the consumer being unable to obtain further credit.

It submitted that none of the complainants had indicated that they owed money, and three specifically stated that they believed the letter to be a 'scam'. It submitted that the letter had not stated who 'Eurocover' was acting on behalf of, nor on what terms the complainants had defaulted. Furthermore, as three of the seven complainants stated that the debt owed was £1,438, the Executive believed it to be unlikely that all three complainants owed the same amount.

The Executive submitted that it had found no evidence to suggest that either 'Eurocover' or 'Eurorecover Ltd' existed as commercial entities, nor that either company was located at 456-458 Strand, London, WC2 0DZ, as stated in the letter. It submitted that it had carried out a search on both 'Eurocover' and 'Eurorecover Ltd' on the FSA register and found that neither company was registered and, therefore, not authorised or regulated by the FSA.

It submitted that the promotional letter sent to complainants had falsely stated that the recipient owed money, which was not the case. It submitted that the letter had stated that, unless recipients called the premium rate number advertised, a range of actions would be taken against them – these actions were not possible as the information within the letter was fictitious, including the name of the company.

The Executive submitted that it was of the opinion that the false information stated in the letter, combined with the threatening tone and sense of urgency, were factors that misled consumers into calling the premium rate number, as evidenced by the call logs.

Furthermore, the false statement that the company was authorised and regulated by the FSA was likely to have deceived consumers into further believing that the letter was credible. The Executive submitted that the promotional letter had also been misleading as a result of its gross inaccuracy.

2. The Service Provider stated that it had not supported this promotion, had no hand in it and did not agree with its wording.

The Service Provider stated that, under the current Code, it was not responsible for the due diligence of companies such as 'Eurocover' or 'Eurorecovery Ltd' (both of which had unclear UK identities). It stated that it had been trying to contact the Information Provider by phone and mail but to no avail.

It stated that it had undertaken some simple research via the web and had found that 'Eurocover' and 'Eurorecovery Ltd' were registered as companies in Italy. It stated that there was also a company that was now dissolved in the UK. The Service Provider stated that it trusted that the Executive would accept that, based on the evidence provided by the Information Provider, the companies did exist and, as such, the letter could not have been as inaccurate as was suggested.

It stated that it appreciated that the dissolved UK company had not been registered with the FSA; however, its initial investigation abroad had led it to believe that these had been bona fide companies with the relevant foreign registrations.

3. The Tribunal considered the evidence and concluded that the contents of the letter (Appendix A) had been untruthful. It found that there was no evidence that the companies 'Eurocover' or Eurorecovery Ltd' had a legitimate presence in the UK as a debt recovery agency or that they were registered with the relevant international financial bodies. Furthermore, none of the companies in question dissolved or otherwise had been registered with the FSA at the time of the letter being sent. The Tribunal found that the false contents of the letter had misled consumers into calling the premium rate number. The Tribunal upheld a breach of paragraph 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 letter (Appendix A) sent to complainants advertising the premium rate number had not contained any pricing information as required under the Code. It submitted that users had not been informed of the cost of using the service prior to incurring a charge.
2. The Service Provider made reference to several emails that it had provided that told the Information Provider that it must include pricing information when running any promotions or any promotional material in relation to the premium rate number.

It stated that, as demonstrated by the Executive's monitoring transcripts, the pricing information had been included on the IVR system (on making the call) and had been clear. The Service Provider stated that it had been in control of this aspect of the service and had believed that the premium rate number was to be used as a customer support line.

3. The Tribunal considered the evidence and concluded that, despite the pricing information stated on the IVR system, the letter had contained no pricing information

and, as such, consumers who phoned the premium rate number had not been fully informed, clearly or straightforwardly, of the cost of making the call prior to incurring a charge. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

**ALLEGED BREACH FIVE
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

It submitted that the letter sent to complainants came under the definition of a 'promotion' under paragraph 11.3.27 of the Code.

It submitted that the letter had contained the contact number for 'Eurocover' as 0207 4919922 and that a member of the PhonepayPlus Consumer Support Team had called the premium rate number 09041941410 on 9 December 2009, asking for an alternative non-premium rate number to give to a complainant. It submitted that the response indicated that the only alternative number was 0207 4919922, which was being used to receive incoming fax transmissions.

The Executive submitted that a web search revealed that this number was in fact a fax number for the company, 'Mail Boxes Etc', based at a different address in London.

It submitted that, as the non-premium rate number was not a valid number for the service, and no other customer service phone number has been made available to consumers, it followed that the requirements of this provision of the Code had not been met.

Ground 2

It submitted that the letter sent to complainants came under the definition of a 'promotion' under paragraph 11.3.27 of the Code.

The Executive submitted that the letter sent to complainants had stated that the sender was 'Eurocover' (purported to be a subsidiary of 'Eurorecovery Ltd').

The Executive submitted that it had found no evidence to suggest that either 'Eurocover' or 'Eurorecovery Ltd' existed as commercial entities, nor that either company was located at 456-458 Strand, London, WC2 0DZ, as stated in the letter sent to the complainants.

The Executive submitted that it had contacted Royal Mail on 29 April 2010 and made enquiries regarding the identity of the company registered at the return address, PO Box 2162, London WC2 0QT, stated on the back of the envelope sent to one of the complainants. Royal Mail confirmed that the PO Box was inactive and that the post

code had been re-coded. The return address provided on the envelope sent to consumers had, therefore, been invalid.

It submitted that, after using the login details provided by the Service Provider to access the Information Provider's account, the Executive found that the contact details for the Information Provider included the email address and postal address for the Director of the Service Provider (Phonenumbers4U). The Executive submitted that it was of the opinion that the service had been promoted and operated by the Service Provider and that the Information Provider, 'Eurocover', had not existed.

It submitted that, although the letter stated contact details for the Information Provider, the Executive was of the opinion that these details were false (for reasons stated in Ground 1 of its submissions) and were, therefore, not valid. It submitted that, as a consequence of the postal address and non-premium rate telephone number being incorrect, it was of the opinion that the contact details of the Service Provider or Information Provider had not been provided in the letter.

2. The Service Provider responded to the Executive's allegations as follows:

Ground 1

It stated that it had provided the Information Provider with all the information to be compliant with the Code. It also stated to have clearly informed the Information Provider in a conversation on 7 December 2009 that 0800 6348585 should be used in all promotions. It could, therefore, not explain why the Information Provider had not used the number provided, but instead had chosen to use a fax number.

Ground 2

The Service Provider stated that it had supplied evidence to show that 'Eurocover' and 'Eurorecovery Ltd' had existed as companies. It also stated that the Information Provider had used the same email and postal address as the Service Provider in its account (referenced by the Executive) and that this was standard practice.

The Service Provider stated that it and the Information Provider had never been one in the same.

3. The Tribunal considered the evidence and concluded that, in relation to Ground 1, the contact details of the Information Provider provided in the letter had not been accurate and, as such, had not been clearly stated. In relation to Ground 2, the Tribunal found that the Information Provider had not been at the address provided and had not existed as a corporate entity in the UK at the time of the breaches. 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 a debt had ever existed.

- The behaviour of the Information Provider was wilful with regard to the delivery of the letter inciting recipients to phone a premium rate number needlessly.
- The fear and anxiety caused by receiving such a letter was deemed to be associated with material or societal harm.
- This type of 'debt letter' scam has been found in breach of the Code and singled out for criticism by PhonepayPlus.
- The Service Provider's breach history.

In mitigation, the Tribunal noted the following factors:

- The Service Provider did co-operate with PhonepayPlus.
- 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 £1,000
- 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.

Appendix A – Copy of the delivery notice.

COPY



EUROCOVER
456-458 STRAND
LONDON
WC2 0DZ
0207 491 9922

Mr. [REDACTED]
[REDACTED]

Date as postmarked

Re. Outstanding Account Number 864822390110
Balance Due 1,438.24

Dear Sir/Madam,

You have failed to respond to our previous letters and the above amount remains outstanding.

We understand that many people experience unforeseen financial difficulties, however, unless we hear from you within 7 (seven) days with your proposals to settle this account, we are instructed to institute BANKRUPTCY PROCEEDINGS without further notice.

PLEASE CONTACT US IMMEDIATELY on 09041941410 to make payment or to discuss payment options.

We would ask you to note that failure to contact us will result in the following:

BANKRUPTCY PROCEEDINGS

Contact with your Employer to affect an ATTACHMENT OF EARNINGS ORDER

Contact with one or more Credit Reference Agency which will result in you being unable to obtain further Credit.

We look forward to hearing from you in the next SEVEN days

Yours Faithfully

[REDACTED]

[REDACTED] A.C.C.A

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