

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 1 April 2010
TRIBUNAL SITTING No. 50/ CASE 4
CASE REFERENCE: 827863/PJ

Service provider:	Think Telecom Solutions Ltd, Cheshire
Information provider:	N/A
Type of service:	Recorded mis-sold Payment Protection Insurance refund claim service
Title:	'Claim £s'
Service numbers:	09825230523, 09825232537 and all other PRNs on which this service is available
Cost:	£1.50 per call
Network operator:	Core Telecom
Number of complainants:	33

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

BACKGROUND

The PhonepayPlus Executive (the 'Executive') received 33 complaints by January 2010 in relation to the service operating on premium rate numbers 0982530523, 09825232537 and all other PRNs 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 on the 24 December 2009. The Executive stated that, whilst using the ProWrestling.Net application on an iPhone, the Executive was presented with a pop-up banner on the iPhone screen that stated:

"Claim £s. Call £1.50. www.claim1.eu"

When the Executive clicked on the banner advert, a call was automatically triggered to the premium rate number 09825232537. A brief recorded message was played stating the call costs and details of the Service Provider, 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 leave a name and contact details with the view of receiving 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 09825232537 and 09825230523, and contact details were left with 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 2 February 2010. The Executive received a formal response to its breach letter from the Service Provider on 9 February 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, a banner pop-up appeared that stated as follows:

“Claim £s. Call £1.50. www.claim1.eu”

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:

“Do you want some extra money before Christmas? 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, please leave your name, number and best time to contact and we will give you a call and assist you in reclaiming the thousands of pounds that could be yours. Please leave your message now.”

It submitted that stating ‘Claim £s’ in the banner and not stating that claiming money related specifically to mis-sold Payment Protection Insurance was likely to have misled consumers into calling the service in the hope that they may be able to claim money – without realising that the banner only related to those claiming back mis-sold PPI.

The Executive submitted that several test calls were made to the premium rate numbers 09825232537 and 09825230523. 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.

The Executive submitted that it had visited the website promoted in the banner advert entitled 'www.claim1.eu'. It submitted that the website contained the following statement:

"Key Financial Claims Ltd manage all claims from this website. Key Financial Claims Ltd is regulated by the Ministry of Justice in respect of Regulated Claims management activities (CRM20279) its registration is recorded on the website www.claimsregulation.gov.uk"

The Executive submitted that it visited the website 'claimsregulation.gov.uk', which confirmed that a named sole trader, trading as Key Financial Claims, was licensed to provide regulated claims management services. The Executive contacted the sole trader to ascertain whether a refund assistance service had been provided to callers, and if so, how many callers had been assisted and the success rate in gaining refunds to date.

Following receipt of the Executive's letter dated 15 January 2010, the sole trader confirmed that he did have a commercial agreement in place with Chase Saunders. In addition, the sole trader had received confirmation from Chase Saunders that no consumer referrals had been made to him generated via the premium rate service. Having received this confirmation, the Executive submitted that it was of the opinion that a PPI refund service was not available to callers to the premium rate numbers and, as such, callers who chose to interact with the service by leaving contact details had been misled into doing so.

2. The Service Provider stated that, due to the nature of the advertisement banner, only 35 characters were available to purvey the advertisement. It stated that, within this, the Service Provider believed that it had met all requirements, namely the advertisement was clear and concise, horizontal and all the same size, as well as providing clear pricing information and a website in which the terms and conditions of the service could be read.

It stated that the advertisement consisted of 'Claim £'s', as this was what the service offered and, whilst the Service Provider would have wished to provide a full description of the service, due to the restrictive nature of the 35-character allowance and the requirement to provide clear pricing information and terms and conditions, the Service Provider choose to utilise the majority of the 35 characters available to present said pricing information and the location of the terms and conditions. It stated that, in taking its role seriously and being aware of the regulatory guidelines, the Service Provider had sought professional advice from Core Telecom and it was determined that, in order to comply with paragraph 5.4.1a of the Code, the banner advertisement should first and foremost inform the consumer of the cost of the call and then the service. To that end, a website URL was provided in the advertisement through which the consumer could view the terms and conditions of the service (including how to receive a refund) and where the consumer could receive further information regarding the claims service, specifically that it was a Payment Protection Insurance claims service.

The Service Provider stated that all voicemail recordings had been sent to Chase Saunders as per its contract. It stated that the voice messages were not vetted by the Service Provider beforehand. It stated that it had spoken to an employee of at Chase Saunders who had stated that it was currently facing a backlog of leads and had decided not to continue with potential clients sent by the Service Provider due to the complication with Key Financial Claims. The Service Provider stated that Chase Saunders still had all the recordings and would continue to offer the service once

this investigation was complete, dependant on its outcome. The Service Provider stated that it had since discontinued the campaign due to the lack of commercial viability. The Service Provider stated that a copy of all voicemails was held on record, totalling 3692.

The Service Provider had alluded to a 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.

3. The Tribunal considered the evidence, including the Executive's monitoring, and concluded that consumers had been misled by the promotion into engaging with a service that did not exist. The Tribunal also found that consumers were likely to have been misled into engaging with the service by a promotion that caused consumers to think that anyone could claim money when only those with mis-sold PPI could claim. 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 made reference to its monitoring exercise and submitted that, whilst using an application on the iPhone, a banner pop-up appeared that stated as follows:

"Claim £s. Call £1.50. www.claim1.eu"

The Executive made reference to the PhonepayPlus Help Note on pricing information, and submitted that differential pricing information (differentiating between the cost of the call from a fixed line from that from a mobile phone) had not been present on the banner advertisement and, as such, consumers had not been fully informed, clearly and straightforwardly, of the cost of using the service prior to incurring a charge. The Executive submitted that this was compounded by the targeting of mobile phone 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:

"As soon as my mobile rings, money is taken from my account. I was in Oxford street on 28/11/09 when it first happened. The phone rang 3 times on 3 different times between 1318hr and 1323hr. I had £7.28 left in my account before the phone calls. I did not realise that it was the no. calling [09825230523] that was depleting money from my account. By 1400hr when I was trying to make a call a message flashing said that there was no more money in the account so cannot make a call. Today [29/11/09] the same thing was happening again after I put £15 in the account. I have

therefore switched off my mobile completely and cannot use it as this no is trying to deplete my account again. Please Help."

"When I run the application [on the iPhone] I didn't notice at first but when I exit the application it says there's a call been dialled and when I checked the calls log it said it this number [09825230523] and when I checked it's charged me for this premium number."

"I have just received my Monthly Direct Debit bill from O2 and noticed an entry for a call I had not made. According to my bill, I made a phone call to the number detailed above [09825230523] at 13.02 hrs on 25/11/09 and I do not believe I made this call. The duration of the call according to my bill was 3min 43sec and I was charged £6.326 before VAT."

The Service Provider stated that, due to the nature of the advertisement banner, 35 characters were provided to advertise the reclaim service. It stated that, despite this, a website was clearly stated which, in turn, informed potential users that "Calls from 0982 523 0523 and 0982 523 0524 will cost £1.50 per call from a BT landline. Other networks may vary. Calls from mobiles will be considerably more." The Service Provider stated that it was unsure how one complainant had rung the number on several occasions and stated that, in order to initiate a call, they would have needed to make a significant action. It stated that, if consumers had mistakenly recalled the number through the redial option, then this was beyond the control of the Service Provider.

3. The Tribunal considered the evidence, including the Executive's monitoring evidence, and concluded that no differential pricing information was present on the banner advertisements 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 also found that the banner advertisement had not stated that the pricing was per minute. 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 and easily available to the user."

1. The Executive submitted that, whilst using an application on the iPhone, it observed a banner advertisement displayed the following:

"Claim £s. Call £1.50. www.claim1.eu"

The Executive submitted that the above promotion 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 the banner advertisement contained the details of a website which had been clearly visible to the user, and that this website had included all details of the Service Provider and a customer service number for complainants to contact if any issues arise. It stated that the name of the Information Provider is also on the banner which is easily legible.

The Service Provider also stated that it had complied with paragraph 5.7.3 of the Code by placing clear pricing information at the start of the call, as well as identifying the provider of the service and how refunds could be requested.

3. The Tribunal considered the evidence, including the Executive's monitoring Evidence, and found that the promotional advertisement banner referred to by the Executive had not contained the identity or contact details of the Service Provider. It also found that the inclusion of a link to a website which contained the necessary information was insufficient compliance on the facts of this case. 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 reckless in its design and operation of the service;
- There was material consumer harm;
- The cost paid by individual consumers was high – one person had been charged £35

In mitigation, the Tribunal noted the following factors:

- The Service Provider did take steps in advance to mitigate risk by making compliance statements to the Network Operator and Admob;
- 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 offered to make a refund to one complainant on proof of loss.

The revenue in relation to this service was in the high 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 £55,000;

- 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.