

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 31 MARCH 2011 TRIBUNAL SITTING No. 74/ CASE 1  
CASE REFERENCE: 853750

Service provider:	Square1 Communications Limited, Westbury, UK
Information provider:	Amanda Allen (sole trader), UK
Type of service:	Sexual entertainment service
Service title:	Adult recorded fantasy stories
Service number:	09097990821 and all other or premium rate numbers in relation to this service
Cost:	£1 or £1.50 per minute
Network operator:	Opal Telecom Limited
Number of complainants:	Industry notification

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

### BACKGROUND

The PhonepayPlus Executive was contacted on the 23 December 2010 by a Network Operator concerned about the content of a service operated by an Information Provider known as Amanda Allen on the premium rate number 09097990821. The service that was provided on this particular number was a sexual entertainment service, providing recorded fantasy 'Age Play' stories for consumers to access.

The Executive monitored the service and promotional material for the service, including the websites 'amandom.com' and 'teasingteens18.co.uk'. It established that the service was operating on numerous premium rate telephone numbers. The Executive monitored several of these numbers and was concerned that the recorded fantasy stories consistently contained content that strongly implied the involvement of persons under 18 years of age. The Executive also observed that other promotions did not fully comply with the requirements of the Code with regard to pricing and/or contact information.

The service operated on the '098' and '0909' number ranges, which have been designated by Ofcom for sexual entertainment services.

### The Service

The website 'amandom.com' was the homepage for the service and could be accessed by a link on 'teasingteens18.co.uk'. It provided specific premium rate numbers to call for the 'Age Play' category of the service and others.

The Service Provider had allocated this Information Provider a total of 2,668 premium rate '0909' and '098' numbers to provide its service(s). The recorded content for the premium rate numbers providing the 'Age Play' category of service was loaded '*remotely*' by the Information Provider during the first week of November 2010.

## **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 10 March 2011. The Service Provider responded to the breaches in a letter dated 22 March 2011.

The Tribunal made a decision on the breaches raised by the Executive on 31 March 2011 following an Informal Representation by the Service Provider.

## **SUBMISSIONS AND CONCLUSIONS**

### **ALLEGED BREACH ONE 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 'adult recorded fantasy stories' service was promoted on two websites, one of which was 'teasingteens18.co.uk'. The Executive submitted that the promotion on this website had not provided any pricing information in relation to the premium rate numbers used to access the service.
2. The Service Provider accepted that the pricing on the website had been totally inadequate and had not conformed to the guidelines stipulated within the Code. It stated that it had not been aware of the 'teasingteens18.co.uk' website until it had been notified of this complaint by the Executive. In mitigation, it stated that the Information Provider's consistent efforts to stay within the pricing guidelines on other websites caused it to believe that this had not been an attempt to deliberately mislead visitors to the website, but rather a reflection of rather haphazard working methods.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach, and concluded that the 'teasingteens18.co.uk' website had failed to provide pricing information in relation to the premium rate numbers and, as such, consumers were not fully informed of the cost of using the service. The Tribunal upheld a breach of paragraph 5.7.1 of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH TWO PRICING (PROMINENCE) (Paragraph 5.7.2)**

*'Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination. Spoken pricing information must be easily audible and discernible'.*

1. The Executive observed that the 'adult recorded fantasy stories' service was promoted on the 'amandom.co.uk' website, which contained numerous '09090' and '09097' prefixed numbers at price points of £1 and £1.50 per minute.

It further observed that the promotions on the right-hand side of the webpage, for premium rate numbers beginning with the 0909 prefix, contained pricing information which was both prominent and which was provided directly below the promoted numbers. However, the premium rate numbers beginning with the '09097' prefix, which were prominently promoted on the left-hand side of the 'amandom.co.uk' website, did not contain any pricing information.

The Executive submitted that consumers could only be suitably informed of the cost of dialling these '09097' premium rate numbers by scrolling (unprompted) to the bottom of the webpage where the information '09097 £1.5 per minute' was displayed in small black print. The Executive submitted that having to scroll to the bottom of the webpage to be informed of pricing information did not satisfactorily meet the requirements of providing prominent pricing information.

2. The Service Provider accepted that the pricing information in relation to the '09097' numbers was not included by the description of the service and the phone number, but required viewers to scroll to the bottom of the webpage. However, in light of the fact that pricing information had been clearly visible in relation to the '09090' numbers, it did not believe that the Information Provider had deliberately tried to conceal this information for the 09097 services.
3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach, and concluded that consumers would have had to scroll to the bottom of the website in order to establish the cost of the '09097' numbers priced at £1.50 a minute. Furthermore, the size of the text had contributed to the failure to provide pricing information that was easily legible and prominent. The Tribunal upheld a breach of paragraph 5.7.2 of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH THREE 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 its monitoring of the websites which promoted the 'adult recorded fantasy stories'. It submitted that the 'amandom.co.uk' website had failed to provide the identity of either the Service Provider or the Information Provider and had also failed to provide a customer service phone number.

Furthermore the 'teasingteens18.co.uk' website had failed to provide the identity of either the Service Provider or the Information Provider, provider contact details or a customer service phone number.

2. The Service Provider accepted that there was no information regarding the identity and contact details of the Service Provider or Information Provider on either of the websites. It stated that Amanda Allen had been utilising numbers from more than one Network

Operator and Service Provider on her websites and had subsequently listed Square1 Communications as her Service Provider across the website. It stated that it had terminated all services on all numbers allocated to the Information Provider and requested the Information Provider to remove all references to it from these websites.

3. The Tribunal considered the evidence, including the Service Provider's acceptance of the breach, and concluded that the websites 'amandom.co.uk' and 'teasingteens18.co.uk' had failed to provide the identity of either the Service Provider or Information Provider and had failed to provide a customer service number. The Tribunal upheld a breach of paragraph 5.8 of the Code.

**Decision: UPHELD**

#### **ALLEGED BREACH FOUR SEXUAL ENTERTAINMENT SERVICES (Paragraph 7.11.2)**

*'Sexual entertainment services, and promotions for them, must not contain references which suggest or imply the involvement of persons under 18 years of age.'*

1. The Executive made reference to its monitoring of seven of the 'Age Play' recorded fantasy stories. It submitted that all seven of these recorded calls had contained strong and consistent references suggesting and implying the involvement of persons under 18 years of age in a sexual context.

The Executive made reference to several examples of the subject matter of these calls which all included sexual references to children under the age of 18. One recorded message depicted a father/daughter relationship, where the father puts the daughter to bed, which, it was submitted, turned quickly to a child abuse story. It included the following passage:

*'...Now you know what you have got to do darling, do you want daddy to tell you a story? Yes daddy. Well what have you got to do? She stood up, walked across to her bedroom door and closed it, turning the key. She lifted her nightie over her head and stood there. And? Yes daddy, she pulled her knickers down and stood naked in front of him. It had taken months to train her and then he sat on the side of the bed and unzipped his pants and pulled out his cock...'*

The Executive submitted that, even though the content was described in the service as being 'fantasy role play' and that all female participants in the scenarios were said to be over the age of 18, the Code was clear that sexual entertainment services and associated promotions must not contain references which suggest or imply the involvement of persons under 18 years of age.

2. The Service Provider stated that at no point had it been aware of the nature of the 'Age Play' material that the Information Provider had started to load onto its lines from November 2010 and that, if it had been asked to 'vet' the recordings, it would have either immediately sought the advice of PhonepayPlus, or rejected the material as being unsuitable and open to misinterpretation. It stated that, had it become aware of this content during its routine content checks, it would have removed it until such time as advice had been provided.

The Service Provider stated that it had carefully evaluated the response of the Information Provider that these services were ‘fantasy scenarios’ that deal with consenting adults indulging in ‘role-play’, but considered that, as the Code made specific reference outlawing the implied involvement of persons under the age of 18, premium rate services were not a suitable media for the publication of these services due to the possibility of misinterpretation.

3. The Tribunal considered the evidence, including the Service Provider’s acceptance of the breach, and concluded that the recorded stories monitored by the Executive had clearly suggested and implied the involvement of persons under 18 years of age and, as such, were in contravention of the Code. The Tribunal upheld a breach of paragraph 7.11.2 of the Code.

## **Decision: UPHELD**

### **ALLEGED BREACH FIVE**

#### **SEXUAL ENTERTAINMENT SERVICES (MESSAGE) (Paragraph 7.11.5)**

*‘Save where the relevant network operator has provided an alternative solution acceptable to PhonepayPlus, all sexual entertainment services must provide a message at the beginning of the service stating that:*

*a the user must be over the age of 18,*

*b the user should be either the bill-payer or have the bill-payer’s permission to call the service,*

*c service details may appear on the phone bill’.*

1. The Executive made reference to its monitoring of seven of the ‘Age Play’ recorded fantasy stories. It submitted that, of these seven recorded calls, only one contained all the correct information. It submitted that three had failed to provide any of the information required under this paragraph of the Code and three had not stated that service details may appear on the phone bill, providing only the information required by sub-paragraphs (a) and (b).
2. The Service Provider accepted that the introductory words of some the recordings had not contained the elements required or all of the mandatory warnings.
3. The Tribunal considered the evidence, including the Service Provider’s acceptance of the breach, and concluded that the majority of the numbers monitored by the Executive had failed to provide either some or all of the notifications required under sections (a)-(c) of paragraph 7.11.5 of the Code. The Tribunal upheld a breach of this paragraph of the Code.

## **SANCTIONS**

The Tribunal’s initial assessment was that, overall, the breaches taken together were **very serious**.

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

- The Service Provider's monitoring of the Information Provider was negligent, having regard to the changing circumstance of the Information Provider and its demonstrated attitude to compliance.
- There was some potential societal harm, having regard to the nature of the content of the service recordings.
- The cost of the service to individuals was high, calls cost up to £15.

The Tribunal took into account the following mitigating factors:

- The Service Provider was as co-operative as it could have been with the Executive.
- The Service Provider was misled into its lack of effective monitoring by the absence of consumer complaints regarding the services provided by this Information Provider over the preceding six years and its apparent compliance, when last monitored by the Service Provider in or around August 2010.

The revenue in relation to this service was in the range of Band 5 (£5,000-£50,000).

The Tribunal found that the revenue in relation to the most serious of the breaches, that of paragraph 7.11.2, was in the low range of Band 6 (£1-£5,000). The revenue attributed to the aspects of the service found to be otherwise in breach was in the range of Band 5 (£5,000-£50,000).

Having taken into account the aggravating and mitigating factors, and the fact that the breach had been brought to the attention of the Service Provider at an early stage, minimising the impact of the breach, societal harm and the associated service revenue, it 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 £20,000.