

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday 23 JUNE 2011 TRIBUNAL SITTING No. 79/ CASE 1
CASE REFERENCE: 859175**

Service provider:	Daotec Limited, London
Information provider:	UK Business Management Solutions Limited, Cardiff
Type of service:	Live advice service
Service title:	'UKBMS Sales Advice'
Service number:	09116132310, 09116132501, 09116135809 and 09116135858
Cost:	£1.53 per minute
Network operator:	Invomo Limited
Number of complainants:	8

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

BACKGROUND

The Executive received eight complaints between 5 April 2011 and 17 May 2011 in relation to a live advice service operating on premium rate numbers 09116132310, 09116132501, 09116135809 and 09116135858. Calls to the number were charged at £1.53 per minute. Complainants, all of whom were from cleaning and refurbishment companies, said they had received an email from the Information Provider saying that it was looking for cleaning services and asking them to call one of the numbers in order to discuss a potential booking.

Complainants stated that, on calling the number, they were engaged in a conversation with a person and discussed the cleaning requirements of what appeared to be a potential new client. Complainants said they felt that the conversation was being unnecessarily prolonged and, following the call, it came to their attention that the call had been charged at a premium rate.

The Executive was concerned that complainants had been unaware that the contact number in the email was premium rate and there was no pricing information present in the email or at the beginning of the call. Furthermore, the Executive noted that the service described by the Information Provider to the Service Provider had been different from that actually in operation.

The Service

According to the eight complaints received, the service had been promoted by emails sent to UK cleaning and refurbishment companies. The emails appeared to have been worded in a manner which would entice callers to dial the premium rate numbers in the expectation that they would gain some business as a result. For example, in one case a feedback form submitted by the Information Provider stated '*we need cleaners*'.

Once callers dialled the premium rate numbers, they were engaged in conversation with a member of the Information Provider's staff and allegedly kept on the call for as long as possible at a cost of £1.53 per minute.

Description of the service according to the Information Provider at the time of its sign-up with the Service Provider

The Service Provider said it had received the following information from the Information Provider at the outset:

“My business is going to be very small to start with and is only going to target the south wales area, we are only going to advertise by leaflet dropping and the service we are going to provide is an advise line to customers. The advise is life advise, all advisers will be qualified” [sic].

“UKBMS, (UK Business Management Solutions), offers an advise service, whereby, businesses can contact our advise line to pitch their product and services, and in return we will provide a detailed report, this offers further advise about their services and ultimately advises where they can improve” [sic].

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 6 June 2011. The Service Provider responded to the breaches in a letter dated 14 June 2011.

The Tribunal made a decision on the breaches raised by the Executive on 23 June 2011, following an informal representation by the Service Provider.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

PRIOR PERMISSION (Paragraph 5.1.1)

‘PhonepayPlus may require that particular categories of service must not be provided without its prior written permission for any service within that category. PhonepayPlus will give reasonable notice of such a requirement and the category of service to which it applies, and will publish a full list of such service categories from time to time. Prior permission may be granted subject to the imposition of additional conditions. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing.’

1. The Executive submitted that certain categories of premium rate service require prior permission from PhonepayPlus before commencing operation.

It submitted that the PhonepayPlus website contained a list of services which required prior permission, before commencing operation. This information was specifically brought to the attention of industry in March 2008, via a published Help Note. Additionally, PhonepayPlus also communicated information relating to services requiring prior permission through the monthly PhonepayPlus Newsletter in August 2010. It submitted that one type of service category that requires written prior permission before it can be provided is any service that charges more than £1 per minute where the total cost of the call can exceed £30.

The Executive submitted that the Service Provider had not applied for and does not have written prior permission for the ‘UKBMS Sales Advice’ service.

It submitted that, in response to the preliminary investigation by the Executive, the Service Provider supplied service information and also a complete log of individual

calls made to the premium rate numbers during operation of the service. It submitted that the 'UKBMS Sales Advice' service had been priced at £1.53 per minute and the call logs showed that no spend cap had been put in place to stop the cost of calls exceeding £30. At a price point of £1.53 per minute, the maximum call duration without written prior permission should have been 19.6 minutes. The call logs provided showed that 13 of 457 calls had exceeded £30.

2. During the informal representation, the Service Provider said it had not considered the service to require prior permission because the Information Provider had assured it that it would put the necessary spend cap in place on the premium rate numbers. However, it admitted that the Information Provider had clearly not done so and it admitted the breach.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach during the informal representation, and concluded that the cost of the calls to the service at £1.53 per minute and the complainant evidence demonstrated that, on several occasions, the total cost of the call had exceeded £30. The Tribunal noted that the Service Provider could have put in place the spend cap itself, but had not done so. The Tribunal found that the operation of this service had been such as to have required prior permission. The Tribunal upheld a breach of paragraph 5.1.1 of the Code.

Decision: UPHELD

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

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

1. The Executive submitted that the Service Provider had, according to the description provided by the Information Provider, expected the live advice service to have been promoted by sending targeted emails to UK businesses containing a pre-determined script that would offer the user an opportunity to pitch products or services to an operator, in return for feedback in the form of a detailed report advising improvements on sales techniques.

It submitted that it had received eight complaints about this service, all of which were from UK businesses who said they had received emails from the Information Provider which misled them into dialling the Information Provider's premium rate numbers.

It submitted that, instead of offering the sales advice service as detailed above, the email promotions had been worded in a manner that enticed recipients to call the premium rate numbers in the expectation that there was a potential to gain some business.

The Executive made reference to the promotions sent to cleaning companies and quoted a PhonepayPlus complainant call record as follows:

'Below is the result of your feedback form. It was submitted by (info@uk-bms.co.uk) on Wednesday, March 30, 2011 at 17:43:14

lastname: xxxx

firstname: xxxx

telephone: 09116135809

contact: telephone

comments: we need cleaners

Submit: send'

'Dear CCS Webform,

Title : miss

Name : danielle evans

Email : info@uk-bms.co.uk

Phone : 09116 132310

Subject : cleaning services

Body : would it be possible to have a call back on the number above regarding your services, for some more information, thanks.

Submit : Submit'

It submitted that this type of email promotion was consistent with the other complaints it had received in relation to this service.

The Executive submitted that the promotional emails associated with this service had misled recipients into dialling premium rate numbers and incurring charges without their knowledge. Furthermore, due to the lack of evidence of any 'sales advice service' offered by the Information Provider (as supported by the Information Provider's own description of the service), the service, as promoted, was not genuine and inherently misleading.

2. The Service Provider accepted that the service operated by the Information Provider was not as described to it initially.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach during the informal representation, and concluded that, on the balance of probabilities, there had been no legitimate attempt by the Information Provider to seek or engage in a contractual relationship for cleaning services.

The Tribunal found that the nature of the promotional emails had misled complainants into calling the premium rate number under the false impression that they were calling a potential new client when, in fact, this was not the case. It also found that the email had been misleading as to the cost of the service as the call-back number had been presented as a normal contact number and users would not have associated it with a premium rate service. The Tribunal upheld a breach of paragraph 5.4.1(a) of the Code.

Decision: UPHELD

ALLEGED BREACH THREE 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 emails sent to the complainants did not contain any pricing information.

The Executive made reference to the same promotional email as it relied on under Paragraph 5.4.1(a) (see above).

It also made reference to the following excerpts from consumer complaints:

'At no point was it made apparent that the number was premium rate'.

'The rep who called them back was not aware it was a premium rate number but was suspicious that they seemed to keep her on the line for as long as possible. 09116135858'.

Furthermore, the Executive also made reference to a letter sent by the Information Provider that stated as follows:

"Unfortunately, our previous training manager failed to provide scrutiny checks and adequate training therefore, we are aware that there has been numerous enquires submitted that have failed to mention our premium rate number costing and our specific service details" [sic].

The Executive submitted that, given the evidence presented by complainants and the letter sent by the Information Provider, there had been no pricing information presented to recipients of the promotional emails prior to incurring a charge.

2. The Service Provider accepted the breach. The Service Provider referred to an email it had sent to the Information Provider regarding an advert it had seen for the service on the website 'Gumtree', in which it had pointed out that the advert did not state the costs of the service. It said that, after that advert had been removed, it had not seen any further promotional material and had not seen the emails sent out by the Information Provider.
3. The Tribunal considered the evidence and concluded that the emails sent to complainants had promoted the service, but had not contained pricing information and, as a result, consumers had not been informed of the cost of the service prior to making a call and incurring a charge. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR

LIVE SERVICES (PROMOTIONAL MATERIAL) (Paragraph 6.2(a))

'Unless the live service is available 24 hours a day, or permission not to provide such information has been granted by PhonepayPlus, hours of operation must be stated on the promotional material.'

1. The Executive submitted that the service was described as a live advice service with hours of operation between 9.00am and 5.30pm.

It submitted that the emails promoting the service had not contained information on the hours of operation, as required by the Code for services which are not available 24 hours a day.

2. The Service Provider accepted the breach. It referred to an email it had sent to the Information Provider regarding an advert it had seen for the service on the website 'Gumtree', in which it had pointed out that the advert did not state the opening hours of the service. It said that, after that advert had been removed, it had not seen any further promotional material and had not seen the emails sent out by the Information Provider.

3. The Tribunal considered the evidence and concluded that the service had not been available 24 hours a day and had not been given permission by PhonepayPlus to omit opening hours' information from its promotional material. It followed that the emails had not contained the required information in relation to the hours of operation of the live service. The Tribunal upheld a breach of paragraph 6.2(a) of the Code.

Decision: UPHELD

ALLEGED BREACH FIVE LIVE SERVICES (Paragraph 6.3.1(a))

'Unless PhonepayPlus grants permission to do otherwise all providers of live services must ensure that on connection each service user receives a brief introductory message giving details of the call costs and the name of the service provider providing the live service'

1. The Executive submitted that the live advice service had not been granted permission, or any form of exemption from PhonepayPlus, to omit the brief introductory message giving details of the live service.

It submitted that, of the eight complaints received about this service, two strongly indicated that there had been no brief introductory message giving details of the live service. It made reference to the following complainant comments:

'I called the prn and upon connection there was no pricing information. A man just said hello'.

'An employee of CCS Medway called the number and spoke to a lady for approx half an hour about the cleaning service they provide. At no point was it made apparent that the number was premium rate'.

The Executive also stated that it monitored the number and noted that the person that answered had given no brief message providing details of the service, as required by the Code.

2. The Service Provider accepted the breach. It said it had offered to include the introductory message upon connection to the premium rate numbers, but the Information Provider had said it would do this itself.
3. The Tribunal considered the evidence, including the complainant comments and the Executive's monitoring, and concluded that complainants had not been provided with a brief introduction with the required service information upon connection, and that the service had not been given permission by PhonepayPlus to omit this information. The Tribunal upheld a breach of paragraph 6.3.1(a) of the Code.

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, as there had been no prospect of any of the callers obtaining a contract to provide cleaning services to the Information Provider.
- The behaviour of the Service Provider was reckless, particularly in relation to its failure to ensure that a spend cap was in place to avoid prior permission being required.
- The cost of the service to individuals was high, with one call costing in excess of £60.

The Tribunal took into account the following mitigating factors:

- The Service Provider did co-operate with PhonepayPlus and switched off the service immediately on notification by PhonepayPlus.
- The Service Provider said it had made refunds to complainants.
- The Service Provider said it had reviewed its due diligence procedures as a result of this case, and had put better systems in place.

The revenue in relation to this service was in the range of Band 6 (£1-£5,000).

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;
- A fine of £10,000.
- The Tribunal commented that it expected claims for refunds to continue to be paid by the Service Provider for the full amount spent by users, except where there is good cause to believe that such claims are not valid.