

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 1 April 2010
TRIBUNAL SITTING No. 50/ CASE 3
CASE REFERENCE: 829406/PJ

Service provider:	Rare Direct Media Limited, Yorkshire
Information provider:	N/A
Type of service:	Recorded mis-sold Payment Protection Insurance refund claim service
Title:	Home Loan & Flights to New York
Service numbers:	09074734000, 09074734001 and all other PRNs on which this service is available
Cost:	£1.50 per call
Network operator:	Core Telecom
Number of complainants:	61

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

BACKGROUND

PhonepayPlus Executive (the 'Executive') received 61 complaints by February 2010 in relation to the service operating on premium rate numbers 09074734000, 09074734001 and all other PRNs that the service operated on. On calling any of the numbers, consumers were presented with a recorded message in relation to Payment Protection Insurance on credit agreements that may have been mis-sold and were asked to provide their details so that they might receive a call-back in relation to the subject matter.

PhonepayPlus examined consumer complaints and monitored the service. During the course of its investigation PhonepayPlus became concerned of issues in relation to fairness, pricing information and contact information.

Monitoring Service

The Executive monitored the service in December 2009. The Executive stated that, whilst using an application on the iPhone, it was presented with one of several banners; the content of the various banners was as follows:

"Need a home loan? 1.50 min"

"Need a homeowner loan? Apply here!"

"UK to New York only £199 Return"

When the Executive clicked on the banner advertisement, a call was automatically triggered to the one of the premium rate numbers. There was no intermediate screen asking users to confirm whether or not they wished to make that call. When the premium rate number answered, the caller was played a brief message stating call costs, followed by a recorded message advising that *"98% of Payment Protection Insurance on credit agreements have been mis-sold and that now you can claim this money back plus interest"*. The Executive was then invited to dial an alternative number or leave a name and contact details for a call-

back to arrange assistance in claiming a refund in the event that Payment Protection Insurance (PPI) had been mis-sold. In addition, several test calls were made to the premium rate numbers 09074734000 and 09074734001, to which contact details were left with the view of receiving a call-back to discuss claiming back PPI.

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 12 February 2010. The Executive received a formal response to its breach letter from the Service Provider on 2 March 2010.

The Tribunal made a decision on the breaches raised by the Executive on 1 April 2010.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

FAIRNESS (MISLEADING) (Paragraph 5.4.1a)

“Services and promotional material must not mislead, or be likely to mislead in any way.”

1. The Executive made reference to its monitoring exercise and submitted that, whilst using an application on the iPhone, an advertisement banner pop-up appeared with one of the following statements:

“Need a home loan? 1.50 min”

“Need a homeowner loan? Apply here!”

“UK to New York only £199 Return”

The Executive submitted that, on calling the premium rate number, a recorded message advised the Executive that the purpose of the service was to provide assistance in reclaiming Payment Protection Insurance payments, where such insurance had been mis-sold. The Executive provided a transcript of the recorded message which was as follows:

“Did you know that 98% of Payment Protection Insurance on credit agreements have been mis-sold and that now you can claim this money back plus interest. If you think your payment protection insurance has been mis-sold to you, we will assist you in reclaiming the thousands of pounds that could be yours, please call 0800228927 or leave a message after the tone. Leaving your name, number and best time to contact you. Thank you.”

The Executive submitted that it considered the description of the service in the banner advert to be misleading because of its inaccuracy. It submitted that it was of the view that advertising the availability of home loans or flights from London to New York was likely to mislead consumers into using the service, as the service, in reality, related to claiming mis-sold Payment Protection Insurance, and not the provision of home loans or flights from London to New York. It submitted that its view was

supported by the recorded message that was played to callers, which made no reference to home loans or flights from London to New York.

The Executive submitted that, on 7 January 2010, it made several test calls to the premium rate numbers 09074734000 and 09074734001. It submitted that it left messages for a call-back, as advised in the recorded message, and that no call-back was received in response to its voice messages left on the service. The Executive submitted that, in view of this, it was of the opinion that no PPI refund assistance service was being actively provided or made available to callers. It submitted that a consumer calling into the service, who left contact details with a view to obtaining assistance with a refund for mis-sold PPI, would not have been provided with a service and, as such, would have been misled into interacting with the service.

2. The Service Provider stated that the Network Operator (Core Telecom) had informed it of the mistakes in relation to its iPhone promotions and the necessary amendments to the service had been swiftly made. The Service Provider further explained that the failure of the iPhones to display an intermediate screen before making the premium rate call was the result of a technical problem between Apple and its advertising platform provider known as 'Admob', following an amendment by Apple of its operating software. The Service Provider had contracted Admob to make its promotions available as banner ads on iPhone applications.

The Service Provider stated that the "UK to New York only £199" promotion had been deleted, was not a campaign and had only run for a couple of hours. It stated that the total number of responses to this advertisement was minimal. The Service Provider stated that its advertisements were copied from a variety of sources and that other companies ran similar advertisements. It stated that it had uploaded the list of advertisements and this particular advertisement was misplaced into the file. It stated that, on noticing this, it had removed the advertisement from its advertising network. The Service Provider stated that it would provide refunds in full to affected complainants.

The Service Provider stated that, to the best of its knowledge, all consumers who had left voicemails had been contacted, although it accepted that the message left by the Executive had not been returned.

3. The Tribunal considered the evidence, including the Executive's monitoring, and concluded that the recorded message in relation to PPI had been unrelated to the advertisement in the pop-up banners. It followed that the consumers expecting information on either home loans or international flights were misled into clicking the advertising banner and entering an unrelated service. The Tribunal also found that consumers had been misled into leaving their contact details by way of voicemail to a service that did not respond and, therefore, on a balance of probabilities, did not exist.

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, whilst using an application on the iPhone, it observed advertisement banners that displayed one of the following advertisements:

- a. *“Need a home loan? 1.50 min”*
- b. *“Need a homeowner loan? Apply here!”*
- c. *“UK to New York only £199 Return”*

It submitted that the second and third banner advertisements (b and c) did not contain pricing information in relation to the service. It submitted that it was of the opinion that such promotions were in breach of this paragraph of the Code. The Executive also submitted that the first banner advertisement (a) did not include a ‘£’ symbol. It submitted that, by omitting this symbol, consumers were not clearly and straightforwardly informed of the cost of using the service.

Furthermore, the Executive submitted that there was no differential pricing (differentiating between the cost of the call from a fixed line from that from a mobile phone) as set out in the PhonepayPlus Help Note on pricing information. The Executive was of the view that this was compounded by targetting the promotion at mobile telephone users, i.e. a network supplementary charge would always be paid by a consumer who clicked on the banner advertisement.

The Executive submitted that it had reviewed the complaints and established that a significant proportion of them had only become aware of the premium rate charge(s) upon receiving their bill and had not, in the opinion of the Executive, therefore been fully informed, clearly and straightforwardly, of the cost prior to incurring the charge. It provided the following complainant examples:

“I have an iPhone with O2 number 07942692269, I mainly use it for internet and apps. While playing the iPhone app ‘BubbleWrap’ by www.orsome.co.nz the dialling screen appeared and called the number 09074734001, it took me by surprise and I cancelled it, the call lasted for 7 seconds and appears on my bill at a cost of £1.70.”

“On 26th December 2009 I somehow accidentally clicked on an advert contained within an iPhone app. This click resulted in the phone calling 09074734000. I immediately hung up when I realised what the phone was doing and thought nothing more of it. Today I have received my mobile phone bill from O2 and I have been charged an astronomical amount of £1.70 for what was a 3 second phone call to this number! Here is the bill summary – 26 Dec 09 – 17:16:51 – 09074734000 – All Day – 00:00:03 - £1.702. I realise the mistake was mine by accidentally clicking on the iPhone App advert (I can’t even remember which App it was – I think it might have been Echofon for Twitter). I am making the complaint as I think hiding premium rate automatic diallers within iPhone App advertising must be wrong and shouldn’t be allowed.”

“This number appeared on my telephone bill and I had not dialled the number. It cost me £1.70. I would like to know the nature of the line and why a 40 second call cost this amount of money. I am adamant that I have not made this call. O2 insist that I must have done. I have checked with all my friends and family and cannot understand how this call can have been made. I have been billed £1.70 for this call on one occasion.”

“Last night (20 January 2010) at 23:24:05 I noticed my iPhone dialling the following premium rate number: 09074734000. I cancelled the call after just 5 seconds (shown as 00:00:05 on my bill) but have been charged £1.70. Having investigated this number I understand that the company behind it is already under investigation by yourselves. As noted in some of the forum comments on <http://whocallsme.com/Phone-Number.aspx/09074734000>, I was not prompted by the iPhone/App advertiser as to whether I wanted to dial this number. I believe this company was representing a telephone loans company. I did notice App Ad by AdMob in the app I was using. It would appear that I might have accidentally touched a part of the ad space and triggered the call. I have requested a refund from O2 and mentioned to them that you are investigating this company.”

2. The Service Provider stated that all its advertisements had been amended quickly when it saw that a very small percentage did not contain the ‘£’ symbol. It stated that it had been informed by Admob that a software update by Apple had removed the confirmation screen. It stated that, as a consequence of this, a caller who accidentally clicked on the advertisement was automatically connected to the premium rate number. The Service Provider stated that, having re-approached Admob, Admob had ensured it that the necessary corrections had been made, and that all advertisements would now have the confirmation screen. The Service Provider stated that any complainants who had contacted them in relation to this issue had been refunded in full, as were any additional mobile operator charges.
3. The Tribunal considered the evidence, including the Executive’s monitoring, and concluded that, in relation to the first banner, the absence of the ‘£’ symbol had not fully informed consumers, clearly and straightforwardly, of the cost of using the service. It also found that the same banner contained no differential pricing information and, as such, users had not been fully informed, clearly or straightforwardly, of the difference between calling the number from a fixed line and calling from a mobile phone (the latter being more expensive). The Tribunal found in relation to the second and third banners that no pricing information had been present.

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 of 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 and easily available to the user.”

1. The Executive submitted that, whilst using an application on the iPhone, it observed advertisement banners that displayed one of the following advertisements:

“Need a home loan? 1.50 min”

“Need a homeowner loan? Apply here!”

“UK to New York only £199 Return”

The Executive submitted that the above promotions did not clearly state the identity and contact details of the Service Provider, or make it otherwise obvious. It also submitted that a customer service phone number had not been included in the banner promotion.

2. The Service Provider stated that all its advertisements included its identity at the start of the recorded message. It stated that, if an individual did choose to search for it on the internet, it appeared at the top of the search engine results and had a clear free phone customer service number and refund policy in place.
3. The Tribunal considered the evidence, including the Executive’s monitoring, and concluded that the three promotional advertisement banners referenced by the Executive did not contain the identity or contact details of the Service Provider. 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 service was valueless as it did not exist;
- The Service Provider was deliberate in its operation of the service;
- There was material consumer harm;
- The cost paid by individual consumers was high – one person had been charged £51.45.

In mitigation, the Tribunal noted the following factors:

- Although the breaches as found were not caused by a third party beyond the control of the Service Provider, the Tribunal took the Apple software issue, highlighted by Admob and raised by the Service Provider, into account;
- The Service Provider asserted that it had made refunds to complainants.

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

Having taken into account the aggravating and 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;
- Fine of £19,000;
- The Tribunal imposed a bar on the Service Provider promoting any services on iPhones, or other touch-screen devices, until such services are determined to be compliant to the satisfaction of the Executive;

- The Tribunal also ordered that claims for refunds are 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.