

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 29 September 2011

TRIBUNAL SITTING No. 86 / CASE 2

CASE REFERENCE: 01225

Network Operator: Invomo Limited

Service Provider: John Hamilton

THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER

UNDER PARAGRAPH 8.5 OF THE CODE

BACKGROUND

A. Summary

On 16 March 2011, the Executive received one complaint in relation to a call made to a service operating on the premium rate number 09066331668. These premium rate numbers had been allocated to the Service Provider, John Hamilton, a sole trader.

On 14 March 2011, the complainant (a UK plc) received a telephone call from someone who introduced himself as "*Thomas Harris*" and claimed to be calling on behalf of "*Amanda Bryant Holdings*". The caller requested a copy of the complainant's company annual report to be faxed to the premium rate number: 09066331668. The complainant faxed the 40-page annual report to the premium rate number, and incurred a charge of £347.96.

The complainant confirmed to the Executive that no service was sought, offered or provided to the recipient of the call. The complainant had simply been informed that "*Amanda Bryant Holdings were looking at investment opportunities*", and had been requested to send a copy of its company annual report by fax to the premium rate number.

B. How the service operated according to the Executive

The complaint received by PhonepayPlus indicates that the premium rate number was not used to provide any service and appears to have been misused by the Service Provider to generate revenue.

C. How the service was purported to operate

On 5 July 2011, the Executive sent a formal direction to the Network Operator, requesting information held concerning the Service Provider, including copies of contracts and any due diligence carried out on the service. The Network Operator was unable to provide any documentary records concerning the Service Provider and was, therefore, unable to verify how the service was purported to operate.

D. Monitoring

On 22 March 2011, the Network Operator suspended all premium rate numbers allocated to the Service Provider. As a result of this suspension, it was not possible for PhonepayPlus to monitor the service.

E. Similarities to the concurrent investigation into Phillip Marshall (case ref: 01220)

On 15 April 2010, the Service Provider registered with PhonepayPlus as a Service Provider under paragraph 3.2.1 of the Code and provided a number of contact details.

Notwithstanding the Network Operator's failure to provide the Executive with any documentary records for the Service Provider, the Executive obtained some additional contact and bank account details during the course of email correspondence with the Network Operator between 23 June 2011 and 11 July 2011.

The Executive examined both the registration information held by PhonepayPlus and the information obtained during email correspondence with the Network Operator, and noted a number of connections to a concurrent investigation into a separate Service Provider named Philip Marshall (case ref: 01220). The Tribunal also considered this case on 29 September 2011. The Executive noted the following connections between John Hamilton and Philip Marshall:

- Philip Marshall and John Hamilton operated identical services;
- Outpayments for the service operated by John Hamilton had been paid into a bank account in Slovakia under the name of A Price. This is the same bank account for which payments were being made with respect to the service operated by Philip Marshall;
- The same Slovakian telephone number was confirmed as the contact number for John Hamilton and Philip Marshall;
- The same UK landline was confirmed as being one of two known contact numbers for John Hamilton and the main UK landline contact for Philip Marshall;
- While John Hamilton and Philip Marshall did not share the same fax number, John Hamilton and Philip Marshall shared a same fax number with a third individual, Larry Banks. John Hamilton also shared a UK land line with Larry Banks;

- Both John Hamilton and Philip Marshall had registered under paragraph 3.2.1 of the Code as Service Providers on 15 April 2010.

The Executive considered the possibility that Philip Marshall and John Hamilton might be aliases used by A Price, the individual named on the bank account in Slovakia, or some other third party. The Tribunal noted this observation but found that there was insufficient evidence to draw any conclusion on the issue.

F. The Investigation

In light of the above observations, the Executive sent a breach letter to the Service Provider on 12 September 2011 (the “First Breach Letter”), which set out a request for information under paragraph 8.3.3 of the Code and raised the following potential breaches under the Code:

Section 5 – General provisions applicable to all premium rate services:

- Paragraph 5.4.1a – Fairness
- Paragraph 5.7.1 – Pricing information
- Paragraph 5.8 – Contact information

The deadline for a reply to the First Breach Letter was 5pm on 19 September 2011. The Service Provider did not provide a response to either the request for information under paragraph 8.3.3 of the Code or the breaches raised by the Executive. Shortly after expiration of the deadline of 5pm on 19 September 2011, the Executive sent a further breach letter to the Service Provider (the “Second Breach Letter”) which raised the following additional breach under the Code:

Section 3 – Service providers

- Paragraph 3.2.2 – Provision of information

The Service Provider failed to respond to the Second Breach Letter. The Tribunal reached a decision on the breaches raised by the Executive on 29 September 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

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 confirmed that, on 12 September 2011, it had sent the First Breach Letter to the Service Provider, John Hamilton, requesting information under paragraph 8.3.3 of the Code, concerning the use of the premium rate number: 09066331668.

The Executive sent the First Breach Letter, including the paragraph 8.3.3 request for information, to the email address and postal address supplied to PhonepayPlus by John Hamilton when registering as a Service Provider on 15 April 2010. The Executive also subsequently attempted to contact John Hamilton by telephone to confirm receipt of the First Breach Letter (including the request for information).

On 14 September 2011, the Executive called the telephone number supplied to PhonepayPlus by John Hamilton when he registered as a Service Provider on 15 April 2010, but there was no connection.

On the same date, the Executive also called the Slovakian telephone number which John Hamilton had supplied to the Network Operator as a contact number, but again there was no answer. The first telephone call was answered by an individual identifying himself as Terrence Jameson who requested that the Executive call back in 30 minutes to speak to John Hamilton. The Executive called again after 30 minutes, but there was no answer.

On 15 September 2011, the Executive sent a further email to John Hamilton, requesting confirmation of receipt of the First Breach Letter (including the request for information). No response was received.

The deadline for providing a response to the First Breach Letter was 5pm on 19 September 2011. The Service Provider failed to submit any response to the Executive by the deadline of 5pm on 19 September 2011.

2. The Service Provider failed to respond to the 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 the service. The Tribunal upheld a breach of paragraph 3.2.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

FAIRNESS (MISLEADING) (Paragraph 5.4.1a)

“Services and promotion material must not: (a) mislead, or be likely to mislead in any way.”

1. The Executive submitted that PhonepayPlus had received a complaint from a business in the UK that it had received a telephone call, requesting that a copy of its annual company report to be sent by fax to the premium rate number: 09066331668. This request had been on the pretext that it was for a legitimate purpose. The complainant was told that the caller was from “*Amanda Bryant Holdings*” which was “*looking for investment opportunities*”. The Executive was unable to verify whether “*Amanda Bryant Holdings*” was a genuine company.

The complainant stated that:

“7 calls were made and I think it took quite a while, I know what company it was they were called Amanda Bryant Holdings we were sending the fax to Thomas Harris it was a 40 page annual report. I think the first time we tried to send it, it was 2:45pm and then it kept going on the whole afternoon. We were not informed it was a premium rate number and my colleague who sent it across had no idea about 09 numbers either”

The Executive noted that Code paragraph 11.3.27 defines a promotion as follows: “*Promotion’ means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services, and the term promotional material shall be construed accordingly’.*

The Executive submitted that the telephone calls to the complainant’s business constituted promotions that encouraged, or induced, the recipient to send a substantial fax to the premium rate number.

The Executive accordingly submitted that the promotional telephone calls misled the recipient into dialling the premium rate number for no genuine reason and when there was no genuine service being provided.

2. The Service Provider failed to respond to the breach.
3. The Tribunal considered the evidence and concluded that the Service Provider had promoted its service by telephoning a UK business and requesting its annual report to be faxed to a premium rate number. The Tribunal concluded that the promotional material had misled the recipient into dialling the premium rate number on the pretext that it was for a legitimate purpose. The Tribunal found that there was in fact no such legitimate purpose and no genuine service was being provided on the premium rate number. The Tribunal upheld a breach of paragraph 5.4.1a 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 raised a breach of paragraph 5.7.1 for the following reason. The complaint received by PhonepayPlus confirmed that the promotional telephone calls received did not inform the recipient in any way of the cost of dialling the premium rate number, prior to charges having been incurred. The Executive submitted that the complainant had stated that:

“We were not informed it was a premium rate number and my colleague who sent it across had no idea about 09 numbers either.”

The Executive confirmed that the complainant had been charged £347.96 for faxing its 40-page annual report to the premium rate number: 09066331668

2. The Service Provider failed to respond to the breach.
3. The Tribunal considered the evidence and concluded that the promotional telephone call did not inform the recipient of the cost of dialling the premium rate number, prior to charges having been incurred. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR

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 obvious and easily available to the user.”

1. The Executive submitted that the telephone calls to the complainant were promotions that encouraged, or induced, the recipient to send a substantial by fax to the premium rate number. The Executive confirmed that the complainant was told that the caller was from “*Amanda Bryant Holdings*”, and the fax was to be sent to someone named “*Thomas Harris*”.

“I know what company it was they were called Amanda Bryant Holdings we were sending the fax to Thomas Harris it was a 40 page annual report”

The Executive submitted that neither “*Amanda Bryant Holdings*”, nor “*Thomas Harris*” were the Service Provider or Information Provider, and that there was no reference to the actual Service Provider, John Hamilton, or any Information Provider. The Executive also noted that the information provided by the complainant appeared to highlight that no contact details or non-premium rate customer service phone number, as required by paragraph 3.3.5 of the Code, were provided within the promotion. In light of the above, the Executive submitted that a breach of paragraph 5.8 of the Code had occurred.

2. The Service Provider failed to respond to the breach.
3. The Tribunal considered the evidence and concluded that the promotion did not contain the required contact information and customer service phone number. The Tribunal upheld a breach of paragraph 5.8 of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal’s initial assessment was that, overall, the breach was **serious**.

The Tribunal considered the following aggravating factors:

- The service provided no value to the consumer who had received a request for their company report to be faxed to the premium rate number;
- The behaviour of the Service Provider was wilful in its operation of the service;
- The service was designed to generate revenue without providing any service or value; and
- The cost paid by the consumer was high (the complainant had incurred a cost of £347.96).

There were no mitigating factors for the Tribunal to consider.

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

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

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- A formal reprimand;
- A fine of £3,250;
- A prohibition on the Service Provider from involvement in, or contracting for, any premium rate services for a period of twelve months, starting from the date of publication of this decision; and
- Payment of all claims made by users for refunds of the full amount spent by them for the service, save where there is good cause to believe that such claims are not valid.