

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

**Thursday 3 March 2011 TRIBUNAL SITTING No. 72/ CASE 2
CASE REFERENCE: 852268**

Service provider & area:	Sybase UK Limited, London
Information Provider & area	Velti DR Limited, London
Type of service:	Competition service
Service title:	'Text2Win' and 'PS3 Daily Competition'
Service number:	80210 and all other relevant shortcodes
Cost:	£1 per user text message
Network Operators:	All Mobile Network Operators
Number of complainants:	1

THIS CASE WAS BROUGHT AGAINST THE INFORMATION PROVIDER UNDER PARAGRAPH 8.7 OF THE CODE

BACKGROUND

PhonepayPlus investigated the service operating on shortcode 80210 and other relevant shortcodes, following monitoring and a previous complaint. The service was a competition service that offered consumers the chance to be part of a prize draw. Users were encouraged to text a correct answer to a movie trivia question for a chance to compete in the competition.

The service was mainly promoted in UK cinemas prior to the showing of various films, principally *'Harry Potter and the Deathly Hallows: Part 1'*.

Upon investigating the service, the Executive was concerned of the potential inadequate technical quality of the service. It was also concerned as to the nature of the promotion of the service and the nature of the competition itself.

The Service

The service was a competition service offering prizes in a prize draw. To enter the draw, consumers answered questions on film trivia that were advertised in various ways. The answers were sent via text messages to mobile shortcode 80210 and cost £1 each. Promotional text messages delivered by the Information Provider were free to receive.

The Information Provider gave details of two competitions it ran. One was in association with the *Evening Standard* newspaper and ran between 31 August and 3 September 2010. Another ran in association with Digital Cinema Media and was to run between 12 November 2010 and 3 February 2011. The Information Provider described the prizes on offer and the 'points scheme' used in the service. The 'points scheme' involved a 'basic mode' and 'bonus periods'.

The service that was run in association with Digital Cinema Media was advertised prior to films shown on its screens across the UK, in poster adverts found in cinema washrooms across the UK and via the website.

The consumer could choose to answer the film trivia question by texting the answer to shortcode 80210. The first service text message welcomed the consumer, accepted the entry to the prize draw and awarded the consumer 20 points (the basic number awarded to any consumer).

The service then promoted the opportunity for more entries to be made via text message, with the advertising of further film trivia questions. As more questions were answered correctly, the consumer accrued more points (20 points per correct answer in the 'basic mode').

The service also advertised bonus periods. These involved the same process of answering a film trivia question. However, during a 'bonus period', a correct answer accrued a higher number of points – instead of 20, it might have been 100 or 9,000 or more depending on the bonus period. Frequent users of the service could accumulate over 100,000 points. The competition was operated so that each point had an equal chance of winning. However, the promotional poster did not describe the 'points scheme'.

Executive Monitoring

The Executive observed a cinema screen advertisement in the Cineworld at Milton Keynes on 25 November 2010. The advertisement was shown prior to screening the film *'Harry Potter and the Deathly Hallows: Part 1'*. Further testing took place on 26 November.

The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

Following requests by the Executive for information in relation to the service over the course of November 2010, the Executive issued a breach letter to the Service Provider dated 9 February 2011.

The Service Provider provided signed Information Provider undertaking forms, which were received by the Executive on 23 February 2011. The Executive accepted the Information Provider pass-through in an email dated 23 February 2011

The Tribunal made a decision on the alleged breaches raised by the Executive on 3 March 2011.

PRELIMINARY MATTER FOR DECISION THE NATURE OF THE SERVICE AND WHETHER IT FALLS WITHIN THE DEFINITION OF A CHILDREN'S SERVICE UNDER PARAGRAPH 7.5.1 OF THE CODE

"Children's services are services which, either wholly or in part, are aimed at or should have been expected to be particularly attractive to children, who are defined for the purpose of this Code as people under 16 years of age."

1. As a preliminary issue to be considered by the Tribunal, the Executive submitted that the 'service' was a 'children's service', as defined in paragraph 7.5.1 of the Code for the following reasons:

The Executive submitted that it had identified a combination of factors which demonstrated that the service had been particularly attractive to people under 16 years of age.

The promotion in cinemas prior to film screenings

The Executive submitted that the Information Provider had booked a large number of promotional slots in UK cinemas. It submitted that, although the promotion had not been linked to any particular film, the most frequently used advertising slot had been prior to the 'Harry Potter' film.

The Executive made reference to a list of films that had an advertising slot and submitted that a significant number of them would have been particularly attractive to children under the age of 16. It submitted that this was demonstrated by the genre of films and their rating under the British Board of Film Classification. The list of films included the following:

- *Harry Potter and the Deathly Hallows: Part 1* **12A**
- *The Social Network* **12A**
- *Despicable Me* **U**
- *Another Year* **12**
- *Inception* **12A**
- *Legend of the Guardians* **PG**
- *Africa United* **12A**
- *Avatar* **12A**
- *Unstoppable* **12**

The 'points scheme' adopted by the Information Provider

The Executive submitted that users had an opportunity to accrue a large number of points and each point became known as an 'entry' for the purpose of the competition. It argued that the 'points scheme' gave the game a competitive element, which was particularly attractive to young people under the age of 16.

It noted that some 'bonus periods' ended after a short period of non-interaction, thus encouraging the competitive element.

The nature and style of service text messages

The Executive referred to a complainant message log that demonstrated the operation of the service. It noted that the 'points scheme' and the general service mechanic had been the same for both the competition, which ran between December 2009 and January 2010, and the recent competition, which was to run from November 2010 to the intended close date in February 2011. The Executive made reference to text messages that it submitted were a representation of the nature and style of the service text messages, and read as follows:

"Go there superstar! U have 2380 pts! Click, whirr! Robots stand for people in which sci-fi? 1=Antz 2=Surrogates 3=Rambo Text 1,2, or 3 to 80210 £1/SMS"

"TEXT2WIN £10k cash! Every correct answer rewards u with 10 X more points! Instead of 20pts you get 200pt for each correct answer! How far will you go? £1/SMS"

“TEXT2WIN £10k cash in just 6 days! You are in top 30% of participants! Speed up! Till 12:00am every correct answer rewards u with 100 times more points! £1/SMS”

“1000pts 4 u!Play again for bonus pts In Raging Bull, Robert De Niro punches his weight as what? 1=Boxer 2=Builder 3=Cop Text 1,2, or 3 to 80210. £1/SMS”

It submitted that the service text messages advertised the ‘points scheme’ in a highly interactive way and this helped to explain how the ‘points scheme’ worked. It submitted that there was encouragement to ‘speed up’ and the information, such as ‘you are in top 30% of participants’, was more commonly associated with arcade machines such as pinball, where points were accrued playing the game with the aim of being top of a leader board. It submitted that such a promotion was particularly attractive to children.

Summary

The Executive submitted that it was a combination of the competition having been advertised to cinema audiences linked to films that are particularly attractive to children, and the nature of the ‘points scheme’, including the nature and style of service text messages, that caused the service to be particularly attractive to children and, therefore, to fall within the definition of a ‘children’s service’, under paragraph 7.5.1 of the Code.

2. The Information Provider stated that its service ‘Text2Win’ was not a ‘children’s service’ under the Code.

It submitted that the target audience for this service had been people in the 25- 40 age bracket and this group had been targeted for a number of reasons, including their disposable income, market research and the game’s attractiveness to this group. Furthermore, it stated that children would have been unable to answer many of the questions and the ‘youthful’ aspects of the service had been designed to appeal to the target group. It went on to deal with the submissions of the Executive:

Promotion in cinemas prior to film screenings

The Information Provider stated that, by promoting the service before the films listed by the Executive – among all the other films that were viewed in the cinemas during the time period that the promotion was operated – had had the aim of appealing to the largest segment of the target audience who would have been inclined to participate in such promotions, and most likely to use mobile devices in a way that they would find participation in such promotional activities fun and attractive.

It stated that the films featuring the promotional activity had been expected to attract a lot of movie-goers in general and to be popular with the target age group in particular (just because a film has a low age rating does not mean it is necessarily a children’s film). To the extent that some of the films might also appeal to an audience younger than the target audience, it was expected that movie-goers younger than the target audience would likely have been accompanied to the film by movie-goers in the target audience, and it was this audience that it had intended to capture based upon the questions included in the promotion and the structure of the game. It stated that, based on the data

provided that showed the percentage of movie-goers in each age bracket generally attending each of these films, it had believed that the majority of the movie-goers would not have been children and, in fact, would have been in the target audience or older.

It also stated that the on-screen advertisement had been presented in a straightforward manner, unlike the form of promotion that might be used to attract children. The advertisement had been purposely plain and simple with a calm and neutral tone. It had not been flashy or animated in a way that an advertisement targeted to children might be and, in general, it conveyed a very 'adult' presentation of the promotion and its prizes.

The 'points scheme' and the nature and style of the service text messages

The Information Provider stated that the method of acquiring points involved in the promotion was sophisticated and was established to appeal to adults, not children. It had required thought on the part of the participant. In addition, the nature and style of the text messages sent relating to the service had also been sophisticated and had required thought on the part of the participant.

a) The content of the questions offered in the promotion

The Information Provider stated that the initial question contained in the promotional materials had simply been a question designed to stimulate participation and had offered two potential answers. The service had been designed to make participation in the game a competitive activity requiring a certain skill level, leveraging the participant's special knowledge of films and film trivia. As the game progressed, the questions had increased in difficulty. It stated that many of the questions in the promotion related to films that were not new releases, and had included some questions that referred to films that were over a decade old. For example, see the questions relating to '*Raging Bull*' (film released in 1980), '*Dr Strangelove*' (film released in 1964), '*Ben Hur*' (film released in 1959) and '*Blade Runner*' (film released in 1982). It stated that the questions had been purposely chosen to appeal to the target audience and reflected the fact that the service had not been intended to be targeted at an audience who would be too young to be able to answer the questions. The main purpose of each of the questions had been to keep adult participants engaged, interested and continuing to participate in the promotional game.

Since the questions were aimed at the target audience, the questions were specifically constructed in such a way that a child would not be expected to be familiar with the subject films to which the questions relate, nor to be able to answer correctly. Accordingly, it was not expected that children would be particularly attracted to the service.

b) The cumulative effect of the 'points scheme' and the nature and style of the service text messages

The 'points scheme' was relatively sophisticated and designed to require interactive thought by the participant. It had not been expected to be attractive to children. The 'points scheme' was designed to appeal to and engage an average 25- to 40-year-old participant, taking into account both the scope of

the subject matter and difficulty of the questions, as outlined above, and the method by which points were earned.

It stated that, as points accrued, a participant must assess his or her overall score and evaluate the benefit that might be gained by continuing to participate in the game, based on the points earned. Additional points could be earned during 'bonus phases', and this element, rather than creating a game that appealed to children, created a game that appealed to the target audience used to participating in games that involve some skill, as well as chance, with the inducement to enter the 'bonus rounds' being a concept more readily understood by, and attractive to, the target audience, rather than children. It stated that the sophisticated nature of this point allocation system wouldn't and couldn't be expected to appeal to children.

It also stated that, in viewing the structure of the promotion, the nature of the 'points scheme', the language and style of the service text messages, and the difficulty of the questions posed, the service had not resembled a children's games, such as arcade games as asserted by the Executive. The 'leader board' similarity, identified by the Executive, had been but one facet of the mechanism; and, in fact, in order to understand the importance of the percentile in which the participant's performance fell, the participant had to understand how the overall mechanism worked, keeping in mind other factors that affected performance, such as the communication of the 'bonus phases' and 'inactivity teasers'.

It stated that the specific language used for the service text messages had been consistent with its general objective to appeal to the target age group and to be an engaging activity for participants in the target age group. In order to meet this objective, the game must be fun and interactive; accordingly, it was to be expected that some language conveying enthusiasm and informality would have been used, which aimed to keep the participants entertained. However, it stated that this language and style would not have been sufficient to make the service attractive to children.

3. The Tribunal considered the evidence and the submissions of the parties. It observed that there were strong arguments in favour of both the Executive and the Information Provider. The Code of Practice requires the Tribunal to ask itself whether the service was, in whole, or in part, aimed at, or should have been expected to be particularly attractive to, children, as defined. The Tribunal found that this service was not aimed at children. However, it found that part of the service should have been expected to have been particularly attractive to children. In particular, the Tribunal found that the nature of the initial question posed both on the cinema screen and in the poster by which consumers gained access to the service should have been expected to have been particularly attractive to children (Appendix A). That question was as follows:

"WHICH SCHOOL DOES HARRY POTTER ATTEND?
FILM1) HOGWARTS
FILM2) WIZARD HIGH
TEXT YOUR ANSWER, 'FILM1' or 'FILM2' to 80210"

The Tribunal found that this question was one that a child might readily answer and was the means of entry into the service. The Tribunal found that

this important part of the service was particularly attractive to children and, therefore, found that the service satisfied the definition of a 'children's service', under paragraph 7.5.1 of the Code.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

INADEQUATE TECHNICAL QUALITY (Paragraph 3.3.3)

"Service providers must use all reasonable endeavours to ensure that all of their services are of an adequate technical quality."

1. The Executive referred to a message log in relation to a complaint made in June 2010 about a competition that ran from December 2009 to January 2010. It submitted that the message log demonstrated that the complainant had been interacting with the service up to, and beyond, the closing date and time for the competition, midnight on 28 January. A final valid entry was made at 23:33 on 28/01/2010.

It submitted that the competition service continued to issue additional quiz questions up to, and including, a service text message sent at 00:51 on 29/01/2010. It stated that the complainant sent 19 text messages charged at £1 per message after the closing date and time of the competition. It stated that the first of these related to the promotional message sent at 23:33, but the final 18 had been in response to service text messages, which the system had delivered in error after the closing date and time of the competition.

It submitted that the complainant sent an answer charged at £1 at 01:21 on 29/01/2010 and the service then alerted him to the closure of the competition:

"Oops, ur too late :(! Text2Win ended on 28th Jan but stay tuned for more great competitions from this cinema! Thanks for your message!"

The Executive submitted that the system had required some form of manual input to switch from the competition being live to issuing of the text message warning of the closure of the competition. It submitted that this switch had failed to occur at midnight on 28 January 2010, and any consumers interacting with the service on 28 January 2010 could have paid for multiple invalid entries due to a system of inadequate technical quality.

2. The Information Provider stated that the system had been set up so as to automatically stop being 'live' once the competition had closed, and that, once a text message had been received outside the promotion period, users were informed that the competition had ended by way of a service text message. There was no further interaction with that particular user after that point.

It made reference to the message log and stated that it had been informed by the Service Provider that the dates and times detailed in the message entries had been in Central European Time ('CET') – i.e. one hour later than Greenwich Mean Time ('GMT'). It stated that the complainant's final valid entry was made at 23:33 GMT on 28/01/2010 but at 23:51 GMT on 28/01/2010 and was recorded as 00:51 CET on 29/01/2010 in the message logs supplied.

It also stated that the complainant made 18 valid entries between 23:20 GMT and 23:51 GMT on 28/01/2010, prior to the advertised closing date and time of the competition, with 18 corresponding service text messages sent in response. It stated that, on the message logs provided, these 18 entries were recorded between 00:20 and 00:51 CET on 29/01/2010. It stated that a single user text message was submitted after midnight on the 28/01/2010 and a service text message was sent in response, stating that the competition had closed (this single invalid entry was recorded at 01:21 CET on 29/01/2010 or 00:21 GMT).

The Information Provider stated the system had been functioning properly and with adequate technical quality throughout the competition.

1. The Tribunal considered the evidence and, on the balance of probabilities, accepted the Information Provider's submissions in relation to the message logs showing that the times recorded in the message logs had been expressed in Central European Time and not Greenwich Mean Time. It found, therefore, that the service had operated within the correct timeframe. The Tribunal did not uphold a breach of paragraph 3.3.3 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH TWO INAPPROPRIATE PROMOTION (Paragraph 5.12)

"Service providers must use all reasonable endeavours to ensure that promotional material does not reach those for whom it, or the service which it promotes, is likely to be regarded by them as being offensive or harmful. Service providers must use all reasonable endeavours to ensure that their services are not promoted in an inappropriate way."

1. The Executive submitted that the Information Provider had booked a large number of cinema advertising/promotional slots across the UK (Appendix A). It referred to a list of screenings provided by the Information Provider's affiliate and submitted that the most frequently listed film had been '*Harry Potter and the Deathly Hallows: Part 1*'. It stated that the list of films contained a significant number of films that would be particularly attractive to children under the age of 16, such as:

- *Harry Potter and the Deathly Hallows: Part 1* **12A**
- *The Social Network* **12A**
- *Despicable Me* **U**
- *Another Year* **12**
- *Inception* **12A**
- *Legend of the Guardians* **PG**
- *Africa United* **12A**
- *Avatar* **12A**
- *Unstoppable* **12**

The Executive submitted that, although people under the age of 16 may be attracted to films given a rating of '15', the Service Provider should have expected these films to be particularly attractive to people under the age of 16. The service did not have an age restriction within the terms and conditions, but did state that "*entrants aged under 18 must seek the bill payer's permission before entering*".

It submitted that the service had been designed with a cash prize as its main prize, and had operated in a way that relied upon, or encouraged, large numbers of consumers to re-enter the service. It stated that both these elements were not permitted for a 'children's service', as defined under paragraph 7.5.1 of the Code.

The Executive referred to the age profile of the audience in relation to the '*Harry Potter*' film, which demonstrated that approximately 33% of the total audience of the film would have been under 16. Furthermore, it submitted that, although the Information Provider had stated that the service had not been solely targeted at the '*Harry Potter*' film, the Executive had identified a number of films that may have attracted an audience of children under the age of 16.

The Executive submitted that, in the case of this being a 'children's service', the Service Provider had not used all reasonable endeavours to restrict its promotion to an appropriate audience.

2. The Information Provider stated that the target group for these promotions had been between the ages of 25- 40. It reiterated the points it made in its previous submission. It stated that the films had all been chosen because they had been expected to be highly popular to the target audience and each had large box office draws among all audiences, including the target audience. The films before which the promotion was advertised were, in fact, attractive to the target age group, and many of the films – even those with a low age rating – were not in any sense 'children's films'. Each was popular among the target age group, or was expected to include in the audience participants in the target age group accompanying younger persons interested in viewing the films. The service was promoted using available media resources and advertising designed to appeal to the target age group, and was placed in areas of the cinema or shown prior to the main feature film that would be noticed by, and would appeal to, the target age group.

It stated that the creative concept had been designed in such a way so as to be simple, yet attractive to the target age group. The colours and illustrations used had not been those usually associated with children's advertisements as the palette used consisted of a predominantly black background with blue, yellow and white used to distinguish the prizes and to highlight the applicable terms of the service.

Furthermore, the voiceover used for the advertisement had been authoritative and identified the prizes and conveyed the applicable terms in a 'matter of fact' manner. The style of the written materials and the voiceover were both designed to attract the target age group, and not to appeal to children. The simple, yet efficient manner in which the advertisements were portrayed had been designed to catch the eye of 25-40 year olds visiting the cinema after a day at work, or on the weekend, by ensuring that all pertinent information was conveyed in a direct and speedy manner, while at the same time restricting the use of colours and colourful language which could prove distracting and/or tiring.

It stated that all these factors were sufficient to prevent the service from being attractive to children.

3. The Tribunal considered the evidence and the submissions of the parties. It noted its preliminary finding that the service fell within the definition of a 'children's service', under paragraph 5.7.1 of the Code and was, therefore, subject to the obligations which apply specifically to children's services elsewhere in the Code. The Tribunal found that the appropriateness of a children's service had to be judged in that context and concluded that, in all the circumstances, the promotion was not inappropriate. The Tribunal did not uphold a breach of paragraph 5.12 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH THREE

CHILDREN'S SERVICE (PROMOTION OF REPEAT USAGE) (Paragraph 7.5.3(d))

"Children's services, and any associated promotional material, must not:

d. encourage children to use other premium rate services or the same service again."

1. The Executive submitted that the Information Provider was restricted from marketing a children's service to past users to encourage re-entry. It submitted that any re-entry ought to be the free choice of the consumer of the children's service and could not be encouraged by the promotion or operation of the service itself.

The Executive further submitted that the 'points scheme', and the way in which the service had been promoted so as to advertise the 'points scheme' to consumers, demonstrated that the Information Provider had relied upon the encouragement of re-entry as a core part of its service.

The Executive referred to the message log of June 2010 and relied upon the nature and style of the service text messages, particularly service text messages advertised during the 'bonus periods'. Two examples read as follows:

"Text2Win! Till 12am ur 1st correct answer ins 100pts, then 200pts, then 300pts and KEEPS INCREASING1 £10k cash, iPod Touch + cinema tkts could be yours! £1/SMS"

"TEXT2WIN £10k cash! Every correct answer rewards u with 10 X more points! Instead of 20pts you get 200pt for each correct answer! How far will you go? £1/SMS"

It submitted that the 'points scheme' had been advertised in an interactive way. There was encouragement to 'speed up' and the information, such as 'you are in top 30% of participants', was more commonly associated with arcade machines, such as pin ball, where points were accrued playing the game with the aim of being top of a leader board. It submitted that, regardless of the wording used, the prize draws for 'Text2Win' had not been linked to any leader board and the benefit of additional points had equated to additional entries only.

It submitted that these text messages had been a central part of the competition service itself. The design and operation of the service had encouraged consumers, including any children using the service, to use the

same service again, this continued until the consumer decided not to interact with the service at all for a period of three days.

2. The Information Provider stated that the service should not be considered as being a 'children's service', within the meaning of the Code. It stated that it had not intended it to be a children's service and had taken all necessary steps to target its focus age group. It stated that the service was not subject to, or in breach of, the restrictions relevant to the provision of such a service, as set out in the Code.
3. The Tribunal noted its preliminary finding that the service was a 'children's service', under paragraph 5.7.1 of the Code. It found that the Information Provider had sent frequent text messages that encouraged the consumer to continue to engage with its premium rate service by answering questions to try to gain more points, and that this would go on until the consumer stopped interacting with the service for a period of three days. The Tribunal found that this children's service had encouraged repeat use by the sending of further questions, with the possibility of achieving an increased chance of winning by accumulating more points – a possibility which was further encouraged by the availability, from time to time, of 'bonus points' and 'bonus periods'.

The Tribunal concluded that the service had encouraged children to use the same premium rate service again, in contravention of the Code. The Tribunal upheld a breach of paragraph 7.5.3(d) of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR CHILDREN'S SERVICE (CASH PRIZES) (Paragraph 7.5.4(b))

"Children's services must not:

b. involve competitions that offer cash prizes or prizes readily converted to cash."

1. The Executive submitted that a service that falls within the definition of a 'children's service', as under paragraph 5.7.1 of the Code, should not advertise a cash prize. It submitted that the competitions that ran from November 2009 to 28 January 2010, and from 12 November 2010 to 3 February 2011, had both advertised cash prizes (£10,000 and £5,000 respectively).
2. The Information Provider stated that the service should not be considered as being a 'children's service', within the meaning of the Code. It stated that it had not intended it to be a children's service and had taken all necessary steps to target its focus age group. It stated that the service was not subject to, or in breach of, the restrictions relevant to the provision of such a service, as set out in the Code.
3. The Tribunal considered the evidence and the submissions of the parties. It noted its preliminary finding that the service was a 'children's service', under paragraph 5.7.1 of the Code. It found that both competitions associated with the service had offered cash prizes of either £10,000 or £5,000. It found that, by offering cash prizes, the Information Provider had acted in contravention of the Code. The Tribunal upheld a breach of paragraph 7.5.4(b) of the Code.

Decision: UPHELD

ALLEGED BREACH FIVE

CHILDREN'S SERVICE (SAME CHANCES OF WINNING) (Paragraph 7.6.7(b))

"Service providers must ensure that:

b. all correct entries have the same chances of winning."

1. The Executive referred to the 'points scheme' and submitted that a consumer who answered the initial question correctly at a cost of £1 was awarded 20 points (the number of points given in 'basic/standard play' periods). It submitted that the Information Provider had stated that 20 points had equated to 20 entries into the prize draw. However, the Executive submitted that, from the consumer's perspective, an entry equated to an answer submitted at a cost of £1.

It submitted that the Information Provider had stated that the service offered users who had already engaged with the service the opportunity to answer questions during a 'bonus period'. It made reference to the message log that demonstrated that these bonus periods took a variety forms, such as:

- The next 5 correct answers are worth 2000 points each.
- The next correct answer is worth 200 points, the second 400, the third 600...
- Get 5000 points for each correct answer until midnight tonight.
- Get 20x more points for the next correct answer. (400 points)
- The next correct answer gets you 9000 points, then 18000, then 36000...

It submitted that the chance of winning improved with the number of entries sent by an individual user. It stated that a person who had only submitted one correct answer, and secured 20 points, had less chance of winning than someone who had answered multiple questions and had secured, say, 3000 points.

The Executive submitted that the 'points scheme' and the 'bonus periods' therein had distorted the chance of winning for different users. For instance, a person could have made five entries by answering five questions and paid £5, but could have accrued 3,000 points as a result of the 'bonus points' and 'bonus periods'. The Executive contrasted this with someone who also made five entries by answering five questions and paid £5, but who only accrued 100 points under 'basic play'. The Executive submitted that the Information Provider had suggested that all entrants had the same opportunities to enter 'bonus periods'; however, it had not wished to bombard consumers with promotional material and, after three days of non-interaction from any consumer, the bonus period advertisements ended.

It submitted that those consumers willing to spend more money on a more frequent basis by re-entering the service had accrued more bonus points and, potentially, more rewarding 'bonus offers'. It submitted that this had further distorted the chance of winning. The Executive submitted that all correct entries should have the same chance of winning, and that users who paid £5 ought to be five times more likely to win than someone who pays £1, with each

entry costing the same price and each entry holding the same chance of winning. The current model meant that correct answers texted to the service had more chance of winning during the 'bonus period', than those correct answers texted during other the 'basic mode period'.

2. The Information Provider submitted that all entries had the same chance of winning. In its submission, an entry equated to a point, not to a question submitted by a consumer. It stated that, although participants may have had a greater chance of winning if they collected more points, each entry had exactly the same chance of winning as the next entry. It stated that the Code did not require that each participant has the same chances of winning, but that each entry does (in line with equivalent principles in UK legislation and common sense), and that the service competition complied with that requirement. It stated that, within the ambit of making its promotions fun and interactive, while at the same time ensuring that they were successful, it maintained fairness at every stage.

It stated that it ensured that the terms of the 'bonus periods' had been communicated to all participants who continued to play the game. It stated that, by communicating the bonus periods to all active participants, it ensured that each participant had the opportunity to submit answers during the 'bonus period', thereby providing that participants who give the correct answers in that time period with the same chance of winning. Once a participant had submitted his or her initial answer and received a response from the Information Provider (informing the participant that he or she had won 20 points for the correct answer), he or she was aware that, by answering further questions correctly, he or she would be awarded another 20 points for each correct response. Similarly, the participant can choose to participate in the 'bonus period' and, if he or she does so, he or she will maintain the same chance of winning as all other participants who have opted to participate in the 'bonus period'.

The Information Provider stated that, if one were to evaluate the 'basic mode' and the 'bonus period', one could see that the effect had been, in essence, the same; it had been an entertaining and interactive activity that rewarded participants based on their participation. Participants chose to enter the competition and its various phases based on information readily available to them.

The Information Provider made reference to the Executive's submission that 20 points, in essence, related to one entry into the prize draw. It submitted that its selection process for winners had been based on a random selection process, executed by its technology platform designed to enable this type of promotion. It stated that it had considered every point awarded to participants as equating to one entry because the probability of that participant's selection was in exact proportion to the number of points he or she has accrued. Accordingly, an actual point was selected in the draw as an entry, instead of a 'block' of points. The win mechanism was based on the principle that the software draws in a completely random manner for each period, day and week of the promotion. It stated that all draws had been run by defining a draw period start and end date, defining which users are eligible to enter the specific draw – even users with one entry or point had been eligible to be drawn.

The Information Provider also made reference to a list of winners that it had provided and stated that it showed that there had been 12 single-entry winners, and four double-entry winners, listed, meaning that a fair proportion of the winning participants, in fact, did not participate in 'bonus phases', but did, in fact, win.

It stated that its promotion mechanism had complied with the letter and the spirit of the Code.

3. The Tribunal considered the evidence and the submissions of the parties. It found that the key issue to be decided was the correct meaning of the word 'entry' in paragraph 7.6.7(b) of the Code. It observed that in paragraph 7.6.7(b), the word 'entry' is preceded by the word 'correct'. This demonstrates that an entry must be capable of being correct or incorrect. The Information Provider submitted that an entry equated to a point. However, a point cannot be correct or incorrect. A point is what accrues to the consumer upon the submission of a correct entry. Accordingly, the Tribunal found that an 'entry', for the purposes of paragraph 7.6.7(b) of the Code, is a single, completed answer to the question posed by the service, which is capable of being answered correctly or incorrectly.

The Tribunal went on to find that not all entries, as properly construed, had the same chance of winning. An entry submitted in a 'bonus period', or in respect of a 'bonus play', had a greater chance of winning than an entry submitted during 'basic or standard play'. The Tribunal upheld a breach of paragraph 7.6.7(b) of the Code.

Decision: UPHELD

SANCTIONS

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

The Tribunal considered various potential aggravating factors and concluded that none were applicable to this case.

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

- The Information Provider co-operated with PhonepayPlus.

The revenue in relation to this service was in the upper range of Band 4 (£50,000-£100,000).

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

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;
- Fine of £7,500

Appendix A – Example of the promotion advertised in UK cinemas (displayed in washrooms and with the same question as the advertisement before the film)

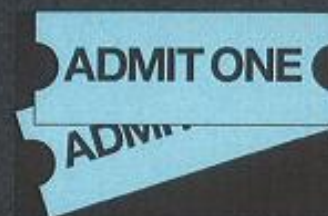
TEXT 2 WIN



**£5,000 cash
prize draw**



**iPad every
fortnight**



**Cinema tickets
every hour**

TO BE IN WITH A CHANCE TO WIN ONE OF THESE PRIZES
SIMPLY ANSWER THE FOLLOWING QUESTION:

WHICH SCHOOL DOES HARRY POTTER ATTEND?

FILM1) HOGWARTS

FILM2) WIZARD HIGH

TEXT YOUR ANSWER, 'FILM1' or 'FILM2' to 80210

Cost per SMS is £1 (standard network rates apply)

Closing Date: 3 Feb 2011 at midnight

*Terms: Winners will be selected at random from all correct entries received. Answers must be as stated. Prizes are as stated. Entrants aged under 18 must seek the bill payer's permission before entering. For full T&Cs please see dcm.co.uk/text2win. Customer helpline 0207 833 5022 (national rate). For all SMS services you may receive other related promotional offers/services. To stop receiving text DCM STOP to 83110. The overall number of winners for any one promotion will be as stated. This offer is open to residents to UK only. There is no cash alternative and prizes may not be suitable for others. Promoter: DCM