

PHONEPAYPLUS LIMITED

and

CHEERS INTERNATIONAL SALES LIMITED

ORAL HEARING DECISION

Tribunal members: **Emma Boothroyd (Chair)**
 Howard Webber
 Louise Povey

1. The oral hearing in this matter took place on 12 June 2012. At the hearing the PhonepayPlus Executive (“the Executive”) was represented by Selman Ansari of Bates, Wells & Braithwaite. Cheers International Sales Limited (“CIS”) was represented by Alan Bates of counsel. David Levitt of the Executive, and Anton James (PRS Manager) and Miles Samaratne (Managing Director) of CIS gave oral evidence. The clerk to the Oral Hearing Tribunal (“the Tribunal”) was Alexander Macpherson of counsel.

Summary of Tribunal’s decision

2. The Tribunal’s decision as to the alleged breaches of the PhonepayPlus Code of Practice (12th edition) (“the Code”) is as follows:

- 2.1. The Tribunal finds that CIS was in breach of paragraph 2.3.1 of the Code because consumers of the relevant premium rate service were not treated fairly and equitably.
 - 2.2. The Tribunal finds that CIS was in breach of paragraph 2.4.3 of the Code because it failed to ensure that consumers' personal information was not collected without their consent.
 - 2.3. The Tribunal finds that CIS was in breach of paragraph 3.6.2 of the Code because the relevant service (being a service which involved the collection of personal information) failed to make clear to consumers the purpose for which the information was required and may be used in the future.
3. The Tribunal's decision as to the sanctions to be applied as a result of the breaches of the Code is as follows:
 - 3.1. Formal reprimand;
 - 3.2. Fine of £50,000;
 - 3.3. For a 12-month period, CIS is to seek prior permission for any new service running on multiple premium-rate numbers.

Description of the service

4. The service operated by CIS which forms the subject of this adjudication was called "Register Now!" and it offered customers the opportunity to register their interest in a new Voice Over Internet Protocol ("VOIP") service which was to be offered by CIS at some time in the future. The service was promoted by means of leaflets distributed at various locations in the United Kingdom which invited customers to call a specified premium-rate number to register their interest in the proposed VOIP service.
5. A singular feature of the "Register Now!" service was that CIS operated the service on around 90,000 premium-rate phone lines. Each individual '09' number was printed on 9 leaflets only, and over the period under investigation, CIS distributed some 584,000 leaflets to members of the public.

6. When a customer called whichever premium-rate number was printed on the leaflet received, his or her telephone number was automatically logged by CIS using Calling Line Identification (“CLI”) technology and charges were incurred. The caller would hear a recorded message which depending upon the price point used read for example: *“Thank you for registering. Your number has been recorded to receive further information on our services. This call is charged at £1.02 per call from a BT landline. Other operator rates may vary. Please note you must be the bill payer. Service details may appear on your phone bill. If you believe you have dialled this number in error please visit www.calledinerror.co.uk or contact our helpdesk on 084444 897 240. Thank you.”*
7. CIS stated that their intention in operating the service was to gauge the level of interest in the proposed VOIP service, and then to use the telephone numbers collected to contact those who registered to give them marketing information as to the VOIP service when it was rolled out. In the event, as a result of the launch of an investigation by the Executive and the subsequent proceedings, no customers were ever contacted.
8. The ‘www.calledinerror.co.uk’ domain name took users to a web-page which formed part of CIS’ own website, and which allowed callers to claim a refund and to request that their details be removed from CIS’ records if they had accessed the service in error.
9. CIS acted as the network operator, level 1 provider and level 2 provider in relation to the relevant service.

Background facts

10. CIS had previously operated a service called “Gossip Box” which had been subject to a PhonepayPlus investigation under the 11th edition of the Code with reference number 859338. This service also used a large number of premium-rate numbers, and the concern raised by the Executive in the course of that investigation was that customers

might call a Gossip Box number in error as a result of misdialling while intending to place votes in relation to popular television programmes which used similar numbers.

11. Prior to the adjudication hearing relating to the “Gossip Box” service, CIS was in email correspondence with the Executive about the service, and the Executive recommended to CIS that it be given a single dedicated number, or be run on a small number of PRS fixed lines. CIS initially stated that this would cause it an unacceptable loss of revenue, but, in any event, CIS terminated the “Gossip Box” service shortly thereafter.
12. An adjudication on the “Gossip Box” service was published on 15 September 2011. A PhonepayPlus tribunal concluded that the Executive’s allegation of breach of paragraph 5.4.1(b) of the 11th edition of the Code was not upheld. However, the tribunal did express concern that allocating so many numbers to a single service would increase the risk of misdialling.
13. On 30 August 2011, CIS launched the “Register Now!” Service. CIS stated that it set up the www.calledinerror.co.uk website in response to some of the issues raised by the Executive and the adjudication tribunal in relation to the “Gossip Box” service.
14. Around 90,000 numbers were applied to the “Register Now!” service. Analysis of the calls received by CIS was carried out by the Executive on the basis of the data provided. This analysis showed that:
 - 14.1. Only 643 of the 90,000 individual premium-rate numbers were called during the period analysed (30 August to 27 October 2011). Thus only 0.7% of numbers used were actually called over this period;
 - 14.2. However, 12,503 calls were made in total to these 643 numbers, with some numbers receiving multiple calls;
 - 14.3. The ten most-called numbers received 5,278 of the total (around 42%). Each of these ten numbers was found to be similar to numbers used for voting on popular television programmes (such as Celebrity Big Brother, The X Factor and Strictly Come Dancing);

- 14.4. In total around 68% of calls made were to numbers which were similar to the numbers of TV voting lines;
- 14.5. One particular number (0901 1616170) received 1,829 calls (around 15% of the total calls for all 90,000 numbers). This was the number which would be dialled if a member of the public dialled the voting number for Celebrity Big Brother/Big Brother and accidentally inserted an extra "1" as the fifth digit;
- 14.6. Calls to the "Register Now!" service spiked on 8 September 2011 (which was the date of the Celebrity Big Brother final) and on the weekends of 8/9 October, 15/16 October and 22/23 October 2011 (which were dates on which The X Factor and Strictly Come Dancing were broadcast). In total around 61% of all calls received by the service were made on those 7 days (out of the 57 days for which data was available).
15. CIS produced a table of the claims for refunds made via its called-in-error website. This table showed that CIS received 47 requests for refunds over the period 8 September to 26 October 2011. 14 of these related to the 0901 1616170 number, and of these 14 requests 5 specifically referred to Big Brother. Other programmes referred to in claims for refunds included Strictly Come Dancing and The X Factor.
16. CIS stated that distribution of the leaflets promoting the "Register Now!" service commenced on 30 August 2011. Operatives would stand at busy locations such as railway stations and shopping centres and hand out the leaflets to passers-by. Most leaflets were distributed in London (around 456,000 of the 584,000 distributed), but trips were also made to various other towns and cities in the midlands and the south of England, with some 28 sites being visited in all.
17. The Executive received two complaints about the service. One was from the industry member responsible for operating the phone lines for The X Factor and the other was a consumer. Mr Levitt of the Executive was already monitoring the service prior to receipt of these complaints, and his investigation was not initiated as a result of them.

18. Mr James of CIS stated in evidence that the purpose behind the use of multiple numbers was partly to enable CIS to check on whether the distributors were doing their job effectively, but primarily to carry out marketing analysis on the success of certain distribution points. He denied that CIS had chosen numbers on the basis that they could be misdialled by people attempting to access TV voting lines. He stated that it would not be possible for CIS to predict which numbers would be used by TV voting lines, and many numbers could be described as being similar to the numbers eventually used.

19. Mr James stated that he accepted that the analysis done showed that many individuals had been calling the "Register Now!" service who could not have received one of CIS' promotional leaflets and thus did not intend to register to receive marketing material. However, he stated that this only became apparent with hindsight, and that CIS had no reason to analyse call data prior to the Executive's investigation. The only analysis done before that time was by the distribution manager, but this would merely have been a check on which numbers were called on any given day and would not have included consideration of the numbers of calls made to particular numbers. No marketing analysis of the numbers used had been carried out by the time of the Executive's investigation. He stated that CIS relied upon the called-in-error website to alert it to any problems, but stated that the level of complaints received did not cause alarm bells to ring.

20. Mr Samararatne gave evidence to state that it was not the intention of CIS to use numbers which were similar to TV voting lines. Rather he stated that the use of multiple numbers was intended to generate precise marketing response data about the success of CIS' promotional campaigns. He stated that there was nothing which CIS could do to prevent misdialling occurring, but that the called-in-error website had been set up in good faith to attempt to ameliorate the situation. He pointed out that many thousands of numbers could be said to be similar to TV voting line numbers, and that it was not reasonable to expect CIS to attempt to avoid such similar numbers.

21. Following the original tribunal's decision in this case on 2 February 2012, CIS requested compliance advice in relation to the "Register Now!" service. The Executive advised CIS to take steps to identify and remove data which was, or was likely to have been, collected without consent. In the event of uncertainty, it was advised that consumers be provided with an effective means of opting out of receiving any further marketing.
22. As a result of this recommendation Mr Samaratne decided to disregard all the data which had been gathered through the "Register Now!" service, on the basis that the correct data could not be extracted from the skewed data. As a result no customers who called the "Register Now!" service have in fact been contacted with marketing information about the proposed VOIP service.

Submissions from the Executive

23. The Executive contended that CIS is responsible for the following breaches of the Code:
 - 23.1. Para 2.3.1: *"Consumers of premium rate services must be treated fairly and equitably"*;
 - 23.2. Para 2.4.3: *"Level 2 providers must ensure that consumers' personal information is not collected without their consent or passed to any other person other than for the sole purpose of facilitating a refund to the consumer"*;
 - 23.3. Para 3.6.2: *"Services which involve the collection of personal information, such as names, addresses and phone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to consumers the purpose for which the information is required and may be used in the future"*.
24. The Executive contended that the architecture of the service and the analysis carried out demonstrated on the balance of probabilities that CIS either intended that there would be multiple misdials to the "Register Now!" service, or else was wilfully reckless as to whether this would be the case.

25. The Executive further contended that the called-in-error webpage was an inadequate remedy to address the risk of misdials arising from the use of so many telephone lines. In particular, a customer trying to vote in relation to a TV show (especially a first-time user) might terminate the call without appreciating that the vote had not been registered.
26. The Executive further contended that CIS failed to react to the number of complaints and requests for refunds which were received through its website, and which should have alerted it to a problem. It relied upon the fact that the evidence of Mr James suggested that little or no review of the data as to the calls received had been carried out, and that CIS failed to appreciate and then act upon the fact that misdialled calls were being received.
27. The result of these failures, in the contention of the Executive, was that consumers of premium-rate services were not treated fairly for the purposes of paragraph 2.3.1 of the Code. Those who misdialled were billed for a service which they did not intend to access to the benefit of CIS.
28. For the purposes of paragraph 2.4.3 of the Code, the Executive contended that the collecting of personal information without consent (in the form of the callers' numbers) was an inevitable consequence of the misdialling. No consent can have been given by callers who had never seen the promotional leaflets, and who believed that they were voting in relation to a TV show rather than registering to receive marketing material in the future.
29. Similarly, for the purposes of paragraph 3.6.2 of the Code, the Executive contended that the service created the likelihood that consumers' personal information would be collected without the purpose for which the information was required and would be used in the future being communicated to them.

Submissions from CIS

30. CIS contended that the “Register Now!” service was a legitimate one, and it was noted that no breaches had been raised in relation to the promotional leaflets used to promote it. It was further noted that there was no issue that it was legitimate for CIS to use CLI technology in relation to such a service. The mere fact that misdialling had occurred to a number which used CLI technology could not be sufficient to establish a breach of the Code.
31. CIS contended that there was no evidence to support any allegation that it had selected numbers deliberately because they were similar to well-publicised TV voting numbers. The number ranges used for the service were selected on an entirely random basis, and it was contended that there was never any intention to obtain revenue as a result of misdials. It submitted that the issue of intention was crucial to determining whether or not a breach was made out.
32. CIS asserted that misdialling was an unavoidable industry-wide problem which was beyond its control. CIS had set up a dedicated web-page enabling those who misdial to claim a refund, and it was not aware of any other industry member which had taken such a step. There is no requirement in the Code to vet allocated numbers in case they are similar numbers to those used for popular voting lines,. In any event it was contended that it would not be feasible to do this. CIS was entitled to use the numbers allocated to it by Ofcom for its legitimate commercial operations.
33. CIS contended that the use of multiple numbers in conjunction with the mass leafleting strategy performed a useful marketing function, as well as enabling CIS to check that distributors were carrying out their job properly. CIS submitted that the use of multiple numbers could not of itself constitute a breach of the Code, given that it performed a legitimate commercial purpose.

Tribunal’s decision on breaches of the Code

Para 2.3.1: “Consumers of premium rate services must be treated fairly and equitably”

34. Misdialling results in consumers being charged for calling a service which they did not intend to access, and thus contravenes the principle of informed consent which

underlies the Code. It is true, as CIS pointed out, that misdialling as a result of consumer error may occur to some extent whatever measures are put in place by the operators of premium-rate telephone lines. Simply to accept that misdialling may not be capable of being completely eradicated, does not mean that industry members are powerless to take steps to reduce the risk of it occurring. In the Tribunal's judgment, an industry member complying with paragraph 2.3.1 of the Code would take reasonable steps to reduce the risk of misdialling taking place to the lowest level reasonably possible.

35. The Tribunal concludes that it was clearly the case on the evidence presented that the risk of a particular premium-rate service being dialled in error is hugely increased when that service is active on many thousands of phone lines. In contrast the probability of a service which runs on one phone number only being called in error may be extremely low. The Tribunal considers that running a service on many thousands of lines increases the chance that a user may access it by mistake while trying to call a service with a similar number.
36. In this case, the Tribunal accepts that there is no direct evidence before it that CIS deliberately selected numbers which were similar to specific numbers used for popular television shows. The Tribunal concludes that, at the very least, the evidence does demonstrate that if a service is made available on a sufficiently large number of telephone numbers then the risk of using numbers which are very similar to those used for popular shows is increased greatly. It was clear in this case that the misdials came from callers trying to access voting lines on several different shows and were taking place on several different 09 numbers used by CIS.
37. The Tribunal concludes that while it may not be reasonable to expect a service provider to take steps to guard against misdialling where it has selected at random a single 09 number for its service, the position is qualitatively different where the relevant service is intentionally operated on a very large range of multiple numbers simultaneously. With the increased risk of misdialling comes an increased

responsibility upon the service provider to avoid unfairness by taking reasonable steps to reduce the risk of misdials.

38. In this case CIS had specifically had its attention drawn to the problem of misdials in the course of the “Gossip Box” investigation. While the specific alleged breach which related to misdials was not upheld in that adjudication, the tribunal did express concern at the increased risk of misdials, and in the course of the investigation CIS sought and obtained advice from the Executive about how to reduce this risk. Indeed, according to CIS, it was specifically as a result of the potential problem considered in the “Gossip Box” investigation that CIS introduced its called-in-error web-page. Thus CIS were clearly aware of the potential problem of misdialling occurring in services using multiple phone lines when it launched the “Register Now!” service.
39. The Tribunal did not consider that setting up the called-in-error web-page sufficiently dealt with the problem of misdials so as to render the treatment of consumers fair for the purposes of paragraph 2.3.1. In particular:
- 39.1. The recorded message set out at paragraph 6 above did not state the name or nature of the service which had been accessed. There was a clear risk that misdiallers (especially perhaps first-time callers not familiar with the message played on the service they intended to access) might consider that “*Thank you for registering*” referred to the successful registering of their vote and terminate the call at that stage;
- 39.2. For those misdiallers who did appreciate that they had accessed the wrong service, a likely reaction is to terminate the call as soon as possible to attempt to reduce any further charges which might be incurred. In these circumstances, a caller who was aware he or she had misdialled would not be on the line long enough to be referred to the domain name of the called-in-error website;
- 39.3. Analysis done by the Executive suggests that the large majority of callers accessing the service did not stay on the line long enough to hear the domain name of the called-in-error webpage;
- 39.4. In any event, where consumers have incurred a very small charge through their own error, a majority may not make further enquiries in an effort to claim a

refund even if aware of CIS' contact details. There is nothing in the recorded message which states that all misdiallers would automatically be entitled to a refund despite their mistake.

40. The failure of the called-in-error website adequately to address the problem of misdialling is borne out by the Executive's analysis. 1,829 calls were made to the number 0901 1616170, for example, and the evidence suggests that most if not all of these calls were misdials. However, only 14 of these callers (less than 1%) subsequently claimed a refund via the called-in-error website.
41. Despite the ineffectiveness of the called-in-error website in ameliorating the misdialling problem, such information as did reach CIS via the website was, in the Tribunal's judgment, sufficient to alert it to a problem with misdials. Within the first three weeks of the service's operation, CIS had received six complaints from consumers who had dialled 0901 1616170 by mistake, and four of these consumers mentioned Big Brother. This should have been sufficient, at the very least, to draw CIS' attention to a problem with that particular number, but in the event no steps were taken to disconnect it. The disconnection of a single number would, of course, have had no discernible effect on any legitimate revenue CIS might receive as a result of the distribution of leaflets or on its marketing strategy.
42. Had CIS monitored the numbers of calls received on its numbers, then it would also have been aware of the problem of misdials. Some of the numbers it used received hundreds of calls, which was clearly not consistent with the calls arising from the distribution of a maximum of nine leaflets with that number printed on them.
43. However, given the huge number of telephone numbers used for this service, the Tribunal does not consider that CIS could have met its duty to treat consumers fairly simply by monitoring call traffic and complaints received and reacting to the same. Even were it necessary for commercially legitimate reasons to run a service on multiple numbers (as to which see paragraphs 44 and 45 below), then because of the resulting high risk of misdials the Tribunal considers that it was not fair to charge all

callers immediately upon connection to the service. Mr James accepted that an alternative approach would be to use IVR technology to confirm the intention of the caller to access the service, and to give misdiallers the option to terminate the call without incurring any charges or having their personal information stored. It is unlikely that any genuine consenting callers who wished to access the "Register Now!" service would be deterred by the need simply to confirm their intention on making the call. It appears to the Tribunal that this further step is a necessary one if a service provider intends to run a service on so many telephone lines that the risk of misdialling becomes severe.

44. In any event, the Tribunal considers the evidence from CIS as to the commercial purpose of running the service on many thousands of phone numbers to have been unsatisfactory. In particular:

44.1. It was stated that the multiple numbers could be used to check up on the work of the distributors, although Mr James accepted that it could not be ascertained that operatives were in all cases genuinely handing out the leaflets as instructed. Further, it was accepted that the huge range of telephone numbers used was not necessary for this purpose;

44.2. It was also stated that the data of calls received could be analysed for marketing purposes in order to ascertain which locations and times of distribution were most effective. However, given that the response rate in relation to leaflets was stated by Mr James to be very low it appears to the Tribunal to be doubtful that any meaningful marketing conclusions could be drawn from the same. In this case, only 643 of the tens of thousands of numbers printed on the leaflets were ever called, and it thus appears unlikely that any helpful marketing analysis could be done on the basis of such a small sample;

44.3. In any event, the fact that so many numbers were used meant that a large number of calls received were the result of misdials and were not made by people who had received leaflets, thus rendering any meaningful marketing analysis impossible. Thus the very feature of the service which was said to have been introduced so that marketing analysis could be done skewed the data to make it useless for the purposes of marketing analysis;

44.4. The Tribunal further notes that in fact no such marketing analysis was done prior to the Executive's investigation, although CIS stated that it may have begun to do this the following year. The Tribunal does not consider that it was credible for CIS to suggest that having had the issue of large number ranges increasing the risk of misdials specifically drawn to its attention that it took no steps to analyse that data at all for this particular problem.

45. For these reasons, the Tribunal is not satisfied on the balance of probabilities that there was a legitimate commercial function in using multiple numbers. This is particularly the case where CIS had recently had their attention specifically drawn to the risk of misdials occurring when multiple phone lines were used.

46. Thus the Tribunal is satisfied that the result of the service operated by CIS was that consumers were not treated fairly and equitably, and breach of paragraph 2.3.1 is upheld. The way in which CIS designed and operated the service led directly to thousands of consumers being charged for a service which they did not intend to access. CIS were, at the very least, wilfully reckless as to this outcome.

Para 2.4.3: *"Level 2 providers must ensure that consumers' personal information is not collected without their consent"*

47. The purpose of the "Register Now!" service was to collect the telephone numbers of consumers interested in receiving marketing material about future VOIP products. Such data was collected automatically once a recipient of one of CIS' leaflets indicated his or her consent to the storage of his contact details by telephoning the number on the leaflet.

48. It follows that anyone misdialling one of CIS' numbers had not given consent for his number to be collected and stored. Thus the nature of the service and the resulting high risk of misdials meant that there was a high risk of individuals having their telephone number collected without their consent.

49. Paragraph 2.4.3 imposes a specific duty upon CIS to “ensure” that the unauthorised collection of data does not take place. For the reasons given above, the Tribunal is satisfied that the design of CIS’ service greatly increased the risk of misdials and that CIS did not take reasonable steps to prevent such misdials taking place. The mischief caused to misdiallers was twofold: unauthorised charges and the collection of personal information. If the service was to be run on multiple phone lines then the introduction of IVR technology so that consent to the collection of personal information could be confirmed in the course of the call would, in the Tribunal’s judgment, be necessary for paragraph 2.4.3 to be complied with.

50. For these reasons, breach of paragraph 2.4.3 is upheld.

Para 3.6.2: “Services which involve the collection of personal information, such as ... phone numbers (which includes the collection of Calling Line Identification (CLI) ... information), must make clear to consumers the purpose for which the information is required and may be used in the future”

51. Again this alleged breach of the Code relates to the collection of personal information. CIS had to ensure that the purpose for which such information is required and may be used is communicated to consumers. The recorded message heard by callers does not repeat the information contained in the leaflet as to the nature of the underlying VOIP service and the fact that the purpose of the collection of information was to register consumers who were interested in this service. Thus any misdialler would not receive this information prior to his or her personal information being collected.

52. Thus the problem of misdialling results in consumers not having access to the information required by the Code. For the reasons given above, the Tribunal concludes that CIS is also in breach of paragraph 3.6.2.

Tribunal’s decision on sanctions

53. The Tribunal considers that the severity of the breach of paragraph 2.3.1 was serious. In particular, the Tribunal takes into account the following matters:

- 53.1. The revenue generated by the service was stated to be £63,090.41. On the evidence, most of this revenue was received from consumers who did not intend to access the “Register Now!” service;
 - 53.2. The steps put in place by CIS in relation to the issue of misdialling fell a long way short of what was required adequately to protect consumers;
 - 53.3. The nature of the service was such as potentially to cause a loss of confidence in premium rate services in general;
 - 53.4. The value delivered to consumers who misdialled was nil;
 - 53.5. In the event, the value delivered to all consumers who accessed the service was nil. This is because CIS decided to discard all of the data received because of the misdialling problem and the resulting difficulty in identifying those who accessed the “Register Now!” service intentionally. Thus no caller to the service obtained what they sought when making the call;
 - 53.6. The Tribunal is satisfied that CIS was (at least) wilfully reckless as to the generation of revenue through misdials.
54. The Tribunal considers that the severity of the breach of paragraph 2.4.3 was significant. In particular, the Tribunal takes into account the following matters:
- 54.1. The storing of consumer information without consent could potentially have a detrimental effect on confidence in premium rate services in general;
 - 54.2. In particular, it is clear from the complaints received by CIS that certain consumers were concerned at the unauthorised storage of their contact details, and were as concerned or more concerned about this issue as about receiving a refund;
 - 54.3. Consumers’ ability to make a free and informed transactional decision was impaired;
 - 54.4. Had the Executive’s investigation not taken place, there was the potential harm of a large number of individuals having their personal information used for unauthorised marketing;
 - 54.5. However, in the event no revenue was produced as a result of CIS’ collection of consumers’ information and no consumers received unsolicited contact from CIS as a result of the unauthorised storing of their telephone numbers.

55. The Tribunal considers that the severity of the breach of paragraph 3.6.2 was significant. In particular, the Tribunal takes into account the following matters:
- 55.1. The collection of personal information without the purpose of the same being communicated could potentially have a detrimental effect on confidence in premium rate services in general;
 - 55.2. It is clear from the complaints received by CIS that certain consumers were concerned at the unauthorised storage of their contact details, and were as concerned or more concerned about this issue as about receiving a refund;
 - 55.3. Consumers' ability to make a free and informed transactional decision was impaired;
 - 55.4. Had the Executive's investigation not taken place, there was the potential harm of a large number of individuals having their personal information used for unauthorised marketing;
 - 55.5. However, in the event no revenue was produced as a result of CIS' collection of consumers' information and no consumers received unsolicited contact from CIS as a result of the unauthorised storing of their telephone numbers.
56. The Tribunal's overall assessment is that the breaches were serious.
57. The Tribunal has given weight to the following aggravating factors:
- 57.1. The fact that CIS was aware of the misdialling issue prior to launch of the "Register Now!" service, and yet proceeded with the launch of a service which was likely to receive misdialled calls;
 - 57.2. The fact that CIS failed to analyse call data at all, or to respond to complaints received relating to misdials;
 - 57.3. The fact that, even after CIS were aware that the Executive were investigating the service, it failed to consider the service, the available call data, and what steps could be taken to minimise the risk of misdials.
58. The Tribunal does not consider that there is any relevant mitigation in this case. Although it is noted that the fact of individual misdials was not within the direct

control of CIS, the nature of the service was such that the generation of unauthorised revenue as a result of consumer error became highly likely. Thus, it is not considered that the underlying accidental nature of the calls made constitutes any mitigation of CIS' breaches of the Code.

59. As a result of the matters set out above, the Tribunal has decided to impose the following sanctions:

59.1. Formal reprimand;

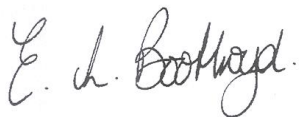
59.2. Fine of £50,000;

59.3. For a 12-month period, CIS is to seek prior permission for any new service running on multiple premium-rate numbers.

60. The third of these sanctions is intended to ensure that CIS obtains prior permission from the Executive prior to launching any new service which uses multiple premium-rate numbers, in light of the risk of misdials which this case has highlighted. The Executive will consider whether adequate safeguards are in place to protect consumers from the generation of unauthorised revenue.

Administrative charge

61. The Tribunal recommends to the Executive 100% of the administrative charge should be imposed upon CIS, with the proviso that CIS should not have to pay for any costs incurred as a result of the failure of the recording equipment at the oral hearing.



Emma Boothroyd (Chair)

On behalf of the Oral Hearing Tribunal

Dated this 11th day of July 2012