

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday, 3 FEBRUARY 2011 TRIBUNAL SITTING No. 70/ CASE 1
CASE REFERENCE: 850883**

Service provider:	CFL Live Limited, Surrey
Information provider:	Bang Media (London) Limited, London
Type of service:	Live chat service
Service title:	'Tease Me TV Daytime Live' – Live 1-2-1 chat service (branded as 'The Pad')
Service number:	09075266907 and all other PRNs in relation to this service
Cost:	£1.50 per minute
Network operator:	CFL Communications Limited
Number of complainants:	N/A

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

BACKGROUND

The 'Tease Me TV Daytime' live 1-2-1 chat premium rate service was monitored by the Executive from October 2010 onwards. It operated on a number of premium rate numbers and provided consumers a means by which to chat to operators who appeared on the Sky television channels 902, 912 and 959 under the brand name 'The Pad' and via the 'teasemtv.tv' website.

The service was provided on the '0901' and the '0907' number ranges and was operational during the hours of 10:00 and 21:00 daily. All numbers cost £1.50 per minute.

During the course of its investigation, the Executive became concerned that the service was of a clearly sexual nature and, as such, was operating on incorrect number ranges and not the correct sexual entertainment service number range as designated by Ofcom.

The Service

The service was a daytime live chat service that offered consumers the opportunity to call and speak to on-screen female operators. The service also supported an 'eavesdrop' service, which enabled consumers who did not want to talk directly to the operators a chance to listen into other calls –the Executive used the 'eavesdrop' part of the service for its monitoring.

The service was broadcast on SKY TV channels 902, 912 and 959 under the brand name 'The Pad'. The service was also available on the internet through the website 'teasemtv.tv'. Both the website and SKY TV broadcast the same visual content and often displayed up to three operators, each appearing on separate streams/channels. The service as broadcast on SKY TV used the '0901' number range, while the internet-based section of the service used the '0907' number range.

Number range

The Ofcom numbering ranges designated for sexual entertainment services are the '0908', '0909' and '098' ranges. The Ofcom website states the following:

“Number range Service designation

0900 / 0901 Special Services at a Premium Rate, time charged calls up to and including 60ppm and total call cost not greater than £5 or fixed fee up to £1 per call (all prices are for BT customers).

0904 / 0905 / 0906 / 0911 Special Services at a Premium Rate, open ended time dependent charge or fixed fee up to £1.50 for BT customers.

0907 Pay for Special Services at a Premium Rate product that costs more than £1 in total for BT customers

0908 / 0909 / 098 Sexual Entertainment Special Services at a Premium Rate”.

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 4 January 2011. The Service Provider responded to the Executive's submissions in correspondence received on 21 January 2011.

The Tribunal made a decision on the breaches raised by the Executive on 3 February 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

GENERAL DUTIES OF SERVICE PROVIDERS (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 the service operated between the hours of 10:00 and 21:00 and had used the '0901' and '0907' number ranges (these number ranges are permitted for use in conjunction with a live chat service).

The Executive submitted that it conducted a series of monitoring calls to the service and used the 'eavesdrop' option of the service to record 23 calls that took place over the course of October 2010. It submitted that these call recordings demonstrated that the service had been regularly providing a live chat service which was of a clearly sexual nature and, as such, fell within the definition of a 'sexual entertainment service' found in paragraph 7.11.1 and repeated in paragraph 11.3.28 of the Code that reads as follows:

“Sexual entertainment services are services of a clearly sexual nature or any service for which the associated promotional material indicates, or implies, that the service shall be construed accordingly.”

The Executive submitted that Ofcom had specifically designated the '0908', '0909' and '098' number ranges to be used in conjunction with premium rate sexual entertainment services.

The Executive submitted that it had monitored 23 calls and classified 19 of them as being of a clearly sexual nature. The monitoring calls involved eight different chat operators, seven of whom had been involved in consumer interaction of an explicit sexual nature.

The Executive submitted that during the course of its monitoring it made the following observations that highlighted the sexual nature of the calls:

- The use of sexual language used by the operators.
- The sexual tone of voice used by the operators when providing the chat service.
- The operators actively responded to sexually-related requests from the consumer as to their on-screen appearance.

The Executive made reference to examples of recorded conversations in relation to the service and submitted that these recordings demonstrated the sexual content of the service. An extract is as follows:

7 October 2010
0907 526 6912

Operator: You like naughty little girls like me, do you?
Consumer: Aye
Operator: Ooh yeah. Do you know what my name is? My names Lynsey. Do you like me Josh?
Consumer: I'd like you to bend over
*Operator: Really, how badly do you f**king want to see me bent over? Do you not like seeing me spread out like this? You just want to see me bent over do you?*
Consumer: I'd like to bend you over and spank that arse
Operator: You like my arse? Is that what you like?
Consumer: Aye
Operator: You like that fat arse of mine do you Joe, ooh yeah is that what you like? You know you like those silky little panties don't you?
Consumer: Oh aye
Operator: How old are you Joe?
Consumer: 18
Operator: Ooh only 18, are you more of a bum man than a booby man are you?
Consumer: Aye, I like a nice pair
*Operator: (inaudible) You would f**king love it, wouldn't you, if you was with me right now, I know you would love it you dirty little thing. Are you single?*

The Executive submitted that the service was a 'sexual entertainment service' and that it had operated on the incorrect number ranges. It followed that there had been a breach of paragraph 3.3.1 of the Code.

2. The Service Provider stated that the calls were not of an adult nature when compared with the adult evening service; however, it acknowledged the issues raised in the Executive's submissions, notably the language employed by the operator and that the operator should have terminated the calls and/or explained to the consumer that the conversation must be of a non-sexual nature.

It stated that, according to the Information Provider, the calls that had not been terminated, or where the operator had failed to enforce the rules to the caller, had been down to a single operator called "Lynsey". It stated that this operator had been reprimanded for conducting such calls in October 2010 and the rules and regulations had been enforced. It stated that this operator had been subsequently unable to adhere to these rules and had been moved to the night-time 'Adult Only' service.

The Service Provider made reference to a response from the Information Provider in relation to the breach and stated that it had been informed by the Information Provider that the guidelines had been re-enforced each morning during the pre-air production meeting.

The Service Provider stated it had been informed by the Information Provider that, of the 17 call transcripts provided, six transcripts had related to the same operator ("Lynsey"). Furthermore, in two of these six transcripts, the consumer had posed a suggestive question and the conversation had taken on a mildly adult tone. The Information Provider had stated that operators had been told to discourage consumers who attempted to engage in a conversation of an adult nature and to terminate the call if the consumer persisted.

The Service Provider stated that the four remaining transcripts related to the operator known as 'Lynsey', there had been occasions where the operator had steered the caller into a suggestive conversation, although the conversations had fallen far short of sexually-explicit discussions that were outlined in the compliance brief and, as such, to the operator's mind, had fallen within the guidelines. It stated that the operator in question no longer worked on daytime services as it was felt that she had been unable to comply with repeated compliance advice.

The Service Provider stated that two of the operators had not been native English speakers and, as such, it had been difficult for them to pick up the nuances of certain calls. It stated that it appeared that their calls had been flirtatious but, again, had fallen within their understanding of the guidelines.

It stated that another one of the operators concerned no longer worked on daytime services or no longer worked for the Information Provider.

The Service Provider stated that the Information Provider had reiterated the guidelines to its current operators in full and their calls were now being monitored closely by production staff to ensure full compliance.

3. The Tribunal considered the evidence, which included transcripts of calls. The Tribunal noted the Service Provider's acknowledgment that the language used by consumers should have prompted the operators to terminate their calls. It noted that some of the calls had represented a compliant daytime chat service for the number ranges used. However, the Tribunal found that operators and consumers had used sexually-explicit words during calls and it was clear that on several occasions, as demonstrated by the transcripts, operators and consumers had engaged in sexually-explicit chat. In addition, when taken in the context of the operator's appearance and behaviour on-screen, it was found that the service as a whole was clearly of a sexual nature within the definition of a 'sexual entertainment service' under paragraph 11.3.28 of the Code.

It followed that the service had been a 'sexual entertainment service' and had operated on a number range other than that designated by Ofcom. The Tribunal upheld a breach of paragraph 3.3.1 of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal's initial assessment was that, overall, the breaches taken together were **moderate**.

In determining the sanctions appropriate for the case, the Tribunal took into account the following aggravating factors:

- The Service Provider had been reckless in its operation of the service, its due diligence and its monitoring of the Information Provider, particularly in relation to the Information Provider's breach history.
- There was societal harm in allowing a sexually-explicit service to operate on an incorrect number range as this damages confidence in premium rate number ranges.
- Although there had been no evidence or complaints that indicated that specific harm had been caused to children, the fact that the service ran on unencrypted television channels had the capacity to be harmful to children.

In mitigation, the Tribunal noted the following factors:

- The Service Provider co-operated with PhonepayPlus.

The revenue in relation to this service was in the range of Band 2 (£250,000-£500,000).

Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **significant**.

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 £40,000.