

# THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 19 January 2012  
TRIBUNAL SITTING No. 91 / CASE 1  
CASE REFERENCE: 857450 (CRM 01226)

Network operator: All Mobile Network Operators  
Service Provider: OpenMarket Limited  
Information Provider: Captive Interactive Systems Limited (formerly known as  
Transact Interactive Systems Limited)

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

### BACKGROUND

The service, Miss Teen Queen UK, was an online beauty pageant competition which operated via the website [missteenqueenuk.com](http://missteenqueenuk.com). This service allowed young girls aged between 13 and 19 years of age to become beauty pageant 'queens' or princesses' with an opportunity to win, amongst other prizes, a modeling contract. The competition was broken down into two categories: 'Miss Teen Princess' for contestants aged 13 to 15 years, and 'Miss Teen Queen' for contestants aged 16 to 19 years.

Each month, 100 girls who had entered the competition were selected to appear on the website for the public vote. Members of the public, but particularly friends and family, could then vote using one of two methods: either by texting the girl's name to shortcode 84205, or by calling an 090 number stating the girl's designated number. Both methods of voting cost 60p plus network charges, and the two contestants with the most public votes from each age category would go through to the next round.

### (i) The Complaint

The Executive received a complaint on 17 February 2011 from an MP who had been contacted by one of her constituents (the "**Complainant**") who stated that her 12-year-old daughter had incurred a mobile phone bill of £2,548 after being encouraged by a Miss Teen Queen contestant to vote for her on Facebook. The Complainant had expressed concern that there was no indication of any pricing and that she was being pursued by bailiffs for the outstanding phone bill.

*"I am writing regarding the involvement of my 12 year old daughter in texting incident... she saw some photographs on Facebook encouraging her to text 84205 in support of young women competing in a beauty Pageant. There was no indication that this would incur any charges, merely a message saying 'thanks for texting' However, I was informed by T-Mobile on 31.12.2010 that I owed them 2,548 pounds! I rang immediately to 'Everything, Everywhere formerly T-Mobile' to explain that there had been a serious misunderstanding. Nevertheless, they insisted I had to pay. I then received another letter, dated 24.01.2011 saying I owed them 2,618 pounds and that failure to pay with result in the 'debt' increasing all the time and being passed to their finance department. I rang back every day for the next four days trying to resolve the problem, because I did not feel it could be possibly be a legitimate charge.*

*“On the 9 February 2011 I received a letter from the bailiffs: Moorcroft Debt Recovery, pre-Court Division claiming that my failure to pay this amount by 10am on the 9 February meant that I now owed 2,943.28 pounds and an additional 267 pounds in legal costs.*

*“I am a single mother with three daughters and a full time teaching job in Hackney and it is quite beyond my ability to pay these charges. Furthermore, nor do I feel I should be expected to.*

*“I have taken advice from the Consumer Direct and sent T-Mobile a recorded letter, asking for a complete breakdown of how these charges were incurred; but that does not allay my fear that Moorcroft may force their way into my flat and take my possessions”.*

It subsequently transpired that the £2,548 mobile phone charges were incurred by two of the Complainant’s daughters (aged 11 and 12 years old at the time), both of whom had accessed the same service but on two separate handsets.

## **(ii) How the service operated according to the Executive**

### The Service

The Miss Teen Queen UK competition had been in operation since 2006.

All girls (between 13 and 19 years of age) could enter themselves online by registering and completing an application form which requested details such as height; shoe size; hair and eye colour; dress, bust, waist and hip sizes; achievements; talents; and ambitions. Upon completing this application form, entrants were sent an email stating that successful entrants would receive an email, a parental consent form and an application form. Those who were not successful did not appear to receive a reply.

Contestants were also scouted at events such as ‘Clothes Show Live’, whereby the event organisers scouted potential contestants at the show, took their picture and recorded their contact details. Successful contestants then received a letter informing them that they had made it through to the next round, and were invited for a photo shoot in London. It appeared that girls scouted at events were more successful in making it through to the next round than those who applied online.

### Transfer of the Service to another Service Provider

From 6 February 2010 to 15 February 2011, the premium rate voting service for the Miss Teen Queen UK competition was provided by the Information Provider and the Service Provider via a shared shortcode: 84205. The Executive noted that the consumer complaint received by PhonepayPlus related to this period and this Service Provider.

The Executive noted that shortcode 84205 was still being used for other similar voting competitions, such as “Miss Manchester”, “Miss London” and “Miss Natural Curves” by the same Information Provider and Service Provider. However, on 10 January 2011, the Information Provider changed its name from Transact Interactive Limited to Captive Interactive Systems Ltd.

On 16 February 2011, Miss Teen Queen UK moved its voting services to another service provider, Wireless Information Network PLC (“WIN”). From this date, the service was operated through a different shortcode: 81319.

## **(iii) Executive’s monitoring**

### Promotion of the Service on Facebook and other social networking sites

The Executive conducted a simple search on Facebook using the keyword '84205'. This resulted in a considerable number of Facebook profiles of contestants. All of the contestants' Facebook profiles appeared to have been specifically created for this competition, as none of these were personal accounts. The purpose of these profiles was to encourage voting, and the majority contained no pricing or other required information for a premium rate service. The Executive's monitoring also identified issues in relation to how the girls were promoted on the website and the girls' public exposure online.

### Executive's experience of accessing the service

On 5 May 2011, the Executive held an informal meeting with the Information Provider. The Executive monitored the service and sent a text message to shortcode 84205 with the name of a past contestant who had promoted the service on her profile page, asking for votes. The Executive received the following message:

*"84205 FreeMsg; I'm sorry, the voting has now been completed for that competition".*

While the message indicated that the competition had ended, and despite the fact that the Service Provider and the Information Provider who operated on this shortcode were no longer operating the service, the Executive was charged 60p plus network charges.

On 27 July 2011, using the same contestant, together with another previous contestant, the Executive again monitored this service and was charged 60p plus network charges for each vote. In light of the time that had elapsed between this and the previous monitoring, the Executive asserted that the service was still operational, although this may have been due to a technical error.

The Executive's evidence demonstrated that the Information Provider was able to generate revenue from a service that it no longer provided.

### Executive's views as to whether the service was a Children's service

The Executive noted that paragraph 7.5.1 of the 11<sup>th</sup> Code defined 'Children services' as *"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 purposes of this Code as people aged under 16 years of age"*.

The Miss Teen Queen UK service was directly aimed at 13 to 15 year olds, as well as 16 to 19 year olds. The "Miss Teen Princess" category of the service was exclusively for contestants aged between 13 and 15 years.

The Executive asserted that voting for contestants was therefore likely to be, and should have been expected to be, particularly attractive to children.

The Executive further asserted that successful contestants eligible for the public vote on the website were likely to get their family and friends to vote for them.

Successful entry into the next round of the contest was based on the number of votes the contestant received through the premium rate service voting. This was made clear on the service website.

Also, the letter which was sent to contestants, informing them that they had been selected by the judges to go forward to the live voting stage of the competition, actively encouraged them to seek votes, stating: *"It is important for you to generate as much support as possible. Votes count!"*

With some contestants getting over a thousand public votes, there was considerable pressure on the other contestants to achieve more votes than their rivals, resulting in them encouraging their friends to repeatedly vote for them through Facebook and other social networking portals. It also appeared that there was more voting closer to the closing dates.

The Executive asserted that it was highly probable that the friends of contestants were likely to be school friends, or social friends (such as friends on social networking sites). The Executive also believed that these friends would be of a similar or equal age to the contestants.

The letter which was sent to contestants, informing them that they had been selected by the judges to go forward to the live voting stage of the competition, actively encouraged them to seek votes from their *"friends"* and *"schoolmates"*

The Complainant's two daughters, who both voted for a friend who was a contestant in the competition, were aged 11 and 12 at the time. They were both encouraged by the contestant through Facebook to vote and had, as a result, incurred large bills. One of the Complainant's daughters sent 3,569 messages with the contestant's name. This was over a period of three days, on 12, 14 and 15 November 2010, and appeared in the top 20 MSISDNs who had incurred the most charges by voting for this competition. The Complainant's other daughter sent 430 messages with the contestant's name. This was over a period between 22:11 and at 23:32 on 15 November 2010. The contest closed at 23.30 that day.

The Executive also noted a media report of a 14-year-old contestant who had *"racked up a £1,175 phone bill"* by voting for herself as a contestant in the Miss Teen Queen UK competition.

For the reasons set out above, the Executive asserted that the service in this case fell within the definition of a 'Children's service'.

### Message Logs

The initial message logs provided by the Service Provider in relation to the mobile phone of one of the Complainant's daughters showed that it was not until after all of these messages had been sent by this daughter that she received the first message from the service at 23:30 on 15 November 2010 stating: *"I'm sorry, the voting has now been completed for that competition"* (the **"Warning Message"**)

The initial message logs provided by the Service Provider in relation to the mobile phone of the other daughter also showed that it was not until after all of these messages had been sent by this daughter that she received the first Warning Message from the service at 23:37 on 15 November 2010.

The initial message logs submitted by the Service Provider for both daughters indicated that a large proportion of the votes cast by the daughters before the competition closed did not result in an actual vote for their intended contestant, due to the number of free Failure Messages. In particular, one daughter's message logs showed that she had sent 430 correct messages, but had received 420 Warning Messages. According to the service flow illustration submitted by the Service Provider, this Warning Message was sent to those

consumers who had cast votes outside of the competition start and end dates, resulting in that vote not being added to the database.

In relation to the above, the Information Provider, in its breach letter response dated 28 November 2011, stated:

*“On reassessment of the inbound data at the gateway and when cross referencing to the final votes awarded to the [intended] contestant...it actually showed that all but 36 of the combined and valid votes placed were actually within the voting window and counted within the competition in favour of [the intended contestant]...”*

In addition, the Executive further noted that one of the Complainant's daughters had also sent 94 blank messages and six messages with 'Y'. The Executive noted that each of these messages sent by the Complainant's daughter, regardless of the content, or lack of content, was charged at 60p, highlighting that the service was not name sensitive, despite this being a shared shortcode. All of these charges had been incurred to the Complainant's daughter's mobile phone before receiving the first message from the service informing her: *“I'm sorry, the voting has now been completed for that competition”*.

The Executive also noted that the other daughter of the Complainant had sent 11 messages which did not contain the contestant's name, but for which she was charged, at 60p each.

### **(iii) How the service operated according to the Service Provider**

The Information Provider described the service as follows:

*“Captive Interactive Systems Limited (CIS) (formerly Transact Interactive Systems and Transact Limited) is the contracted party with Openmarket Ltd (formerly MX Telecom Ltd) for shortcode 84205. The ultimate information provider in this case is Teen Queen UK who promote the services run under this brand name. CIS acted as service provider to Teen Queen UK. enclose herewith a copy of the contract between Openmarket and CIS”*.

*“There are a number of competition services that have operated on this shortcode which has been used for voting. Attached is a detailed file listing Service Name, Competition Name (Description), Promotion Method and MO Keyword. The service enables voting services to be created with a start and end time. During this time votes can be cast to the system using a keyword/shortcode “pair” eg: meg01/84205 or by calling a premium rate number. The shortcode is configured for MO billing and the premium rate number supplied uses per call billing.*

*“Votes cast for each contestant are stored and displayed to the information provider as requested.*

*“Votes cast outside of the competition start and end dates will receive a warning message...”*

*“...Votes cast for a contestant that is not competing in the current completion will receive a warning message that they have misspelt the name of the contestant and they are advised to check the spelling”*

## **THE INVESTIGATION**

The Executive initially conducted this matter as a standard procedure investigation in accordance with paragraph 8.5 of the PhonepayPlus Code of Practice (11<sup>th</sup> Edition, April

2008) (the “**Code**”). The Executive sent a letter to the Service Provider on 8 June 2011, asking a series of questions as well as requesting message logs and other corroborating information to be forwarded to substantiate the claim being made by the Complainant, in accordance with paragraph 8.3.3 of the Code. A response, including message logs for the two daughters, was submitted by the Information Provider (via the Service Provider) on 28 June 2011. The Executive sent another letter to the Service Provider on 28 July 2011, asking a series of questions regarding the top 20 MSISDNs as well as other data regarding consumer spend trends, in accordance with paragraph 8.3.3 of the Code. A response was submitted by the Service Provider on 12 August 2011. The Executive sent a breach letter to the Service Provider on 1 September 2011. Following the Service Provider’s request that the Executive pursue the investigation as an Information Provider case, the required Service Provider and Information Provider undertaking forms were sent to the Executive on 19 September 2011. The breach letter was re-issued to the Information Provider on 7 November 2011. A formal response to the breach letter was provided by the Information provider on 28 November 2011. On 6 December 2011, the Executive sent an email to the Information Provider containing a proposed Tribunal date of 22 December 2011, as well as recent email correspondence between the Complainant and the Executive (dated 27, 29 and 30 November 2011). The purpose of this email dated 6 December 2011 was to provide the Information Provider with an opportunity to formally submit a response, should it have wished to do so. On 7 December 2011, the Information Provider responded, stating that it was unable to accept the proposed Tribunal date as their offices would be closed and expressed its intention to seek a resolution by way of an oral hearing. In a separate email dated 7 December 2011, the Information Provider formally submitted its comments on the recent emails received from the Complainant on 27, 29 and 30 November 2011.

Following an internal reconsideration of the case, it was decided by the Executive to withdraw the breach letter dated 7 November 2011, and to re-issue a revised breach letter (the “**Revised Breach Letter**”). The Revised Breach Letter was sent, along with oral hearing documentation, to the Information Provider on 14 December 2011. Within the Revised Breach Letter, the Executive raised the following potential breaches of the Code:

- Paragraph 3.2.2 – Provision of Information;
- Paragraph 5.7.1 – Pricing Information;
- Paragraph 5.8 – Contact Information;
- Paragraph 7.5.2 (a) and (b) - Children’s Service (Usual Cost of the Service and Bill Payer’s Permission);
- Paragraph 7.5.3(a) - Children’s Service (Harm to Children); and
- Paragraph 7.5.3(d) - Children’s Service (Encouraged Repeated Use of the Service).

On 9 January 2012, the Information Provider submitted its response to the Revised Breach Letter.

On 19 January 2012, the Tribunal reached a decision on the breaches raised by the Executive.

## **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 email addresses”.*

1. On 8 June 2011 and under paragraph 8.3.3 of the Code, the Executive wrote to the Service Provider, requesting information about the service including screenshots of its website [missteenqueenuk.com](http://missteenqueenuk.com). The agreed deadline for submission of this information was 28 June 2011. The Service Provider’s response, dated 28 June 2011 (which was completed by the Information Provider), stated:

*“Unfortunately Teen Queen UK has not been able to recover the website promotions for the 2009 or 2010 promotions as they are not routinely archived after the competition has ended”*

The Executive asserted that, notwithstanding the fact that the service organiser (trading as Teen Queen UK) (“TQ”), may not have had or have been able to recover the website as its third-party web company had not archived it, the Information Provider and the Service Provider were also unable to provide any details of the website themselves, or any satisfactory explanation as to why they themselves were unable to provide the information requested by the Executive.

The Executive would have expected either the Service Provider or Information Provider to have had the information requested and to have retained some evidence of the promotional material used to promote their service using the shortcode 84205. It asserted that their failure to provide this information in response to the Executive’s request was further aggravated by the fact that they were, at the time of the Executive’s request, still able to generate income from the service on the shortcode 84205. This was already some months after TQ had transferred the service to another service provider and information provider, under a separate shortcode.

On 19 September 2011 the Information Provider provided some screenshots of the website together with its response to this alleged breach. It explained that it had been able to do so by using “the wayback machine” technology, which offered access to pages from the URL addresses as they appeared on specific dates in the past. The Information Provider explained that this had only been possible “*on further investigation and understanding of the way in which the wayback machine operates*”.

Paragraph 3.2.2 of the Code states that “*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... [Emphasis Added]*”.

The Executive asserted that this information had originally been requested on 8 June 2011, and it could and should have, by some means, been available to the Service Provider or Information provider at the time of the request. The information was, however, only supplied to the Executive on 19 September 2011, after issuance of the breach letter and extensions of time given for the response. As such, the Information Provider did not provide the information requested by PhonepayPlus without delay.

As a result of the delay in providing the screenshots of the website, the Executive was required to conduct its own search during the course of the investigation of this matter, which was carried out by a search on Facebook (and not by “the wayback machine” technology). The Executive’s search produced some of the web pages associated with this service when it was operated by the Service Provider, although none that contained any pricing. The failure of the Service Provider and Information Provider to provide the requested information seriously affected the ability of the Executive to conduct a thorough investigation in this matter, highlighting the importance of the requirement under paragraph 3.2.2 for information to be provided without delay.

In light of the above, the Executive asserted that a breach of paragraph 3.2.2 had occurred.

2. The Information Provider stated that, when addressing the Executive’s request for screenshots of the service, it initially understood this to mean copies of all promotional material, including screenshots of any known promotions relating to the particular competition.

The Information Provider confirmed that it had made a request to TQ to see if any relevantly dated archives for the website were available relating to the November 2010 competition. The Information Provider was advised by TQ’s third-party web designer that he did not retain old contestant pictures or pages longer than six months from the end of any contest.

The Information Provider further confirmed that the service website was a dynamic product, but that the site template remained constant throughout with all compliance information remaining static. At the time of the request on 8 June 2011, it remained this way – with only the contestants’ pictures and names changing per competition. While compiling its documents in response to the Executive’s request dated 8 June 2011, the Information Provider considered that, as it was not able to provide archives of its website pages which were more than six months old, it would have been sufficient to provide the Executive with an explanation of this issue, together with a statement of the website address as [missteenqueenuk.com](http://missteenqueenuk.com).

During its informal representation, the Information Provider confirmed that the matter then fell silent until it received the Executive’s breach letter dated 1 September 2011. The Information Provider noted that the Executive’s breach letter dated 1 September 2011 contained alleged breaches relating to the service website based on archive information obtained by the Executive. The Information Provider therefore asserted that the Executive’s research had clearly only produced a partial copy of the site. The Information Provider understood this research to have been carried out using “the wayback machine”, when in fact it was Facebook that was used. In light of this misunderstanding, the Information Provider stated that it was known that “the wayback machine” was not a totally reliable source for quantified data recovery through a simple search request as it only took selective shots of sites, and this was demonstrated by the examples recovered by the Executive.

On receiving the exhibits presented within the breach letter dated 1 September 2011 and the subsequent breaches raised, the Information Provider took expert advice on the best way to acquire, through an in-depth search, a more detailed copy of a website at a specific point in time. The success of this endeavour depended on whether the data had been captured by “the wayback machine”. By executing the “deep search” process, the Information Provider managed to recover a full and better example of the website which more likely reflected the appearance of the service website during the period in question. The Information Provider did, however, confirm during its informal representation that the “deep search” process took a while to conduct and the Information Provider argued that its findings could not have been provided to the Executive any earlier than the date on which it actually submitted the requested information on 19 September 2011. It observed that its submission of this information resulted in all breaches relating to paragraph 5.8 and 7.5.2 (a) and (b) in respect of the missteenqueenuk.com website being dropped from the investigation.

The Information Provider noted the Executive’s expectation that either or both of the Information Provider or the Service Provider would have retained copies of the website. The Information Provider stated that it was not aware of any such requirement under the Code for either the Information Provider or the Service Provider, and commented that any such requirement would surely be unduly burdensome.

The Information Provider therefore emphasised that, for the reasons stated above, if it had been possible to provide such information in connection to the website promotion, it was clearly in the Information Provider’s interests to provide it, and the Information Provider sought no benefit in not providing it should the information have been available from the website owner.

For the reasons stated above, the Information Provider suggested that a breach of paragraph 3.2.2 had not occurred.

3. The Tribunal considered the evidence and concluded that, in the circumstances of this case, there had been no delay to the provision of the website promotions, as requested by the Executive. The Tribunal made this determination based on the Information Provider’s submission that it had been unable to source the information requested within the deadline specified by the Executive, as such information was not routinely archived after the competition had ended. It was not information which was in its possession or in the possession of any party from whom the information could have been required or requested. The Tribunal noted that, following receipt of the breach letter on 1 September 2011, the Information Provider conducted a “deep search” of “the wayback machine” and the Tribunal was satisfied, on the basis of the evidence presented, that this search required a period of time to complete. The Tribunal was further satisfied that the Information Provider had acted expediently in conducting and completing the “deep search”, and so found that it had been carried out without delay. Accordingly the Tribunal concluded that the Information Provider was not in breach of paragraph 3.2.2 of the Code.

**Decision: NOT UPHELD**

#### **ALLEGED BREACH TWO**

##### **Pricing Information (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 noted that this breach had been raised as an alternative to an alleged breach under paragraph 7.5.2(a) of the Code which addressed the issue of pricing information within a 'Children's service'. In light of the Tribunal's finding that the service was a 'Children's service' (as stated within part 3. of Alleged Breach Four below) within the meaning of paragraph 7.5.1 of the Code, the Executive withdrew its allegation of the potential breach under paragraph 5.7.1 of the Code.

## **Decision: WITHDRAWN BY THE EXECUTIVE**

### **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 its is otherwise obvious and easily available to the user".*

1. Paragraph 11.3.27 of the Code defines a "promotion" as *"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 Miss Teen Queen UK service was promoted by numerous contestants on Facebook. The Complainant stated in her letter to her MP dated 14 February 2011, that her 12-year-old daughter *"saw some photographs on Facebook encouraging her to text 84205 in support of young women competing in a beauty pageant"*.

On 27 October 2011, the Complainant confirmed to the Executive that it was her two daughters, aged 11 and 12 at the time, who both voted for a friend who was a contestant in the Miss Teen Queen competition after she (the contestant) had encouraged them to do so via Facebook.

The Executive noted that numerous Facebook profiles did not clearly state the identity and contact details of the Service Provider or Information Provider. It further noted that the numerous Facebook profiles did not clearly state the customer service number required in accordance with paragraph 3.3.5 of the Code. The Executive asserted that no reasonable steps had been taken to bring this to the attention of the end-user, and neither was it otherwise obvious or easily available to them (particularly bearing in mind that many, if not most, people voting as a result of seeing promotional profiles on Facebook would be unlikely to look elsewhere before voting).

Paragraph 3.1.1 of the 11th Edition of the Code states that service providers are responsible for ensuring that the content and promotion of their premium rate service, whether produced by themselves, their information provider or others, comply with the relevant provisions of the Code.

Notwithstanding the strict liability of the Information Provider (by virtue of this case proceeding as an information provider case in accordance with paragraph 8.7 of the Code), the Executive further asserted that the Information Provider should have, in any event, reasonably expected contestants to seek voting support from others when promoting themselves and the service on Facebook.

In the light of the above, the Executive submitted that a breach of paragraph 5.8 of the Code had occurred.

2. The Information Provider submitted that the creation of Facebook pages referred to in the investigation were outside of the control of the Information Provider and TQ. The pages were created, owned and managed by private individuals and neither the Information Provider nor TQ had knowledge of or access to them as they were not 'friends' of these private individuals. The Information Provider asserted that it had made TQ fully aware of the requirements of the Code and submitted that TQ likewise made contestants aware through the contestant acceptance packs.

The Information Provider stated that it had first become aware this was a potential problem on, or around, 24 March 2011 when an initial enquiry came from PhonepayPlus. In an email from PhonepayPlus, the Information Provider was informed that:

*“there seems to be a big problem on these Facebook fan pages as none of them include pricing information”. He then followed with “I know this is outside Transacts control but it’s a bit concerning”.*

On becoming aware of this issue, the Information Provider stated that it undertook a review of Facebook. A search was conducted in Google for the name of the contestant for whom the Complainant’s daughters had been encouraged to vote. The results received did not produce any pages or profiles that contained any premium rate service numbers. The search did produce the profile of the same contestant who had appeared in the November 2010 competition, but this was a secure profile and no information was available to persons who were not 'friends' of the contestant on Facebook. The Information Provider carried out its search using only the name of the contestant for whom the Complainant’s daughters had been encouraged to vote. The Information Provider asserted that, at the time of receipt of the above notice from PhonepayPlus, it was not aware of any other issues on Facebook pages that were causing problems for consumers. The search procedure by the Information Provider was undertaken in what it considered to be a normal manner and in accordance with the way in which a normal person would have undertaken a search within Facebook to find another individual. This search did not produce any results that visibly demonstrated any misuse in relation to the contestant’s profile. Further similar searches of random names of past TQ contestants were also undertaken and, likewise, did not produce any apparent visible issues requiring any action.

At that time, the Information Provider did not consider undertaking a search of the shortcode number (84205) itself, nor regard this as a normal search procedure. Use of the shortcode as a search word in Facebook would have meant that the person entering this number would have already acquired it from another source, and in doing so, would have been more likely to have seen all pricing and related compliance requirements.

On 5 May 2011, one of the directors of the Information Provider attended PhonepayPlus for an informal discussion with the Executive. The Information Provider confirmed that this director had not been made personally aware of the issues of promotion of the service on Facebook until it was brought to his attention during this discussion. Upon his return from this meeting, he looked into this matter in further detail and confirmed the action he had taken as a result in correspondence to the Executive. These actions included an immediate meeting on 6 May 2011 to review all matters relating to the service. A second round of searches was undertaken on Facebook to ascertain how this problem could be occurring as the previous searches in March 2011 had produced no apparent visible problems. The Information Provider therefore stated that, until 6 May 2011, it could only be assumed that any problems around the relaying of numbers via Facebook must have been occurring in private

profiles to which no visibility was possible unless accessed as an accepted 'Facebook Friend' of the account owner. The Information Provider asserted that its findings on Facebook resulted in the discovery of promotions for other contestant-based services that were similar to TQ. The Information Provider was by far not the only company that had experienced this issue and not been aware of its existence. The Information Provider asserted it was therefore clear that this was an industry-wide problem and not just limited to the service. It appeared to affect a considerable part of the industry and was prolific across many service providers, services and social networking groups.

Nevertheless, the Information Provider informed the Executive that it had advised its clients that contestants should not be promoting their reference vote numbers within social networks, albeit innocently, without including all correct and prominent pricing information as set down in its agreements with them. It also stated that it had published a notice to each client, alerting them to this matter and advising them to contact all their contestants to desist from this activity and provided a guidance note on how to correctly promote themselves with pricing information. It also stated that it had amended its agreements so that, in the event of any contestant being found to have posted their vote preference within social networks or otherwise, the vote itself will not be counted and no monies will be remitted for the respective contestant, effectively disqualifying them from the competition.

Following the above internal meeting, the Information Provider called the Executive and made enquiries and suggestions regarding the possible provision of advice or some wider industry guidance/awareness notes from the Executive on how to deal with social networking and the related promotional matters. The Information Provider also advised the Executive of intended next steps to be undertaken by the Information Provider in relation to its customer base in light of this now known problem. The Information Provider argued that, to date, it was not aware of any consultations taking place or guidance notes ever being issued by the Executive in relation to this matter. The Information Provider confirmed that it had continued to monitor its own client services and had amended its agreements accordingly, whilst continuing to monitor activity on social networks.

The Information Provider and TQ therefore submitted that the promotion of the service by individuals within their own social networking areas was not within the parameters of knowledge of the Information Provider at the time it operated the service. The Information Provider cited the following reasons:

- The Complainant had called the Information Provider in December 2010, but in this initial call, the Complainant had made no reference to her children incurring high bills as a result of Facebook. The focus of the Complainant in this call was related to incorrect billing by her Mobile Network Operator, T-Mobile. The Information Provider further confirmed during its informal representation that it had offered to refund the Complainant with the amount representing the Information Provider's revenue from the Complainant's phone bill, if she could obtain confirmation of the T-Mobile element.
- TQ ceased to be a customer of the Information Provider on 15 February 2011, and the first knowledge the Information Provider had that there was any issue with Facebook or social networking sites was on 24 March 2011 when the original number enquiry was made by PhonepayPlus.
- The final competition for the service closed on 15 February 2011, and there was no noticeable volume of any ongoing inbound votes that would have caused any statistical awareness to closed promotions remaining active.

- The shortcode used for the service (84205) was a shared code and retained ongoing traffic from other promotions and did not highlight any unusually high traffic volumes.
- The initial contestant name-based searches of Facebook, which were undertaken by the Information Provider's customer services team following an information meeting with PhonepayPlus on 5 March 2011, were in keeping with the normal searches often carried out by a Facebook user and this did not highlight any promotions that would result in any breach of the Code.

During its informal representation, the Information Provider asserted that it was evident that the sequence of events that had led to the Complainant's daughters incurring a phone bill of £2,548 differed from those described by the Complainant.

The Information Provider further stated during its informal representation that the Complainant had stated during her initial call to the Information Provider in December 2010 that the sales representative at the T-Mobile store where she had purchased her daughters' mobile phones had informed her that text messaging was free. The Information Provider was convinced that the Complainant must have relayed this information to her daughters who accordingly voted for the contestant, believing that the messages were free. The Information Provider further asserted that, based on the evidence contained within the call logs, the Complainant's daughters had placed numerous votes before the contest had ended, but at the end of the voting window, which ended at 11.30pm, the last text, which was sent at 11.32pm, was immediately followed with the 'STOP' command. The 'STOP' command was unnecessary for this type of service, but the Information Provider believed that this demonstrated that the Complainant's daughters had knowledge of premium rate services. As far as the Information Provider was concerned, this also clearly demonstrated the following:

- The voting window was clearly known, as all voting ended on time;
- The voting pattern showed a race to place votes in line with a countdown counter on the service website, which meant that the service website, together with its pricing and terms, must have been visible to someone;
- Notwithstanding the fact that the pricing information and terms of the service must have been visible, the Complainant's daughters had been reassured by their mother that all texting was free.

In summary, it was therefore clear to the Information Provider that the high phone bill was the result of a misunderstanding that the free text bundle did not include premium rate services, which was further compounded by the fact that there was no regulatory requirement to send return receipts to chargeable message originating messages. The Complainant and her daughters were therefore never notified of any charges for the votes cast for the service.

Since being fully aware of the matter, the Information Provider confirmed that it immediately undertook a full review of its voting service arrangements. A full analysis of any potential post-competition votes did not exceed 15 in total and comprised a monetary value of £9. The Information Provider also initiated a full refund policy to affected parties, where applicable, and made a formal request to TQ to contact all affected Facebook profile owners and request withdrawal of the offending Facebook pages or posts.

As a final action, the Information Provider confirmed that it made a further enquiry to Facebook group pages and was advised that old group pages, unless maintained, would be moved into archive over the coming weeks and, in the event that individual removal requests were not undertaken by historic contestants, they would be automatically withdrawn under the impending Facebook group archiving policy.

Notwithstanding the above, the Information Provider accepted during its informal representation that it was, in terms of the wording of the Code, strictly liable for the promotions on Facebook. It nevertheless asked the Tribunal to take into consideration that the breaches were outside of the control of itself or TQ, and that it had taken all steps that it could have been reasonably expected to take when it became aware of the issues

3. The Tribunal considered the evidence and the acceptance of the Information Provider that it was strictly liable for the Facebook promotions. While there was uncertainty as to the precise sequence of events that had taken place during the time when the Complainants' daughters had incurred the phone bill of £2,548, the Tribunal concluded that, on a balance of probabilities, the Complainant's daughters had received promotions within the meaning of paragraph 11.3.27 of the Code, which widely defined a promotion as, *"anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services"*. The Tribunal also took into account the undisputed evidence that there were many other promotions of the service on Facebook which did not contain contact information. Further, under paragraph 3.1.1 of the Code, *"Service Providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves, information provider or others) comply with all relevant provisions"*. [Emphasis added] The Information Provider was therefore responsible for all promotions of the service carried out on Facebook. Accordingly, the Tribunal concluded that the Information Provider was in breach of paragraph 5.8 of the Code, notwithstanding its inability to physically prevent postings by contestants on social media.

**Decision: UPHELD**

#### **ALLEGED BREACH FOUR**

##### **Children's Service (Usual Cost of the Service and Bill Payer's Permission) (Paragraph 7.5.2)**

*"Promotional material for children's services must clearly state:*

*a the usual cost of the service,*

*b that the service should only be used with the agreement of the person responsible for paying the phone bill"*.

1. Paragraph 11.3.27 of the 11th Edition of the Code defined "promotion" as *"anything where the intent or effect was, 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 Miss Teen Queen UK service was promoted by numerous contestants on Facebook and was promoted to the Complainant's daughters. The Executive also noted that numerous Facebook profiles did not clearly state the usual cost of the service, and that the service should only have been used with the agreement of the person responsible for paying the phone bill.

The Complainant stated in her letter to her MP dated 14 February 2011 that “*there was no indication that this would incur any charges, merely a message saying “thanks for texting”*”.

The Executive asserted that the Complainant's 12-year-old daughter, and those other children who accessed this service after seeing a promotion on a social network site like the Miss Teen Queen UK Facebook profiles, which did not include any pricing information, would have been unaware of the cost of the service and that they required the agreement of the bill-payer prior to accessing the service.

Paragraph 3.1.1 of the Code states that service providers are responsible for ensuring that the content and promotion of their premium rate service, whether produced by themselves, their information provider or others, comply with the relevant provisions of the Code.

Notwithstanding the strict liability of the Information Provider for the Facebook promotions, the Executive further asserted that the Information Provider should have, in any event, reasonably expected contestants to seek voting support from others (including in some cases from people under 16 years of age) when promoting themselves and the service on Facebook.

Accordingly, the Executive asserted that it is not sufficient to simply inform contestants (in the letter which tells them that they have been selected to go forward to the public vote) that “*You must be over 18 years of age to vote and must have the permission of the bill payer. All votes cost 60p plus standard network charge*”, and to state with regard to promotions:

*“FLYERS If you want to promote yourself, we would suggest you make a flyer with the VOTING information on like the example enclosed and distribute it to your friends and family workmates and schoolmates to help you gain more support....”*

The letter did not advise contestants that, whatever means of promotion, they must include the cost of voting and that voters must be over 18 or have permission from the bill-payer. The example flyer sent to contestants stated in a smaller font than the rest of the printed information that “*Votes cost 60p + standard charge*”, but it did not state that voters must be over 18 or have permission from the bill-payer. The letter to contestants suggested they make a flyer “*like the example enclosed*”, but it did not draw their attention to the pricing information on the example (which the Executive asserted may be easily overlooked by a teenager, particularly those aged under 16), and it did not advise them that they should ensure that the pricing information on the example is included in any flyer, or any other promotion they make.

The Executive noted that, after this issue was raised at a discussion with the Information Provider on 5 May 2011, the Information Provider stated in its response on 6 May that the issue of “*contestants using social networks to advise their friends of their vote reference*” appeared to be a “*continuing problem*”, that this, “*does cause matter for concern and needs addressing further with the information providers who represent the contestants...*”. The response further stated that:

*“We have advised our clients that contestants should not be promoting their reference vote numbers within social networks albeit innocently without including all correct and prominent pricing information as set down in the agreement between ourselves and the information providers themselves. We have published a notice to each client alerting them of this matter and advising them to contact all their contestants to desist from this activity and provided a guidance note on how to*

*correctly promote themselves with pricing information included. We have further added an amendment to our agreement to eliminate further problems in the event any contestant is found posting their vote reference within social networks or otherwise the vote itself will not be counted...*"

The Executive asserted that such steps, as referred to by the Information Provider, which were taken to seek to address the problem, were taken after the event and did not discharge the Information Provider of its responsibility under paragraph 7.5.2. Rather, it highlighted that such steps were not, but could and should have been taken by the Service Provider and/or Information Provider during the time they were involved in this service.

The Executive did not therefore accept that the promotions on Facebook were outside the Information Provider's control.

In light of the above, the Executive asserted that a breach of paragraphs 7.5.2(a) and (b) had occurred.

2. The Information Provider firstly disagreed with the Executive's view that the service was a 'Children's service'. It argued that, since the inception of the Miss Teen Queen UK contest six years ago, it had never been the opinion of any of the parties that the service should be classified as a 'Children's service' under the PhonepayPlus Code in respect of the competition's voting capability. All known promotional points stated that "*all voters must be over 18 and have the permission of the bill payer*". Although the service did not disallow voting by children with the bill-payer's permission (as it was not classed as an adult service), the Information Provider submitted that it should not have been recognised as a service that was particularly attractive to children, as the voting public profile engaging with the service on a regular basis attracted a far wider audience. The Information Provider therefore submitted that the Executive's assumption that the service was a 'Children's service' and its raising of breaches in this respect failed to recognise the wider audience of parents, relatives, uncles, aunts brothers, sisters, cousins, grandparents and others who were friends and associates of the aforementioned who submitted votes in favour of a particular family member and/or contestant.

With regard to the potential breach under Paragraphs 7.5.2(a) and (b) of the Code, the Information Provider's response was that it accepted that numerous contestants promoted themselves via their personal profiles and pages on Facebook, but this was outside the control of the Information Provider and TQ.

The Information Provider refuted the Executive's assertion that the information pack provided to contestants by TQ was inadequate and did not provide sufficient compliance advice to contestants that were successful in being selected for the public vote in the heats leading up to the Miss Teen Queen UK final. The Information Provider asserted that the letter that advised of selection fully explained the process of the competition so all accepted contestants were aware of how the contest would be held and what would happen. There was a dedicated section that referred to the voting element that would take place in the heats for contestants to be selected by public vote for inclusion in the live finals. This section advised contestants of how to ensure they were compliant when attaining promotional coverage by all types of media outlets and clearly stated:

- The numbers to be used in any promotional coverage both IVR and Mobile;
- That callers must be over 18yrs of age to vote and have bill payers permission;

- That all votes cost 61p plus standard network charges;
- It again reiterates again that votes cost 61p plus standard network charges;
- Provides the respective customer support line number;
- Stipulates the voting window for the particular contestant's entry period; and
- Informs that votes placed before or after these dates will not be counted but may still be charged.

The Information Provider stated that the letter contained all the points that should have been included in order to comply with the Code. Therefore, regardless of the promotions adopted by contestants, the information and compliance advice contained in the letter should still have been applied. As an added check there was a highlighted section for compliance monitoring on the letter that stated, "*Please ensure all printed articles are sent to us by post*". This was to ensure that material entering the public domain could be continuously monitored for compliance and any problems found could be addressed with the contestant, should any be found not to be in accordance with compliance requirements. The information packs sent to contestants had been standard since the inception of the service and, as far as the Information Provider was aware, these packs had never been the basis of any complaint by any consumer or otherwise.

The Information Provider further stated that many national and regional newspapers printed numerous articles featuring contestants and those articles, as far as the Information Provider was concerned, had been suitably presented, complete with compliance requirements and in line with the guidance given in the contestant packs.

At no point did any packs that were sent out to contestants by TQ recommend Facebook as a suggested medium for promotion of contestants, nor did it provide any information, encouragement, suggestion or otherwise on the construction of a Facebook account or any other social networking profiles. The Information Provider stated that it was not aware that these profiles were being created and populated in this manner at the time of the incident happening.

While the Information Provider was aware of the conditions stated and required by section 3.1.1 of the Code, and notwithstanding the associated strict liability of the Information Provider for responsibility for correct pricing information and related terms, the Information Provider submitted that this adherence could only reasonably be accepted in events or occasions where there was knowledge or a reasonable reason that this could have been known. As described within the Information Provider's response to the potential breach of paragraph 5.8 of the Code, the Information Provider asserted that it had no knowledge of the Facebook promotions until March 2011, but was not aware of the full extent of the problem until it carried out its shortcode-based search following its meeting with the Executive on 5 May 2011. Thereafter, and as already described in relation to the potential breach of paragraph 5.8 of the Code, the Information Provider carried out a full review of its voting service arrangements.

The Information Provider submitted that the Facebook page of the contestant for whom the Complainant's children voted played no part whatsoever in this incident. The Information Provider suggested it was via the secure friendship areas of Facebook where the encouragement occurred, and this was an ongoing communication between the parties as friends in an area such as 'Facebook Chat' during the final stages of the

competition that led to the votes being placed. The Information Provider supported this assertion by reference to the Complainant's account to the Executive of the 27 October 2011, in which the complainant stated:

*"Can I just say what happened to my daughters, they were encouraged by a girl on Facebook to vote for her over and over again"*

The Information Provider submitted that this was more likely to have been a description of a direct conversational event within Facebook than from a silent static profile page. The Information Provider further submitted that, under these circumstances, even if the non-compliant profile had not existed or had even been compliant at the time, it was highly probable this would not have stopped this incident occurring in the manner in which it did, and, as a result, was totally outside the control of the Information Provider or, in fact, anyone outside the accepted and private Facebook contact relationships between the parties involved.

The Information Provider submitted that, based on information obtained from the complainant or that established from data retrieved, it was unlikely that the non-compliant Facebook profiles discovered by the Executive in its initial search played any part whatsoever in this incident occurring.

Further, the Information Provider repeated the assertions it had made in relation to the potential breach of Paragraph 5.8 of the Code, that the Complainant's grievances were initially aimed at T-Mobile and not at the Information Provider. In the Complainant's letter to the Executive dated 29 October 2011, the complainant stated:

*"The man in the Dalston Branch reassured me that they always let customers know if they must pay for texts [closely followed by]...they always did apart from this one".*

The Information Provider accepted that, by searching the number 84205 in Facebook, a series of profiles appeared that were constructed by individuals under their private accounts, but asserted that these were beyond the control or knowledge of the Information Provider. The Information Provider noted that the results of this search contained a mixture of both compliant and non-compliant profiles of contestants in the Miss Teen Queen UK competition.

In light of the above, the Information Provider did not accept that a breach of paragraph 7.5.2 (a) and (b) of the Code had occurred.

3. The Tribunal first considered whether the service was a 'Children's service' within the meaning of paragraph 7.5.1 of the 11th Edition of the Code. This provides that, *"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 purposes of this Code as people under 16 years of age."*

The Tribunal found that the 'Miss Teen Princess' element of the service was a 'Children's service'. The Tribunal noted that the 'Miss Teen Princess' part of the service was restricted to children between 13 and 15 years of age and found, on the basis of the evidence presented, that this part of the service was, or should have been expected to be, particularly attractive to children, in particular those friends/peers of the contestants who were aged between 13 and 15. The Tribunal therefore concluded that the Miss Teen Queen UK service, of which the 'Teen Princess' element was a part, was a 'Children's service'.

In light of the above finding and having applied the same reasoning with respect to the Tribunal's decision to uphold the breach of paragraph 5.8 of the Code, the Tribunal concluded that the service was in breach of paragraph 7.5.2(a) and (b) of the Code, notwithstanding the inability of the Information Provider to physically prevent postings by contestants on social media.

**Decision: UPHELD**

### **ALLEGED BREACH FIVE**

#### **Children's Service (Harm to Children) (Paragraph 7.5.3(a))**

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

*a contain anything which is likely to result in harm to children or others or which exploits their credulity, lack of experience or sense of loyalty".*

1. The Executive submitted that children who appeared as contestants on this service were being publicly promoted by the website as well as being publicly exposed on social networking sites.

While conducting a search on the competition, the Executive identified that that some of the Miss Teen Queen UK contestants were being exposed to some very public comments and criticisms as a direct result of the service. These comments and criticisms were made on their appearance as well as their ability to be a beauty pageant contestant.

The Executive noted that cyber bullying was bullying that was done through the use of technology. For example, using the internet, a mobile phone or a camera to hurt or embarrass someone was considered to be cyber bullying. It could be shared widely with a lot of people quickly, which was why it was so dangerous and hurtful. One example of this was found on a popular Yahoo! questions forum, where a 13-year-old asked whether she was model material after she was scouted by Miss Teen Queen UK. In her question, she mentioned her 'boob' size and included a picture with her in uniform. She specifically asked people to be 'nice' in their replies. Her posted question stated:

*"ok i am a size 0 -6 (6 to big round wast) (0 in dresses) i am a reseanable height, Big B cup boobs, 13 years old, tanned (in pic i look pale!) i was scouted at the clothes show and was asked to enter to be miss teen queen UK! please try to be nice i know i am not the nicest looking thing on two legs..... scroll down the page, click to enlarge images! dont look at the clothes, school uniforme....."*

Some of the replies she received were as follows:

- *"your really naturally pretty but a model has somthing unique about there [sic] face there bone stuture and i dont think yours is quite unique enough"* (This was voted the best answer);
- *"your pretty but no model material"* (4 people said this);
- *"Your one picture looks like you have some serious forehead acne, You look just basic to me. Good Luck Profession Cosmetologist for Trucco Cosmetics"* (This person provided a direct link to Professional Cosmetologist for Trucco Cosmetics);

- *“nh ur not that pretty and theirs nuffin unique about , like most girls tbh, but if u was scouted then give it a go..”* (this post was from a ‘part time glam model’); and
- *“ye sur like a natural...but a little makeup would do u some good!!!”*

In another post found on the website thesite.org, a contestant was asking people to vote for her. She started to receive nasty comments about her and why she was entering this competition. After several posts, this contestant, fed up with the comments, posted back in large font:

- *“Will everyone stop having a go at me? All I asked people would you vote for me? You don’t have to. But if you don’t want to, don’t be nasty about it. It’s a modelling competition! Ffs”*).

The Executive found the following comments on Facebook profiles where the contestants were asking for people to vote for them on a student chat forum. The forum discussed the competition and included actual references to the girls’ names, including some where the girls were known to those commenting on the forum:

- *“take c of chips wat do you get lol lol haa hhaaa hhaaa lol faty ha ha ha ha”* (Facebook);
- *“I’ll vote for her 😊 shame she’s a minger though....”* (Facebook);
- *“Most of them are pretty hideous. I’ve seen prettier girls walking down the street. Oh man, I would so bang [name of contestant]! She has the awesome “face looks like it got smashed in by a sledgehammer” look. How kinky!” Urgh. More like Chav Queen UK. \*\*\*\*\* Plebs”;*
- *“Lol i love looking at the sort of people who enter, but seriously some of them are just not that good looking 🤔 Furthermore, [name of contestant] has a face of a 4 year old!”;*
- *“Jeeze how FUG are thoughts girls?You get a million times better looking people from just walking down the street.Excuse me whilst i puke at their misguided vanity”;*
- *“You are much mistaken. I’d rather get swine flu than even consider “hitting” that”;*
- *“i either have really high standards or just about every girl accept three of them are pretty ugly i can’t pick out one girl who looks good whatsoever”;*
- *“pure fail on their behalf I feel sry for those who got 0 votes, considering the quality of the contestants. Some of the girls who have very little votes are pretty – [name of contestant] for example.Then you get girls like [name of contestant] and [name of contestant] who are just... eeew”;*
- *“HOLY \*\*\*\* that [name of contestant] one from Aberdeenshire GOES TO MY SCHOOL ... UURGH!”;*
- *“Okay AND I KNOW the [name of contestant] girl she ALSO is in my class ARRRRGH wtf Number 12 is a bit.. round. [name of contestant] isn’t that pretty at all tbh”;*
- *“I second that ‘WHY?!’ motion, lol! Number 12 is apparently ‘0’ years old, hehe! Number 15 looks like an imposter (like a granny trying to get into a competition, hehe! “;*

- *"I don't have a clue how some of these girls could be described as beautiful?? I mean, number 26!"*;
- *"Omg one of the girls was on My Super Sweet 16, what a douche. They're all ugly. I wouldn't touch any of them"*;
- *"None of them are nice =/ And, come on now, let's not be kidding ourselves. Some of them really shouldn't even bother going into that competition..."*;
- *"Goes to show how minging most British girls are"*;
- *"19 and 40 prob the best, another 5 or so good ones in there, some of them are munters! The sad thing is the munters will think they're something special after this and not realise that when they're 19/20 and clubbing they will be good for nothing but a quick blowie behind the kebab shop"*.

The Executive believed that this type of exposure to online public humiliation was potentially highly damaging to children and, in some cases, the girls were known to the person making the comments. Such comments would also be seen by their other friends and, as such, would constitute cyber bullying and could potentially result in harm to these children.

In light of the above, the Executive asserted that a breach of paragraph 7.5.3(a) had occurred.

2. The Information Provider reiterated its arguments against classification of the service as a 'Children's service'.

The Information Provider stated that contributors to forums were free to express their opinions openly in line with guidelines set down for their continued participation in such forums. The Information Provider submitted that, in an open forum on the internet where any individual invites comments about anything, including itself, then like any social community, it will attract a multitude of differing views or personal opinions, and not all will be pleasant ones.

The Information Provider argued that it had no control or ability to control individuals making personal comments or voicing personal opinions on social networking sites, such as Facebook or internet discussion boards, and this was particularly true in cases where the individual was not known or in any way connected to the Information Provider or TQ.

The Information Provider had further carried out its own research on cyber bullying and argued that it would need to be:

- An uninvited act or event;
- Direct and personal to an individual;
- Outside the control of the individual or "target" to block or suitably retort; and
- Repeated, consistent or recurring in nature.

In response to the Executive's assertions regarding the postings on the Yahoo! questions forum and alleged related breach, the Information Provider made the following response.

On accessing the link provided by the Executive, the Information Provider established that the original post was made by a pseudonym called "*best of the best xxx*" who was no longer a live contributor. The forum itself was no longer active, with the last feedback response to this thread being posted over four years ago. Yahoo 360 was a "beta forum" that was closed by Yahoo! on 13 July 2009, but some residual forum postings still existed in search results from Yahoo!. There was no record on the Yahoo forum of who "*best of the best xxx*" was or any identity information or real name, so the Information Provider stated that it had been unable to establish whether the Yahoo! forum was ever anything to do with the service. The Information Provider further claimed that it could not find any pictures of "*best of the best xxx*" whatsoever within the forum or the thread, in school uniform or otherwise.

In a letter to the Executive on the 15 December 2011, the Information Provider had asked the Executive to provide any further information as the Information Provider could not make any identification of the actual individual in question nor establish if this person had ever been a contestant in any TQ contest before July 2009, had been subject to any premium rate related promotion or had any involvement with Miss Teen Queen UK, other than allegedly being provisionally "scouted at 'The Clothes Show'". In a response from the Executive on 20 December, the Information Provider stated that it was advised that no added information regarding the individual was available or known, as the Executive had been unable to access the link during its monitoring of the service. The Information Provider therefore had no knowledge of the identity of the individual in question and the reference made in the question posed by her in the Yahoo! forum only stated that she "*had been scouted at the clothes show*" and was asked if she wished to enter TQ.

In the forum referred to by the Executive (Yahoo 360), the individual only made reference to being approached, but the Information Provider stated that she had made no reference to having actually entered the Miss Teen Queen UK contest. On reviewing the forum link provided by the Executive, the Information Provider noted that it contained a total of 15 contributors who had made 15 feedback responses to the question posed by "*best of the best xxx*". The Information Provider stated that each contributor had only made one response expressing their personal opinion to the question posed by the individual in an open forum. Of the 15 responses, the Information Provider considered that 12 were positive and/or encouraging, two were neutral and one was negative. The Information Provider further stated that the added comments were accompanied by either constructive advice or the honest opinion of the contributor to the question posed.

The Information Provider therefore suggested that the activity on this link did not in any way demonstrate any act of cyber bullying, or anything that was likely to result in harm to children or others or which exploited their credulity, lack of experience or sense of loyalty, nor did it constitute the basis of any breach as the Information Provider believed that the individual concerned could not be quantified as ever having taken part in any premium rate service related vote.

With regard to the Executive's second example link to another forum page at thesite.org, the Information Provider stated that this website was a community site covering multiple topics and managing discussion boards for those who wished to voluntarily join a conversation. The Information Provider stated that the thread referred to by the Executive contained numerous posts in response to a contestant's opening request for votes from her online friends and expressed the general personal opinions of the contributors on the Miss Teen Queen UK contest in which the contestant was seeking support.

In further researching the contributors contributing to the thread, the Information Provider stated that it observed the following:

- There were a total of 79 postings made from around 24 contributors;
- The nature of the conversations being held between the parties was expressing the general and personal opinions of those individuals;
- All the contributors were known to each other from numerous other conversational threads within the same site in which they had participated together in a similar manner with similar comment or “banter”;
- All contributors engaged in the thread were adults ranging from 18 to 33 years of age;
- The contestant who had started the tread was at the time 18 years old and was classed as an adult; and
- All posts made by this contestant within the thread were made in “Large Font” as the general posting style and was not demonstrative of any outrage suffered by the contestant.

The Information Provider therefore suggested that the activity on this link did not in any way demonstrate any act of cyber bullying or anything that was likely to result in harm to children or others or which exploited their credulity, lack of experience or sense of loyalty.

The Information Provider stated that a further link referenced by the Executive referred to threads found in “The Student Room Community Forum”. The example thread described by the Executive was started on 5 July 2009 by the pseudonym “e hine e” and the opening post suggested the following conversation topic.

- *“Is it just me who thinks this is totally ridiculous? I hate beauty pagents anyway, but it's obvious that here the people who have the most friends are going to win-they can tell them all to vote for them. It just seems like a huge waste of time”*

On reviewing “The Student Room Community Forum”, the Information Provider stated that it is clear there that there were numerous conversational threads relating to numerous topics of likes and dislikes and, in this instance, the community chose to express an opinion between them within the conversation thread. The Information Provider asserted that, naturally, beauty pageants such as TQ could cause controversy, and the Information Provider stated that it appreciated controversial topics were always good for attracting further controversy between the contributors.

The Information Provider asserted that the Executive’s example postings from the conversation threads that related to comments being made by students to each other expressed their personal thoughts and opinions to others within the group. The Information Provider further argued that the comments made were nothing more than would be realistically made between individuals within this age and peer group in normal conversation or banter. The Information Provider further stated that the comments made were between the parties and remained within the group. They were not directed repeatedly and harmfully with malicious intent directly at any of the individuals mentioned.

The Information Provider further stated that the conversational threads were held within an entirely different site to TQ itself and were within a site that encouraged controversy between students and attracted various personal opinions, as a result of which there were also some positive comments. The Information Provider asserted

that none of the posting community in this thread were contestants in TQ, none had any involvement with TQ and no premium rate service numbers were ever mentioned.

In response to the Executive's allegations to certain postings making reference to the girls' names, the Information Provider stated that this was not unexpected. During this period of the competition, the service would state the full name of the contestant so, when looking at the main TQ website, the full name would have been visible alongside the contestant's reference number. The Information Provider further asserted that it was also possible that, in certain instances, viewers of the service website may have known contestants who had entered and may well have gone to school with them. The Information Provider considered that it was only natural that, within the conversational thread between them, they would make reference to this.

Finally, with respect to TheStudentRoom.org, the Information Provider asserted that postings and threads contained in the link provided by the Executive asserting cyber bullying had never been regarded as offensive under the guidelines or monitoring process of TheStudentRoom.org. In addition, the Information Provider stated that no warnings had been given in this regard and no postings had been retracted. The Information Provider therefore suggested that the activity on TheStudentRoom.org did not in any way demonstrate any act of cyber bullying or caused anything that was likely to result in harm to children or others or which exploits their credulity, lack of experience or sense of loyalty.

The Information Provider further argued that the service was, in fact, beneficial to its contestants and cited an article with the headline "*I was bullied because of autism... now I'm a teen beauty queen*" which was published in "The Sun" newspaper on the 6 September 2011. The Information Provider stated that the article covered the story of a contestant who had suffered from Asperger's Syndrome and, as a result, had been a victim of bullying.

The Information Provider confirmed that she stated in the article:

- *"I was at a private all-girls school which made things worse. I was very badly bullied. I couldn't connect, I didn't have any friends and spent most weekends on my own."*
- *"I entered the contest to show that people like me can do things like this."*
- *"I wish the bullies could see me now! I loved every minute."*
- *"Yes, I have Asperger's but that doesn't mean I have to shut myself away. I was thrilled to take part."*
- *"I only entered the contest because I literally bumped into a Miss Teen UK exhibition stand at a performing arts exhibition. The organisers asked me to enter, so I did. I couldn't believe I made the finals."*
- *"Most people with my condition think something like this is out of their reach but I have managed it - It shows it doesn't matter who or what you are, you can do what you want."*

In the same article, another contestant, who at the age of nine was diagnosed with acute Myeloid Leukaemia, had spent six months in Great Ormond Street Hospital and previously been given only 24 hours to live, became the runner-up in the 'Miss Teenage Princess' category.

After the competition, the contestant said:

- *"I entered the contest because I wanted parents of very ill children to realise there is hope. It happened to my parents but here I am in a beauty contest!"*

The Information Provider further stated that another article published on the "This is Lincolnshire" website in August 2010 told the story of a 13-year-old teenager who had been bullied for years, and since entering a Teen Beauty competition, had had a huge confidence boost.

In light of the above assertions, the Information Provider suggested that a breach of paragraph 7.5.3(a) of the Code had not occurred.

3. The Tribunal considered the evidence and concluded that the service and the associated promotional material, including the Facebook pages, were likely to result in harm to children by exposing them to personal humiliation in relation to their physical appearance as adolescents. The Tribunal also commented that the seeking of votes from friends was capable of exploiting their sense of loyalty in friends.

**Decision: UPHELD**

#### **ALLEGED BREACH SIX**

##### **Children's Service (Encouraged Repeated Use of the Service) (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 Miss Teen Queen UK competition service was directly aimed at 13 to 19 year olds.

The very nature of the service, whereby the person or persons with the most votes entered the next round, coupled with the number of votes that some contestants accumulated, added pressure to the other contestants to encourage further voting.

Contestants, who were put up for a public vote on the website, were likely to encourage their family and friends to vote for them or they would be voting for themselves.

The Executive believed that it was highly probable that the friends of contestants were likely to be school friends, or social friends (such as friends on social networking sites), friends who the Executive believed would also be of a similar or the same age as the contestants. It was therefore highly probable that consumers accessing the service to vote for their friends were also likely to include 'children' as defined by the Code, or be voting for themselves.

The Complainant's two daughters, who both voted for a friend who was a contestant in the competition, were aged 11 and 12 at the time they voted.

The Executive noted that a tabloid newspaper reported on a 14-year-old Miss Teen Queen UK contestant who was able to incur a £1,175 phone bill by voting for herself. In the article, her mother stated, *"im not angry at [the contestant] because I understand why she did it. Im angry at the exploitation. Girls are vulnerable at that age"*.

A request by the Executive of the top 20 mobile phone numbers that incurred the highest charges for this service showed that one user sent 8,385 messages and the remainder had sent between 4,786 and 2,000 messages each. One of these top 20 (seventh highest charge) was one of the Complainant's daughters.

If the provision of the service was deemed to end with the casting of a single vote, then the Executive asserted that the service (which is a 'Children's service') and the promotional material on the website and in the Facebook profiles (for which the Service/Information Provider was responsible under the Code) encouraged children to cast multiple votes, and thereby to use the same service again.

In light of the above, the Executive asserted that a breach of paragraph 7.5.3(d) of the Code had occurred

2. The Information Provider stated that it was important to identify, and not confuse, who was a contestant and who fell into a typical user profile for premium rate service. Any assumption that they were one and the same was strongly refuted.

The Information Provider did not dispute that contestants who entered the heat stages where there was a public vote would naturally get support from the family, as with all competitions or events where a son or daughter, sibling or otherwise related person was entering. In most instances, it was likely that the same applied to sponsorships for charities or other fundraising events. The Information Provide also did not dispute that with bill-payer's permission, friends of the contestant may likewise have provided support and at no time was it ever suggested otherwise, or did any such person deny the right to do so under the condition advised and within the requirements of the Code.

The Information Provider referred to the Executive's example of one contestant who had stated in an online posting:

*"I'm just gonna keep trying. I've posted flyers through lots of doors near mine and I keep getting my boyfriend and parents to vote for me and anyone I can really"*.

The Information Provider submitted that, at the time of posting this statement, the contestant had already obtained 500 votes and was using a variety of methods via her boyfriend, parents and by posting flyers through lots of doors. These methods demonstrated a wider audience, age group and differing active means of attaining votes within the competition. It was the Information Provider's view that this was far wider than the narrow assumption asserted by the Executive that votes were being obtained primarily by children referring to children.

The Information Provider further asserted that many regional newspapers carried editorial coverage of local contestants and supported their involvement in the Miss Teen Queen UK competition. Local support, coupled with the charitable component, encouraged voting from a wider audience via this medium.

The Information Provider argued that the service was a recognised and generally accepted pageant that raised monies for charity through its own operations which included the premium rate voting revenues and also through encouragement of its contestants in a variety of initiatives. The Information Provider stated that this

charitable fundraising component and initiatives of Miss Teen Queen UK and its contestants attracted considerable support from the media through many editorial promotions, sponsorship and celebrity endorsements and, as a result, attracted a wider voter participant audience to the premium rate public voting component of the contest.

The Information Provider stated that two examples were submitted by the Executive in support of the assertion that it was highly probable that friends of the contestants were likely to be school friends or social friends and would be of a similar age or the same age as the contestants. The Information Provider stated that, based on this, the Executive then assumed and concluded that it was therefore highly probable that consumers accessing the service to vote for their friends were also likely to include children, as defined by the Code, or be voting for themselves. The Information Provider stated that the first example being the children of the Complainant and the Facebook page of the contestant for whom they pledged votes. The Information Provider strongly disagreed with the Executive's approach. It was the Information Provider's case that the high bill resulting from votes being placed in favour of the contestant for whom the Complainant's daughters voted had nothing to do with this particular Facebook page, and that it was more likely that the circumstances that led to the Complainant's daughters placing votes in the manner they did was via a different means and with a different belief when doing so.

The second example cited by the Executive related to a single incident over a five-year period of an individual placing multiple votes for herself on her own phone provided to her by her parents without credit limit. While this act was reported by the press, no complaint regarding the service or its operation was ever made. As far as the Information Provider was aware, no other matters of this nature had occurred.

The Information Provider suggested that the assumptions made by the Executive, based on the examples provided, were not truly reflective of the way votes were attained or the Executive's assumption that a contestant's age was one and the same as that of their voter.

The Information Provider further stated that the Executive's account of the top 20 mobile numbers that had incurred the highest charges further demonstrated that a wider audience was using the service and quite happily so. The Information Provider considered that the minimal complaint history relating to this was a testament to that fact. The Information Provider suggested that, if the costs incurred on the top 20 mobile numbers as stated by the Executive had been incurred by children, it would surely have initiated greater complaint.

The Information Provider repeated that it did not consider the service to be classified as a 'Children's service'. There was no encouragement of repeat voting in any promotional material within the Information Provider's control and, in any event, the cost of an individual vote in the contest was 60p. As stated previously, neither the Information Provider nor TQ ever considered the premium rate component to be restricted as a 'Children's service' but, likewise, children were not prohibited from voting with the bill-payer's permission. The Information Provider considered that this was comparable with other various contests and talent shows currently running and known to the Executive where contestants were under 16 but the voting community was of wider appeal. Examples of this would have been the 'X Factor' or 'Britain's Got Talent', both of which had contained contestants under the age of 16 and experienced considerable exposure to social networking promotions. Further considerations were where the contestants may have been over 16, but may have proved *"particularly*

*attractive*” to an under-16 voting profile, as was the widely reported case in the last ‘X Factor’ series with the winners ‘Little Mix’.

The Information Provider further stated that there were currently several other teen beauty pageants, with contestant age ranges between 13 years to 19 years, which contained public voting via premium rate services with similar offerings and price points to Miss Teen Queen UK. As far as the Information Provider was aware, none of these other services had ever been operated under a ‘Children’s service’ classification. The Information Provider did not therefore consider that the service in question should have been classified as a ‘Children’s service’ and, although the contestants ranged from 13 to 19 years of age, the Information Provider considered it was clearly demonstrated that it was more likely that the service was of a wider appeal and not just of particular interest to children.

In view of the above and in the interests of consistency, the Information Provider disagreed that a breach of Paragraph 7.5.3(d) of the Code had occurred.

3. The Tribunal had already determined that the service was a ‘Children’s service’.

The Tribunal considered the evidence and concluded that, notwithstanding the Information Provider’s evidence that some contestants had received votes that were cast in a variety of circumstances, the nature of the service and its promotional material were such as to encourage multiple voting by all age ranges, including children. The Tribunal found that the service encouraged multiple voting by virtue of contestants being selected for the next round by who received the most votes from the public, with no restriction of one vote per person/handset/telephone. The Tribunal had regard to the evidence of multiple voting that had in fact occurred, including that of the Complainant’s children

### **Decision: UPHELD**

### **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 cost paid by individual consumers was high, given that the Complainant had stated that she had incurred a phone bill of £2,548; and
- The service was found to be harmful to children.

The Tribunal considered the following mitigating factors:

- In relation to the breaches that arose from the promotions of the service on Facebook, the breaches were caused by third parties (contestants for the Miss Teen Queen UK service) who were acting independently from the Information Provider;
- The Information Provider co-operated with PhonepayPlus when notified of the breaches;
- The Information Provider had considered refunds but no unconditional offer of a refund had been made to the Complainant;

- The Tribunal found that the Information Provider genuinely did not believe that the service was a ‘Children’s service’; and
- The Tribunal took into account the evolving landscape of the promotion of premium rate services using social networking over the period in which the Information Provider had operated the service.

The revenue in relation to the service was in the mid range of Band 3 (£100,000 - £250,000).

Having taken into account the aggravating and mitigating factors, the Tribunal 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; and
- The Information Provider must pay 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.