

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 31 MARCH 2011 TRIBUNAL SITTING No. 74/ CASE 2
CASE REFERENCE: 852273

Service provider:	Jermaine Pinnock (sole trader), UK
Information provider:	N/A
Type of service:	Parcel delivery service
Service title:	'SP Couriers Delivery' service
Service number:	09083930122
Cost:	£1.50 per minute
Network operator:	Invomo Limited
Number of complainants:	2

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

BACKGROUND

The PhonepayPlus Executive received two complaints in relation to the 'SP Couriers Delivery' service. The complainants were both from the Peckham area of London and had received a card posted through their letterbox, which stated that there had been an attempt to deliver a 'Message'. The delivery cards directed the recipient to call a premium rate number to organise a redelivery of the message *'to your address or to an alternative local address'*.

Consumers were charged £1.50 per minute to call the premium rate number 09083930122 and listen to a recording that did not contain any information relating to a delivery service, but the opportunity to host adult parties.

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 8 March 2011. The Executive made several attempts to contact the Service Provider and received no response.

The Tribunal made a decision on the breaches raised by the Executive on 31 March 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

PROVISION OF INFORMATION (REGISTRATION FORM) (Paragraph 3.2.1)

'Before providing any premium rate services, service providers must register with PhonepayPlus by completing online or lodging with PhonepayPlus a registration form (available for completion on the PhonepayPlus website or from PhonepayPlus) and receive an acknowledgement (which may be electronically generated) from PhonepayPlus.'

1. The Executive submitted that the Service Provider was a sole trader who had contracted directly with the Network Operator. It submitted that it had checked the internal systems at PhonepayPlus and it was clear that Jermaine Pinnock as a sole trader had not registered as a Service Provider and, therefore, was in breach of this paragraph of the Code
2. The Service Provider did not respond to the Executive's submission in relation to this breach.
3. The Tribunal considered the evidence and concluded that the Service Provider had failed to register with PhonepayPlus in contravention of the Code. The Tribunal upheld a breach of paragraph 3.2.1 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO PROVISION OF INFORMATION (Paragraph 3.2.2)

'Service providers must provide to PhonepayPlus without delay such information as it may require for any purpose relating to this Code which may include but is not limited to:

- a. any number ranges (including dialling codes) or other connection arrangements allocated to it by Ofcom or any network operator,*
- b. if the service requires or involves access to any website, the URL of the site,*
- c. the name, address, e-mail address, phone and fax number of the person representing the service provider who is nominated to receive all communications in connection with the application of the Code, enabling contact to be made with that person at all necessary times, and, if that person is not a director of the service provider, the name of the director with primary responsibility for premium rate services,*
- d. the name and home address of each of the directors and their phone and fax numbers and e-mail addresses.'*

1. The Executive submitted that it wrote to the Service Provider in a letter dated 8 March 2011 and requested information under paragraph 8.3.3 of the Code, concerning the 'SP Couriers Delivery' service. It submitted that the Service Provider, having had a conversation with the Executive where it confirmed receipt of the breach letter, failed to provide the requested information within the deadline of 15 March 2011.
2. The Service Provider did not respond to the Executive's submission in relation to this breach.
3. The Tribunal considered the evidence and concluded that the Service Provider had failed to provide any of the information requested by the PhonepayPlus Executive in relation to its investigation of this service. The Tribunal upheld a breach of paragraph 3.2.2 of the Code.

Decision: UPHELD

ALLEGED BREACH THREE

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 it had received two complaints specifically concerning the promotional material for the 'SP Couriers Delivery' service (Appendix A). It submitted that both complainants had alluded to having felt misled by the promotional cards that gave notice of an attempted delivery and prompted them to call the premium rate number. The complainants' comments were as follows:

"The complainant received a courier card from 'SP Couriers' in the letter box saying 'message cannot be delivered. For re-delivery please call 0908 393 0122'. The complainant did not call the number as they were not expecting any deliveries and felt that it was a bit suspicious as it gave a premium rate number to call with-out any pricing".

"Advertised as Courier redelivery contact on the note left in my Post Box. Card left on mail box, states a delivery was attempted, states item is a message, no details of who it is addressed to (as other courier cards always have), with a generic reference (Job2010). Similar to scams exposed recently where the call charge is £1.5 per minute. I have not called the number but I am 100% sure it's a scam as 0908 numbers are registered as adult numbers, not courier services".

The Executive submitted that the nature of the promotion indicated an intention to mislead recipients into believing that a courier company had attempted a delivery to their premises. The Executive provided examples of the wording as follows:

- *'Sorry, you were out',*
- *'could not be delivered to you',*
- *'We can **Redeliver** to your address or to an alternative local address',*
and
- *'Please note we'll keep a Recorded item for 1 week, and all other items for 3 weeks before returning them to sender'*

The Executive made reference to its monitoring exercise and submitted that, on dialling the premium rate number, it found that the pre-recorded message was in fact promoting an online 'work from home' plan (which had to do with hosting adult parties) and had no mention of organising a redelivery of a message or item. The Executive submitted that consumer expectation (on the basis of the appearance and content of the promotional material) would have been to consider that the notice was a genuine notification by a delivery/courier service, as opposed to a promotion for an informative premium rate service.

2. The Service Provider did not respond to the Executive's submission in relation to this breach.
3. The Tribunal considered the evidence and concluded that, on receiving a notice of failed delivery from a courier company, the consumer expectation would have been that a message had not been delivered and that it could be retrieved by calling the premium rate number when, in fact, the recording had nothing to do with a delivery of an item. It found therefore that consumers were misled into dialling the premium rate number. The Tribunal upheld a breach of paragraph 5.4.1(a) of the Code.

Decision: UPHELD

**ALLEGED BREACH FOUR
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 service was promoted by the receipt of a delivery card purporting to be from a genuine courier service called ‘SP Couriers Delivery’ (Appendix A). It submitted that the delivery card had promoted the premium rate number 09083930122 and prompted recipients to call the number to rearrange a delivery that had allegedly been missed. The Executive submitted that the cost of calling the premium rate number had been £1.50 per minute; however, no pricing information had been provided on the delivery card and, as such, users were not fully informed of the cost of using the service, prior to incurring charge. It submitted that the recorded message had also contained no pricing information.
2. The Service Provider did not respond to the Executive’s submission in relation to this breach.
3. The Tribunal considered the evidence and concluded that the neither the delivery notice nor the recorded message had contained pricing information and, as such, users were not informed of the £1.50 cost of the call, prior to incurring a charge. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

**ALLEGED BREACH FIVE
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 obvious and easily available to the user’

1. The Executive submitted that the service was promoted by the receipt of a delivery card purporting to be from a genuine courier service called ‘SP Couriers Delivery’ (Appendix A). It submitted that the delivery card had promoted the premium rate number 09083930122 and prompted recipients to call the number to rearrange a delivery that had allegedly been missed. It submitted that the delivery notice had not contained any contact information and had failed to provide any indication of the identity and contact details of the Service Provider, or a customer service phone number.
2. The Service Provider did not respond to the Executive’s submission in relation to this breach.
3. The Tribunal considered the evidence and concluded that the delivery notice had not contained any contact information. The Tribunal upheld a breach of paragraph 5.8 of the Code.

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 provided no value to consumers who called in response to a parcel delivery service.
- The Service Provider's behaviour was wilful in its operation of the service.
- The cost paid by the consumer was high (up to £4.50) for a valueless service.
- This type of service had been singled out for criticism by PhonepayPlus.

The Tribunal considered various potential mitigating factors and concluded that none were applicable to this case.

The revenue in relation to this service was in the low 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 £5,000.