

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 28 APRIL 2011 TRIBUNAL SITTING No. 75/ CASE 2
CASE REFERENCE: 854589

Service provider:	Michael Woodman (sole trader), UK
Information provider:	N/A
Type of service:	Fixed line, Faxing premium rate numbers
Service title:	N/A
Service number:	08715260297, 08715260492, 08719182050 and all other relevant premium rate numbers
Cost:	10p per minute
Network operator:	Core Telecom Limited, Switchconnect Limited
Number of complainants:	13

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

BACKGROUND

PhonepayPlus received complaints in relation to the receipt of faxes promoting the premium rate numbers 08715260297, 08715260492 and 08719182050 and others. The faxes requested assistance in relation to a legal, accounting or construction issue and were sent to organisations with that specific expertise, such as law firms, accountancy firms and architectural firms. They were designed to promote a response to a premium rate number.

The Executive was concerned that the promotional material had been misleading and that the premium rate charge was increased, there being undue delay once connected to the premium rate number. Also, there was no pricing information in relation to the service and a lack of contact information.

Monitoring

Following receipt of complaints, the Executive started a monitoring exercise. On calling the service, the Executive heard the following recorded message:

"Thank you for calling. All our operators are currently busy, please continue to hold".

Music was then played, with periodic announcements asking that the Executive remain on hold.

The Executive called the premium rate numbers on numerous occasions and was placed on hold for varying periods of time and on some occasions in excess of ten minutes. At no point was the Executive put through to an operator. The Executive was also not advised of the likely hold time, or the position in the call queue. In three of the calls, the Executive was given the opportunity to leave a message at the end of the call for a call-back. On 22 March 2011, the Executive left a message for a call-back on the voicemail facility. No call-back was received.

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 1 April 2011 and received an undated response on 13 April 2011.

The Tribunal made a decision on the breaches raised by the Executive on 28 April 2011.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

CUSTOMER SERVICE ARRANGEMENTS (Paragraph 3.3.5)

‘Service providers must ensure that there are in place customer service arrangements which must include a non-premium rate UK customer service phone number and an effective mechanism for the consideration of claims for refunds and their payment where justified.’

1. The Executive made reference to the 0871 Help Note published by PhonepayPlus (May 2009), which provides guidance on the compliant operation of 087 telephone services and states as follows:

“Consumers should be offered an effective process should they want to make a complaint about an 087 service. The number to call to make a complaint should be stated or be made obvious in some other way. The complaint handling number can be the same as the number for the service itself or another 087 number...”

It submitted that only one telephone number had been stated in the faxes that had promoted the premium rate numbers (Appendix A) and, as such, it was reasonable to expect that the provision of customer services and complaint handling would be provided on that number. The Executive submitted that, in light of the fact that all the complainants who called the premium rate numbers reported to have been unable to get through to the Service Provider and that during the course of its monitoring the Executive had also been unable to contact the Service Provider, it follows that there had been no customer service arrangements in place supporting this 087 service, nor had there been an effective mechanism for the consideration of claims for refunds.

The Executive made reference to some sample complaints and quoted as follows:

“There is no service just a recorded message”

“We are a firm of accountants that received a fax from ‘M.P. Woodman’ requesting a fee quote for professional advice, including year end accounts, etc. The contact number that was provided was 0871 526 0492. When this number is called there is a brief message saying that you are in a queue and the call is important. It is a complete con.”

“Fax request received with above number [08715260492] and 08715260297 quoted as call back numbers to quote for specific accountancy services. Call placed on hold indefinitely. Suspect this is a scam”

The Executive submitted that the Service Provider had not put customer service arrangements in place as required under this paragraph of the Code.

2. The Service Provider questioned how someone could be placed on hold indefinitely. It stated that it did not receive the Executive’s voice message.

3. The Tribunal considered the evidence and concluded that the Service Provider had failed to put any customer service arrangements in place. The Tribunal upheld a breach of paragraph 3.3.5 of the Code.

Decision: UPHELD

**ALLEGED BREACH TWO
FAIRNESS (MISLEADING) (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 the different fax promotions (Appendix A) that were sent by the Service Provider, the promotions were as follows:
 - A fax advising that the Service Provider has a budget of £400,000 to build a four bedroom house and asking for a call-back on the premium rate number to discuss. This fax appears to have been sent to construction and architect firms
 - A fax advising that the Service Provider is starting up three limited companies and requires assistance with payroll, PAYE, national insurance, risk assessment, Year End Accounts, bookkeeping, and VAT returns, and asking for a call-back on the premium rate number to discuss. The fax appears to have been sent to accountancy firms.
 - A fax advising that the Service Provider requires legal assistance following a previous criminal conviction and requesting a call-back on the premium rate number to discuss. This fax appears to have been sent to legal firms.

The Executive submitted that the Service Provider had tailored the content of the faxes to the specialism of the organisation to which they were sent, so as to increase the likelihood of that firm calling the premium rate number. The Executive noted that a no time had it or the complainants who called the premium rate number been able to get through to the Service Provider. It also noted that it did not receive a call-back after leaving a message and that the same premium rate number had been quoted in all of the promotional faxes. In light of this evidence, the Executive submitted that there had been no legitimate service and that the promotional material had misled recipients into calling the premium rate number with a view of offering a professional service when it was not possible to do so.

The Executive made reference to complainant comments that were as follows:

“There is no service just a recorded message”

“We are a firm of accountants that received a fax from ‘M.P. Woodman’ requesting a fee quote for professional advice, including year end accounts, etc. The contact number that was provided was 0871 526 0492. When this number is called there is a brief message saying that you are in a queue and the call is important. It is a complete con.”

“Fax request received with above number [08715260492] and 08715260297 quoted as call back numbers to quote for specific accountancy services. Call placed on hold indefinitely. Suspect this is a scam”

“Believe to be a scam of someone trying to make money by getting contractors to call who are looking for work.”

“There is no other information on the fax and we are aware that all users of 0871 number must advise cost of call which should be shown close to telephone number and prominent and that failure to do so will result in disconnection. Luckily we intercepted this fax before any of the staff read it as they have been trained to follow up on all leads so would not have hesitated in calling “Mike”. It makes us wonder how many other small businesses like ourselves this person has tried to con.”

“A hook facsimile sent to impress – big budget, lots of nights. Return telephone numbers do not inform you they are premium rate!”

2. The Service Provider stated that it sent the faxes to companies asking for information from them and it had not been offering a service, but rather looking for a service. It stated that the Executive was suggesting that, as it never received a call-back, it was submitted that the Service Provider had not provided a legitimate service. It stated that as it never received the voice message and therefore could not reply.
3. The Tribunal considered the evidence and concluded that the Service Provider had sent promotional faxes with content tailored to the specialism of a particular organisation. The organisations were misled into contacting the Service Provider by way of a premium rate number with the view of offering a professional service when, in fact, it was not possible to contact the Service Provider and there was no evidence that the issues stated in the faxes were genuine or real. The Tribunal upheld a breach of paragraph 5.4.1(a) of the Code.

Decision: UPHELD

**ALLEGED BREACH THREE
UNDUE DELAY (Paragraph 5.4.2)**

‘Services must not be unreasonably prolonged or delayed’

1. The Executive made reference to the 0871 Help Note published by PhonepayPlus (May 2009). It quoted the advice provided in relation to limiting undue delay and the two suggested methods of achieving this as follows:

“If consumers are held in a queue while they wait for an operator to become available they must be given a suitable indication of the likely delay. They will then be in a position to make an informed decision as to whether to remain on hold or to try again another time.”

Two methods suggested in the Help Note of achieving this are:

- Stating an estimation of the length of the delay (in minutes);
- Telling the caller they are placed in a queue and where they are in relation to others in the queue.

The Executive made reference to its monitoring service and the length of the calls:

Date of Call	Length of time on hold
11 January 2011	5 minutes, 15 seconds
28 February 2011	5 minutes, 46 seconds

17 March 2011	10 minutes, 15 seconds
22 March 2011	10 minutes, 15 seconds

The Executive submitted that at no point during the above calls was it put through to an operator, or advised of the likely hold time or its position in the call queue. It submitted that in three of the calls it was given the opportunity to leave a message with the view of getting a return call. It did so on the 22 March 2011; however, no call-back was received.

The Executive made reference to the complainant comments and quoted as follows:

“There is no service just a recorded message”

“We are a firm of accountants that received a fax from ‘M.P. Woodman’ requesting a fee quote for professional advice, including year end accounts, etc. The contact number that was provided was 0871 526 0492. When this number is called there is a brief message saying that you are in a queue and the call is important. It is a complete con.”

“Further to my phone call to your office I attach a fax received by me at about 7am this morning. I telephoned the number given soon after 9am. A recorded message said I would be put through to an advisor but I got 1 minute of music after which the call was cut off. I telephoned again at about 9:30am and received the same result although I cut off myself after a short time. Finally, I tried a third time at about 10am but cut this call as soon as the music started. I understand that you also tried this number with the same result. My server ACN will be able to confirm the costs to me by tomorrow morning if I wish to call them. I am therefore confirming that I would like to make a complaint about this fax.”

“Fax request received with above number [08715260492] and 08715260297 quoted as call back numbers to quote for specific accountancy services. Call placed on hold indefinitely. Suspect this is a scam”

The consumer called and said that he received a fax asking him to contact 08715260492 number because the person need information on year end accounts, book keeping, payroll etc. The consumer said that he tried calling the number but was put on hold. He said he called the number a few times but each time he could not get through.

2. The Service Provider stated that he had been told by BT PLC that there was a message informing callers of the call cost per minute. He also stated that he was told there was a message informing callers of their place in the queue. He stated that, as he had never called the premium rate number, he would not know if that was true or always working.
3. The Tribunal considered the evidence and found that both the Executive and complainants had been unable to make any contact with the Service Provider, regardless of the duration of the call. The Tribunal also noted the inconsistent call durations and that it appeared that no one received a call-back. It concluded that, given that there was no evidence that any call made to the service was answered or returned, calls made to the service had been unreasonably prolonged and delayed, with the aim of maximising Service Provider revenue. The Tribunal upheld a breach of paragraph 5.4.2 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 made reference to the three different fax promotions used by the Service Provider to advertise the premium rate numbers (Appendix A). The Executive submitted that the promotional faxes contained no pricing information and no pricing information was given on connection to the premium rate numbers.

The Executive quoted several complainant comments as follows:

"There is no other information on the fax and we are aware that all users of 0871 number must advise cost of call which should be shown close to telephone number and prominent and that failure to do so will result in disconnection. Luckily we intercepted this fax before any of the staff read it as they have been trained to follow up on all leads so would not have hesitated in calling "Mike". It makes us wonder how many other small businesses like ourselves this person has tried to con."

"A hook facsimile sent to impress – big budget, lots of nights. Return telephone numbers do not inform you they are premium rate!"

"Further to my phone call to your office I attach a fax received by me at about 7am this morning. I telephoned the number given soon after 9am. A recorded message said I would be put through to an advisor but I got 1 minute of music after which the call was cut off. I telephoned again at about 9:30am and received the same result although I cut off myself after a short time. Finally, I tried a third time at about 10am but cut this call as soon as the music started. I understand that you also tried this number with the same result. My server ACN will be able to confirm the costs to me by tomorrow morning if I wish to call them. I am therefore confirming that I would like to make a complaint about this fax."

2. The Service Provider stated that it did not know why the cost of the call had not been included on this fax and questioned how complainants who had never called the number or faxed back could suggest that it was a con. He stated that he had been told that there would be warning messages at the start of the calls to its 0871 numbers.
3. The Tribunal considered the evidence and concluded that neither the promotional fax message nor the recorded message had contained pricing information and, as such, users were not informed of the 10 pence per minute 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 made reference to the three different fax promotions (Appendix A) used by the Service Provider to promote the premium rate numbers. It submitted that one of the fax promotions had provided the identity of the Service Provider as ‘Mike’ and the remaining two fax promotions had provided the Service Provider’s identity as ‘M.P.Woodman’. The Executive submitted that that the identity of the Service Provider had not been clearly stated in the promotional material.
2. The Service Provider stated that the name ‘Mike’ represented the initial ‘M’ in ‘M.P. Woodman’ and that most people use initials for the name or sometimes just their first name.
3. The Tribunal considered the evidence and concluded that the name ‘Mike’ did not constitute sufficient information about the identity of the Service Provider or Information Provider. 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 request for a professional service.
- The Service Provider’s behaviour was deliberate and wilful in its operation of the service.
- There was material consumer harm as the service was designed to generate revenue without providing any service or value.

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 **very 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.
- The Tribunal imposed 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 the publication of this decision.

Appendix A – Examples of the faxes sent by the Service Provider

Dear Sir/Madam

I need an account to help me with the following, I am starting three limited company's, with turn over of £100,000 each, I want to be able to submit tax returns over the Internet, via a Internet portal, we will need day to day help with payroll, P.A.Y.E, National insurance Etc.

We also need tax advice, how to pay less tax, which is best leasing or bought out right, IE which is more cost eective when buying fixed items, leasing, renting, outright etc.

We are interested in the following areas, if you dont provide these services can you point me to a company that does?

My contact details are phone 0871 526 0492 and fax 0871 526 0297.

- Initial Risk Assessment
- Year End Accounts
- Bookkeeping
- Payroll
- VAT Returns

Regards

M.P.Woodman

*Please Reply Plus
0200 500 212
511 work.*



Dear Sir/Madam

I am looking for a solicitor, in 1999 I was charged with downloading 8 indecent pictures of children, I have latter found out at least one of the pictures was downloaded whilst I was at work, this was as far as I am aware never raised in court, or asked to the person accusing me of downloading them, how I could of downloaded it/them when I was at work.

I was living with a guy I met at work in a room in his 2 bedroom flat, he was caught trying to steal my computer at 1-2am in the morning by the police over 2 miles from where he lived they asked him what he was doing, they took him back to the fiat, as soon as he got there he said there was child pornograpy on his computer, which they took, I sold him the computer, but before I did I reformated the hdd, so it was clean, I used to use his as well as mine, there was major confusion even in court what was downloaded on whose pc, there experts lied in court even though we could prove you can get files on mire without knowing, they said you cant.

It was his word against mine and I had to choose either to say he did it, or they could of been downloade3d when I was on it and not know about it, which is stupid, esp when one or more where downloaded when I ws at work.

He even kicked out his then gf who he was enged to and let me stay in his flat whilst she stayed at a YWCA, his only witness was her, and he used to beat her up when I was in his flat, not a really good witness in my books.

I was hoping to appeal against this, esp since there witness would say no one downloads files and leaves there pcs, when in fact 90% of people do, I personally think the charge was unfair, when there was no real evidence or none at all who could of downloaded the 8 pictures, esp when one or more was done when I was at work.

I think I can get legal aid, but if I had to pay I would pay up to £20,000, wont supply my address becasue my landlord intercepts my post and sometimes opens it.

0871 526 0492 is my landline number.

Kind Regards

Mike

PS I was sentenced in 2000 to 3 months and 2 years on sex offenders reg, appealed and got 6 months and 7 and a half years on sex ofenders reg. If you cant help can you supply a solicitor that miht be able to.