

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday, 17 February 2011 TRIBUNAL SITTING No. 71/ CASE 4
CASE REFERENCE: 846300

Service provider & area:	Customer Service Helplines (UK) Ltd, Arlesey, Bedfordshire
Type of service:	Recorded directory information
Service title:	Customer Service Numbers
Service number:	09041690072, 09041690074, 09041690075, 09041690201, 09041690205 and all other PRNs on which these services operate.
Cost:	£1.50 per call
Network operator:	Switch Services Limited
Number of complainants:	10

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

BACKGROUND

The Executive received ten complaints in relation to the 'Customer Service Numbers' service. The service was a recorded directory information service that operated on various premium rate numbers.

Consumers who searched for an organisation's contact number on a search engine were presented with the Service Provider's website. Consumers who clicked onto the website link were presented with 'Customer Service Numbers', 'your search results' and a premium rate number directly below. Complainants stated that the advertising of the premium rate service was misleading.

The Executive's concern was centred on the misleading nature of the service and its pricing information.

Monitoring

The Executive monitored the service in December 2010 and January 2011. On calling the premium rate number the Executive heard a recorded message that stated: "Thank you for your call. The number you require is...". The customer service number of the relevant organisation was then repeated several times before the service automatically disconnected.

The Investigation

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

Following a preliminary investigation, the Executive issued a breach letter to the Service Provider, dated 1 February 2011. The Executive received a response from the Service Provider on 8 February 2011.

The Tribunal made a decision on the breaches raised by the Executive on 17 February 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE MISLEADING (FAIRNESS) (Paragraph 5.4.1a)

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

1. The Executive made reference to its monitoring exercise and submitted that when searching for a variety of organisations’ customer service details through the Google search engine, the Service Provider’s website appeared towards the top of the search results in the sponsored links section.

The Executive made reference to various examples of headers found above the link to the Service Provider’s website in relation to different searches that stated as follows;

- Tax Credits - The header stated ‘Tax Credits Helpline’
- DVLA - The header stated ‘Driving Licence Helpline’
- Virgin Media - The header stated ‘Customer Service Helpline’
- Child Benefits - The header stated ‘Child Benefits Helpline’

The Executive submitted that the above descriptions of the premium rate service were likely to have misled consumers who were searching for an organisation’s customer service number into thinking that by clicking on the Service Provider’s website link they would be presented with the customer service details of the relevant organisation.

It submitted that on clicking the website link, consumers were directed to the Service Provider’s website. The website prominently stated ‘Customer Service Numbers’, below which it stated ‘Your Search Results:’, followed by the relevant organisation’s name and the phrase ‘Customer Services’, or ‘Helpline’, which was also stated prominently (Appendix A).

The Executive submitted that this text would reinforce a consumer’s belief that the premium rate number displayed on this website was the actual customer service number for the organisation as opposed to a recorded information service that merely provided the required organisation’s customer service number. The Executive made reference to consumer complaints that supported its view such as the following:

“Company uses a Google paid advert to attract innocent, low paid people to use the number to find out an easily available (particularly if they have web access!) HMRC number. This is surely the worst example of sharp practice, preying on unsuspecting innocent billpayers.”

“Simply gives out another number for the DVLA – I’m sure the DVLA would not advertise a premium rate £1.50 number. This number was called was called by one of our staff. The number simply gives out another number (0300 790 6801) on a loop. This number belongs to the DVLA – I’m sure the DVLA would not advertise a fixed fee 09 number simply to do this. It has scam written all over it.”

In light of the above reasons, the Executive submitted that a breach of paragraph 5.4.1a of the Code had occurred.

2. The Service Provider stated that it operated an online directory service which was designed to save people's time and effort by giving quick access to the number they required.

It stated that its service allowed customers to find a number more easily, by entering popular search phrases into the Google search engine. For this to work, the keywords and headers must be descriptive and concise, as the amount of text permitted in a Google advertisement is limited. It followed that if it offered a number that can be contacted for help and assistance, the term 'helpline' was appropriately employed.

It stated that PhonepayPlus had approved an O2 version of the advertisement which had been headed '*Customer Service Helpline*' in October 2010 and as such the Virgin Media example should also have been acceptable. It stated that changing the phrase '*Customer Service Helpline*' to '*Driving Licence Helpline*' was a sideways move, to assist customers to expedite their search, by narrowing the results.

It stated that its advertisements had been shown over 128 million times by Google and only 4.5 million of the advertisements viewed had resulted in people clicking through to visit its website. It stated that these figures demonstrated that its advertisements had been widely understood and should they have been misleading or less obviously a directory service, there would have been more 'click throughs'.

The Service Provider stated that in view of the substantial sums it paid Google it was important that those people who do 'click' should already have an idea of the service. It stated that to avoid unsuspecting clicks its advertisements for Customer-Service-Helplines.co.uk clearly showed a descriptive web address that indicated the nature of the service and was not designed to confuse consumers.

Furthermore, it stated that its web pages were designed to emphasise that it was a directory service and the words '*Your Search Results*' indicated that the premium rate number has been supplied by a directory and is not the company's official web page.

It stated that the premium rate number had been prominently displayed on the web page and directly below it (and always in immediate view without needing to scroll) was the information regarding the recorded message.

The Service Provider stated that it did not target vulnerable people but offered a database that was evenly spread over all industries. For example the customer service contacts for companies such as Marks & Spencer or Apple Inc. would not be considered as having vulnerable customers, but these too formed part of its database.

3. The Tribunal considered the evidence and concluded that the service was a form of directory enquiry service as it incorporated several of the characteristics of this category of service. The Tribunal found that, in light of the combination of the appearance of the service and the use of the wording such as 'speak to an advisor' (Appendix B) and 'contact' in the Google ads banner/web link, consumers were likely to have been misled, as on clicking the web link consumers were likely to think that the number that appeared on the webpage was the number which they were searching for and not the number for the premium rate service.

The Tribunal acknowledged that consumers did eventually get the number they had been looking for. However, the web link was not sufficiently clear that obtaining the number would incur a charge.

The Tribunal upheld a breach of paragraph 5.4.1a of the Code.

Decision: UPHELD

ALLEGED BREACH TWO PRICING INFORMATION (COST) (Paragraph 5.7.2)

“Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Spoken pricing information must be easily audible and discernible”

1. The Executive made reference to the pricing information contained in the promotional material on the website, which stated as follows:

“Calls to this online telephone directory service cost a maximum of £1.50 per call plus network extras.”

It made reference to the PhonepayPlus Help Note on pricing information and submitted that the pricing information (within the terms and conditions beneath the premium rate number) had been in a significantly smaller font than the main call to action within the promotion, and as such had not been prominent to a consumer viewing the promotional material.

The Executive made specific reference to the website promotions for the ‘Tax Credits Helpline’, ‘DVLA – customer service number’ (Appendix B), ‘Virgin Media – customer service number’ and ‘Child Benefits Helpline’ where the cost of making the call had been placed in the middle of the terms and conditions, contrary to the guidance given in the PhonepayPlus Help Note on pricing information.

The Executive also submitted that the Service Provider had been advised in correspondence dated 24 August 2010 that there were issues with the prominence of the pricing information in its promotional material.

2. The Service Provider stated that it had been of the understanding that its web page for ‘O2 Customer Services’ had been fully compliant and accepted by PhonepayPlus. It stated that, it was this exact layout style that had been adopted throughout its website but some parts had failed to update.

It stated that, even before these website changes, its pricing information had always been displayed in close proximity to the premium rate number and it had not been necessary to scroll down to view pricing. Although it had not been ‘stand alone’ as in the earlier version, it had been very near to the top of the paragraph and all of the other information that followed in the paragraph had been necessary.

It stated that the design above the premium rate number was based on its logo, and company name and had not been designed to imitate any other organisation. Also, below the premium rate number, all of the text used, (even prior to the approved changes), had been formulated in previous co-operation with PhonepayPlus.

It stated that the fonts used were conventional and displayed in a horizontal format and that it had ensured that the font size was very legible, (even for customers with below average eyesight), and the colour of the text was black. The text size, style and colour used for the price information had been consistent with the rest of the text below the premium rate number.

It stated that it accepted that a prominence issue had been brought to its attention by PhonepayPlus in August and that it had always been fully willing to comply and implement the changes.

It stated that it had since re-examined all of its web pages to ensure all were now published correctly and the web pages which had been brought to its attention by the Executive had now been corrected and double checked.

3. The Tribunal considered the evidence and concluded that, in relation to at least one of the examples provided by the Executive (Appendix B), pricing information on the service's webpage was not sufficiently prominent.

Decision: UPHELD

SANCTIONS

The Tribunal took the view that failure to comply with a sanction imposed by PhonepayPlus should be regarded overall as **significant**.

The Tribunal considered that there were no aggravating factors that were relevant to this case.

The Tribunal considered various potential mitigating factors and concluded that none were applicable to this case. However, the Tribunal noted that:

- The Service Provider had taken earlier advice (prior to the investigation) and had not implemented the advice correctly, subsequently departing from the advice provided in an informal resolution process, so this could not be regarded as mitigation.
- Several of the pages were not updated due to a technical error.

The Tribunal commented that it was pleased that the Service Provider had expressed a wish to co-operate with the Executive and it hoped that it would follow the Executive's advice in the future.

The revenue in relation to this service was in the range of Band 1 (£500,000+).

Having taken everything into account, 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;
- A fine of £50,000.
- The Tribunal ordered that the Service Provider remedy the breach by seeking and implementing compliance advice to the satisfaction of the Executive.

- The Tribunal ordered refunds 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

Screen shot of the Google Ad page and the O2 search page

The image consists of two screenshots of a Windows Internet Explorer browser window. The top screenshot shows a Google search for "O2 customer service". The search results page displays several links, including "Customer Service Helpline" (an advertisement), "Call Customer Services", "Customer Service Helpline", "Support - O2", "Customer Service and O2 stores - O2", "Contact us - O2", "O2 | Mobile Phones, Broadband & Sims From The UK's Leading Provider", "O2 - Customer service", and "O2 - Customer care". The bottom screenshot shows the "Customer Service Numbers UK" website. The page features a navigation menu with "Home", "Contact us", "Number Search", and "About us". The main content area displays the search results for "O2 - CUSTOMER SERVICE NUMBER" with the phone number "Tel: 0904 169 0201". Below the number, there is a message: "To obtain the Customer Service Department number for O2 please use the above number. Calls cost no more than £1.50 from a BT landline • Service provided by Customer Service Helplines (UK) Ltd. The telephone number will be provided as a recorded message which continuously repeats. The given number will put you through to the O2 Customer Services Department. For your convenience, please have a pen and paper to hand." The footer contains copyright information: "© 2009 Customer Service Numbers • All Rights Reserved. Calls to this online telephone directory service cost a maximum of £1.50 per call plus network extras. Please ensure you have the bill payer's permission before using the service. The services may also be found for free within the public domain. Our company is not affiliated with the above organisation and they can not be contacted by email, via this site. To contact us, please email on helpline@customer-service-numbers.co.uk or telephone 0845 6520369."

Appendix B

Screenshot of Google Ad page and DVLA search result

The image shows two screenshots from a Windows Internet Explorer browser. The top screenshot is a Google search results page for the query "DVLA customer service". The search results include several links to DVLA customer service information, such as "Driver Licensing Helpline", "Driving Licence Helpline", and "Licence Helpline Number". There are also advertisements for "DVLA Contact Details" and "Customer Care".

The bottom screenshot shows the website "Customer Service Numbers UK" (www.customer-service-numbers.co.uk). The page features a navigation menu with links for Home, Contact us, Number Search, and About us. The main content area displays the search results for "DVLA - CUSTOMER SERVICE NUMBER" and provides the telephone number "Tel: 0904 169 0074". Below the number, there is a note: "To obtain the Customer Service Department number for DVLA please use the above number." and a disclaimer: "The contact telephone number will be provided as a recorded message which continuously repeats. The given number will put you directly through to an advisor in their Customer Services Department. For your convenience, please have a pen and paper to hand." The page also includes a copyright notice for 2009 Customer Service Numbers.