

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS  
TRIBUNAL DECISION**

**Thursday 29 September 2011**

**TRIBUNAL SITTING No. 86 / CASE 1**

**CASE REFERENCE: 01220**

Network Operator: 24 Seven Communications Limited

Service Provider: Phillip Marshall

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

**BACKGROUND**

**A. Summary**

On 10 March 2011, the Executive received one complaint in relation to a call made to a service operating on ten premium rate numbers, ranging from 09116128750 to 09116128759. These premium rate numbers had been allocated to the Service Provider, Phillip Marshall, a sole trader, trading under the business name 'P. Marshall & Company'.

The complainant (a UK plc) received a telephone call from someone claiming to be from a firm of solicitors and asking, "*on behalf of a shareholder*", to obtain a fax copy of the complainant's company's annual report. The caller provided a geographic fax number: 02033710652. The complainant faxed the annual report to the geographic number and shortly thereafter received a further telephone call in which the caller informed the complainant that the fax could not be read. The caller provided an alternative, premium rate number to which to re-fax the annual report. The alternative premium rate number was 09116128755. The complainant did not re-fax the report, as requested, and received 14 subsequent calls repeating the request.

The complainant confirmed that no service was sought, offered or provided to it. The complainant had simply responded to the request that it should send a copy of its company annual report by fax to the premium rate number that was given to it.

**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 21 July 2010, the Service Provider made initial enquiries to the Network Operator to operate the service, and filled out a standard due diligence form in which the service was described as: *“Provision of Software Training Media based on returned fax questionnaire”*.

On 24 March 2011, PhonepayPlus was informed by the Network Operator that: *“The services operated on our PRS phone line are computer video training software fax orders; and a Company Reports rewriting fax service”*.

The complaint received by PhonepayPlus therefore indicated that the premium rate numbers were not used for the declared use, as detailed in the standard due diligence form. The numbers (or at least the particular number in question) appeared to have been misused by the Service Provider to generate revenue.

### **D. Monitoring**

On 10 March 2011, PhonepayPlus contacted the Network Operator with details of the complaint and requested that the numbers allocated to the Service Provider be suspended immediately, pending investigation of the service. On 11 March 2011, the Network Operator agreed to suspend 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 John Hamilton (case ref: 01225)**

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

On 6 July 2011, the Executive sent a formal direction to the Network Operator under paragraph 2.5 of the PhonepayPlus Code of Practice (11<sup>th</sup> Edition, Amended April 2008) (the “Code”) for the provision of further information concerning the Service Provider.

On 12 July 2011, the Network Operator provided a response, which was accompanied by a number of copy documents held in relation to the Service Provider.

The Executive examined both the registration information held by PhonepayPlus and the copy documents provided by the Network Operator, and noted a number of connections to a concurrent investigation into a separate Service Provider named John Hamilton (case ref: 01225). The Tribunal also considered this case on 29 September 2011. The Executive noted the following connections between Phillip Marshall and John Hamilton:

- Phillip Marshall and John Hamilton operated identical services;

- Outpayments for the service operated by Phillip Marshall had been paid into a bank account in Slovakia under the name of A Price. This was the same bank account for which payments were being made with respect to the service operated by John Hamilton;
- The same Slovakian telephone number was confirmed as the contact number for Phillip Marshall and John Hamilton;
- The same UK landline was confirmed as the contact number for Phillip Marshall and one of two contact numbers for John Hamilton;
- While Phillip Marshall and John Hamilton did not share the same fax number, Phillip Marshall and John Hamilton shared the same fax number with a third individual, Larry Banks;
- Both Phillip Marshall and John Hamilton had registered with PhonepayPlus as Service Providers under paragraph 3.2.1 of the Code 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**

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. On 12 September 2011, the Executive sent the First Breach Letter to the Service Provider, Phillip Marshall, requesting information under paragraph 8.3.3 of the Code, concerning the ‘*Company Reports rewriting fax service*’. This letter was sent to the email address and postal address supplied to PhonepayPlus by Phillip Marshall when registering as a Service Provider on 15 April 2010. The Executive also subsequently attempted to contact Phillip Marshall 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 Phillip Marshall 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 Phillip Marshall had supplied to the Network Operator as a contact number, but again there was no answer.

On 15 September 2011, the Executive sent a further email to Phillip Marshall, 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, which outlined that it had received a telephone request for a copy of its annual company report to be sent by fax to the premium rate number 09116128755. This request had been on the pretext that it was for a legitimate purpose. The recipient of the call had been informed that the request was being made by an employee of a solicitor’s firm.

The complainant stated the following:

*"We're a public limited company and we've been contacted by fax asking for our returns and the number they have asked us to contact them back on is premium rate and it gives no indication of that. In summary the caller would read out a script stating they were calling from a solicitor and wanted a copy of the annual company report faxing [sic] to them. They would then initially provide a geographic number of 020 3371 0652 and then call back stating that they could not read the fax and could we refax it to: 09116 128 755 at no time did they state that it was a premium rate call or provide any details of the call rates involved. They called 15 times based on our call logger from the number 020 3371 0652 requesting the annual report be faxed to their number of 09116 128."*

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 complainant to send a substantial fax to a premium rate number.

The Executive accordingly submitted that the promotional telephone calls misled, or would have been likely to have misled, recipients into dialling the premium rate number for no genuine reason, and when there was no genuine service being provided on the premium rate numbers.

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 their annual report to be faxed to a premium rate number. The Tribunal concluded that the promotional telephone calls were intended to mislead 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 that 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 submitted that 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.
2. The Service Provider failed to respond to the breach.
3. The Tribunal considered the evidence and concluded that the promotional telephone calls 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 constituted promotions that encouraged, or induced, the recipient to send a substantial document by fax to the premium rate number. The Executive submitted that the promotional dialogue announced that the caller was from a solicitor’s firm, rather than provide the actual identity of the Service Provider, Phillip Marshall, or any Information Provider. The Executive further submitted that no contact details or non-premium rate customer service phone number, as required by paragraph 3.3.5, were provided within the promotions. 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 promotions 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 three consumers, other than the complainant, was high (£76.50 for a 50-minute call at £1.53 per minute).

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 £1,500;
- 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.