

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 17 February 2011 TRIBUNAL SITTING No. 71 / CASE 1
CASE REFERENCE: 849347

Service provider & area:	Mobile Interactive Group Limited, London
Information provider & area:	Cometa Wireless Gaming Systems Limited, Sheffield
Type of service:	Remote Gambling Service
Service title:	'mBet'
Service number:	80876, 63002, 63003
Cost:	£1.50 per text received
Network operator:	All Mobile Network Operators
Number of complainants:	1

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

BACKGROUND

The Executive received one complaint from a member of the public regarding the mBet Remote Gambling service which operated on the shortcodes 80876, 63002 and 63003. The service offered consumers the opportunity to play casino games on their mobile phone handsets and use premium rate billing as a method of payment.

The service operated from May 2009 to November 2010 without the requisite prior written permission, a requirement for Remote Gambling services. The service was suspended by the Service Provider in December 2010 following instruction from PhonepayPlus.

Service Promotion

The service was promoted on the 'mbet.com/w/index.html' website (Appendix A) The service could be downloaded to consumers' handsets by entering their mobile phone number into the request field as seen in the screen shot (Appendix A).

Consumers could begin gambling once they had registered an account, completed age verification and paid money into their account via the receipt of premium rate reverse billed text messages.

Age Verification

When registering to access the service, consumers were required to enter personal details including their name, age and address. In turn a third party company carried out checks to verify the consumer, by running checks against the following information:

- Electoral Roll Information (Voters Roll)
- Drivers Licence Data
- Passport Information
- National Identity Data

Requirement for prior permission

The Executive noted that under paragraph 5.1.1 of the Code, PhonepayPlus may require that particular categories of service must not be provided without its prior written permission and that the requirement to obtain Prior Permission applies to the service provider.

The Executive noted that the PhonepayPlus' Help Note on prior permission outlines the requirement to obtain Prior Permission from PhonepayPlus for remote gambling services and that the Prior Permission section of the PhonepayPlus website also outlines the requirement to obtain permission for remote gambling services, and that such services are subject to a spend limit of £30 in any 24 hour period.

The Executive further noted that PhonepayPlus has also communicated information to industry relating to services requiring Prior Permission through the monthly PhonepayPlus Newsletter.

- In August 2010, PhonepayPlus communicated the list of services requiring Prior Permission and a reminder that a service requiring Prior Permission should not operate until a certificate has been issued.
- In September 2010, PhonepayPlus specifically communicated information relating to remote gambling services.

The Executive confirmed that the Service Provider had seven employees registered to receive the PhonepayPlus Newsletters.

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 21 January 2011. The Executive received a response from the Service Provider on 28 January 2011 and a further response on 8 February 2011.

The Tribunal made a decision on the breaches raised by the Executive on 17 February 2011, having heard an Informal Representation from the Service Provider.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE PRIOR PERMISSION (Paragraph 5.1.1)

“PhonepayPlus may require that particular categories of services 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 remote gambling is a premium rate service category that requires written Prior Permission before it is allowed to operate.

It submitted that PhonepayPlus published on its website a list of services which required Prior Permission before commencing operation and that this information

had been specifically brought to the attention of the industry in March 2008, via a published Help Note and the monthly PhonepayPlus Newsletter.

It submitted that it had received a complaint from a member of the public in October 2010 and that this brought the service to its attention. Subsequent enquiries into the mBet service had made it immediately apparent that the required remote gambling Prior Permission had not been obtained, prior to the service commencing operation.

It submitted that remote gambling Prior Permission certificates are only issued to service providers and as such must be applied for by the Service Provider, on behalf of each of their information provider clients' services. The Executive submitted that this had not occurred in the case of the mBet service which operated through the Service Provider's platform, between May 2009 and November 2010 (19 months).

2. The Service Provider stated that the service did not have Prior Permission but this had been a purely administrative error on its part which had resulted in the service being mis-categorised and not identified as a gambling service.

It stated that following on from PhonepayPlus' communications to industry it had performed audits and sent notifications to its clients to check all their services had permissions, but due to the nature of the error this service had been missed. The Service Provider also said that it had since improved its processes to avoid this kind of error occurring again.

It stated that once this was brought to light, under PhonepayPlus' instruction it suspended the service and had offered refunds all end users who had spent more than £30 per day and had actively notified those who had been affected in the last 6 months. It stated that it had also applied for Prior Permission.

3. The Tribunal considered the evidence, including the Service Provider's admission, and concluded that Prior Permission to operate a remote gambling service, as required by PhonepayPlus, had not been sought or obtained by the Service Provider before the operation of the service. The Tribunal upheld a breach of paragraph 5.1.1 of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal's initial assessment was that, overall, the breaches taken together were **significant**.

In determining the sanctions appropriate for the case, the Tribunal took into account the following aggravating factors:

- The Service Provider's behaviour was careless in its failure, on two occasions, to establish that the service did not have the requisite Prior Permission; firstly when contracting with the Information Provider and secondly by mis-categorising the service and therefore not discovering the absence of a Prior Permission certificate during its audit.

The breach history of the Service Provider: in particular a recent case (843809/14 October 2010) where the Tribunal stated that the Service Provider had been careless in its failure to check the service was compliant.

In mitigation, the Tribunal noted the following factors:

- The Service Provider had co-operated with the Executive to a level that is expected.
- The Service Provider had provided refunds to users and pro-actively contacted consumers that had been affected in the last 6 months.

The revenue in relation to this service fell within the range of Band 2 (£250,000-£500,000).

Having taken into account the aggravating factors and the mitigating factors, and the revenue generated by the service, 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 generated by the service, the Tribunal decided to impose the following sanctions:

- A Formal Reprimand;
- A fine of £50,000;

Appendix A – Screenshot of mBet webpage

