

Tribunal Sitting, Case Number and Date	Case Ref	Network Operator	Level 1 Provider	Level 2 Provider	Service Title and Type	Case Type	Procedure
No. 114 Case 2 22/11/12	10748	Mars Communications Limited	N/A	ITS Technical Limited	Gov Help and Travelhelp	Level 2 Provider	Track 2 procedure

The Executive received five complaints in relation to an information and call connection service (the “**Service**”) operated by the Level 2 provider, ITS Technical Limited. The Service operated on the websites govhelp.co.uk and travelhelplines.co.uk. The websites promoted a number of 090 numbers, which connected consumers to a variety of government departments and services (for example the Passport Office) and travel organisations (for example National Rail Enquiries) at a charge of £1.53 per minute.

The complainants alleged that the Service websites were misleading as they thought they were Government websites (or at least affiliated with the Government) and/ or complaints stated they were unaware that they would incur high charges.

The Executive raised the following potential breaches of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”).

- Rule 2.3.2 – Misleading
- Rule 2.3.10 – Vulnerable groups
- Paragraph 3.4.12(a) – Registration of numbers

The Tribunal upheld the breaches. The Level 2 provider’s revenue in relation to the Services was within the range of Band 5 (£5,000- £50,000). The Tribunal considered the case to be **serious** and imposed a formal reprimand, a fine of £8,000 and a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

Administrative Charge Awarded

100%

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

**Thursday 22 November 2012
TRIBUNAL SITTING No. 114/ CASE 1
CASE REFERENCE: 10748**

Level 2 provider: ITS Technical Limited

Type of service: Information and call connection and information service (“GovHelp” and “Travelhelp”)

Level 1 provider: N/A

Network operator: Mars Communications Limited

**THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER
UNDER PARAGRAPH 4.4 OF THE CODE**

BACKGROUND

The Executive received five complaints in relation to an information and call connection service (the “**Service**”) operated by the Level 2 provider, ITS Technical Limited. The Service operated on the websites govhelp.co.uk and travelhelplines.co.uk. The websites promoted a number of 090 numbers, which connected consumers to a variety of Government departments and services (for example the Passport Office) and travel organisations (for example National Rail Enquiries) at a charge of £1.53 per minute.

The complainants alleged that the service websites were misleading. Two of the complainants stated that they Google searched “Passport Office” and found the Level 2 provider’s website as the first sponsored link presented in the list (**Appendix A**). They stated that they dialled the number on the website on the understanding that they were calling the official Passport Office number. One of the complainants stated that the website was misleading as it contained the “Home Office” official logo – implying that it was the official website whilst another complainant made reference to being misled by the website name, govhelp.co.uk (**Appendix B**). In addition, one of the complainants stated that s/he was unaware of the cost of this Service and incurred a cost of £188.

The Investigation

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”).

The Executive sent a breach letter to the Level 2 provider on 29 October 2012. Within the breach letter the Executive raised the following potential breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.3.10 – Vulnerable groups
- Rule 3.4.12(a) – Number registration

The Level 2 provider responded on 13 November 2012. On 22 November 2012, and after hearing informal representations by conference call from the Level 2 provider, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

Rule 2.3.2

“Premium rate services must not mislead or be likely to mislead in any way.”

1. The Executive submitted that the Level 2 provider had breached rule 2.3.2 on the grounds that consumers were misled, or likely to have been misled, into the belief that the Govhelp website was an official government website or affiliated to the services it was providing a connection service to. The Executive stated that this was for the following reasons:
 - i. The use of the name “Govhelp”, which is similar to the official government website names (formerly directgov and now gov.uk).
 - ii. On some website pages the disclaimer stating that the Level 2 provider was not affiliated to services to which it offered connection was either below the fold or absent. As a result, consumers may not have been aware that they were on the website of an unaffiliated third party.
 - iii. The use of logos. The website contained the official logos for the services to which it offered connection, for example the Home Office or the Child Support Agency (**Appendices B and C**).
 - iv. The website had a column on the left hand side which was titled “most popular” and listed a number of Government departments. The Executive submitted that this gave the impression that this was the official Government website.

The Executive also noted that consumers were likely to have been misled by the use of logos on the Travelhelplines website (**Appendix D**).

The Executive further noted the content of the complaints, which contained evidence that actual consumers had been misled.

For the above reasons, the Executive submitted that consumers were misled, or were likely to have been misled, and as a result the Level 2 provider had acted in breach of rule 2.3.2 of the Code.

2. The Level 2 provider denied the breach. Specifically the Level 2 provider stated that the domain name govhelp.co.uk was chosen as the site only facilitated a directory service for Government services. It maintained that its web sites did not operate from either ‘.gov’ or ‘.org.uk’ domains, thus by using a commercial domain name i.e. ‘.co.uk’ it avoided potential confusion. Further, the Level 2 provider asserted that its promotion of the service via sponsored search engine results clearly stated that the Service was a “directory enquiry” service. In relation to the use of logos, the Level 2 provider stated that this was done to assist users to identify that they could call the directory number and get the correct information from the correct organisation. It was asserted that at no point were the logos put in place to confuse customers. In relation to the “most popular” section, the Level 2 provider submitted that the text contained in the image was a statement of fact and simply referred to a list of Government organisations. The Level 2 provider stated that it was unsure of how this could have been worded to describe a list of Government organisations without using the word Government, but it added that it was happy to remove the list and/ or reword the section. The Level 2 provider maintained that it provided a legitimate commercial

service that aimed to save consumers time and effort. Further, the Level 2 provider pointed out that its websites contained a url which would take consumers to the actual website of the service they required.

The provider asserted that it had made the following changes as a result of the investigation:

- i. Changed the domain name to: www.numberhelp.co.uk
- ii. Removed all logos
- iii. Removed connection to some departments/organisations.

In summary, the Level 2 provider stated that it did not intend to mislead consumers.

3. The Tribunal considered the evidence, including the written and oral submissions made by the Level 2 provider. The Tribunal found that consumers were misled or likely to have been misled into the belief that the Level 2 provider's website was an official Government website or at least affiliated to Government. The Tribunal had regard to the service as a whole but, in particular, it accepted the submissions of the Executive in relation to the use of logos, the list of Government departments and the domain name. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

Rule 2.3.10

“Premium rate services must not seek to take advantage of any vulnerable group or any vulnerability caused to consumers by their personal circumstances.”

1. The Executive submitted that the Services sought to take advantage of members of the public who were vulnerable due to their circumstances. The Executive noted that within the list of customer service helplines were the following:

Disability Living Allowance
Job Seekers Allowance
The Pension Service
Child Support

The Executive submitted that customers requiring these services are likely to be claiming benefits or experiencing financial difficulties and may be in urgent need of advice. The Executive considered that a service operating a £1.53 per minute helpline providing information/ advice which is also available for free or for a significantly less expensive call rate, appears to take advantage of vulnerable groups or vulnerability caused to consumers by their personal circumstances.

In light of the above, the Executive submits that a breach of rule 2.3.10 of the Code had occurred.

2. The Level 2 provider denied the breach of rule 2.3.10. In its written response to the breach letter the Level 2 provider stated that the services listed on the website Govhelp.co.uk were not promoted on Google or any other search engine or by any other forms of advertising and therefore the numbers were not promoted to consumers. In addition, the Level 2 provider commented that it had entered into previous correspondence with PhonepayPlus with respect to these Services and vulnerable groups – hence no advertising was done on these Services and that it did

not see any breaches by putting them on the website, as long as there was no direct promotion of them to the potentially vulnerable groups. However, during informal representations the provider stated that it had used sponsored search engine results to promote the Service.

The provider repeated that it had removed the connection service to a number of Government departments and services from its website.

Further, the Level 2 provider provided recordings from other directory enquiry services, whose services are more expensive and which carry out extensive advertising of their services on prime time TV. The Level 2 provider asserted that the recordings show that while they do not actively promote Disability Living Allowance – they do allow access to it with no additional warning of the potential call costs involved.

In addition, the Level 2 provider asserted that to access the Service the user must:

- a. have a PC or laptop
- b. have broadband connectivity
- c. be able to use a search engine and be literate

Whilst the Level 2 provider agreed that some people meeting the above criteria may be described as vulnerable, the actual definition of vulnerable people is vague and often open to interpretation. The Level 2 provider added that if it had planned to target these particular groups then it would agree with the suggestion that it had broken rule 2.3.10 of the Code, but at no point did the Service directly target vulnerable people or take advantage of them due to their financial circumstances.

Finally, the provider attached an extensive list of screen shots of providers that it considered directly target vulnerable groups.

3. The Tribunal considered the evidence and noted the Level 2 provider's submissions. In particular, the Tribunal noted that the Level 2 provider had ceased promoting the Service to a number of organisations and services. The Tribunal found that on the facts and evidence before it parts of the Service were only attractive to people who are in need of supporting services and were vulnerable as a result of their personal circumstances (for example they have queries about the Disability Living Allowance). For the reasons submitted by the Executive, the Tribunal held that the Service and its promotion operated in a manner that sought to take advantage of vulnerabilities caused to consumers by their personal circumstances. Accordingly, the Tribunal upheld a breach of rule 2.3.10 of the Code.

Decision: UPHELD

ALLEGED BREACH THREE
Paragraph 3.4.12(a)

“Level 2 providers must provide to PhonepayPlus relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service.”

1. The Executive brought a number of “Notice[s] to Industry” regarding Registration to the Tribunal's attention.

The Network operator, Mars Communications Limited, stated that the premium rate number range on which the Service operated (0903 124 0000 to 0150) was allocated to the Level 2 provider on 16 April 2012, and became operational on 1 May 2012.

The Executive observed that the Level 2 provider registered the numbers promoted on the Govhelp website (numbers 0903 124 0001 to 0099) on 9 May 2012. The Executive further observed that the Level 2 provider registered the numbers promoted on the TravelHelp website (numbers 0903 124 0100 to 0150) on 16 October 2012.

Consequently, the Executive noted that the Govhelp numbers were not registered for a period of eight calendar days post becoming operational and the Travelhelp numbers were not registered for a period of approximately five and a half months after becoming operational.

The Executive stated that where there has been a delay in registering services, consumers do not have the ability to access and view full information on the Service.

Consequently, the Executive submitted that the Level 2 provider had failed to register the number in a timely manner and therefore was in breach of paragraph 3.4.12(a) of the Code.

2. The Level 2 provider accepted the breach. The Level 2 provider stated that it understood the importance of registering numbers and that the non-timely registration was an oversight. The Level 2 provider asserted that it had changed its processes to ensure that numbers cannot become operational before registration with PhonepayPlus.
3. The Tribunal noted the Executive's submissions and concluded that there is an obligation on Level 2 providers to register services within a reasonable period having regard to paragraph 3.4.12(a) and (c) of the Code and the "Notice[s] to Industry". The Tribunal found that the period of delay was excessive and concluded that paragraph 3.4.12(a) had been breached. Accordingly, the Tribunal upheld a breach of paragraph 3.4.12(a) of the Code.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

The Tribunal's initial assessment of the breaches of the Code was as follows:

Rule 2.3.2 – Misleading

The initial assessment of rule 2.3.2 of the Code was **significant**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Service had promotional material that was designed with the intention not to provide consumers with adequate knowledge of the Service or the costs associated with it.

Rule 2.3.10 – Vulnerable

The initial assessment of rule 2.3.10 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The case had a clear detrimental impact, directly or indirectly, on consumers and the breach had a clear and damaging impact on consumers.
- The nature of the breach meant that the Service damaged consumer confidence in premium rate services.

Paragraph 3.4.12(a) – Registration of numbers

The initial assessment of paragraph 3.4.12(a) of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider unreasonably failed to register numbers with PhonepayPlus for an extended period of time.

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

Final Overall Assessment

The Tribunal took into consideration the following aggravating factors:

- The Level 2 provider failed to follow Guidance in relation to pricing and promotional material and registration.
- The Level 2 provider failed to take account of previous adjudications regarding information and call connection services.

The Tribunal took into consideration the following mitigating factors:

- The Level 2 provider took steps to end the breaches and remedy the consequences in a timely fashion; namely, registering its numbers, changing the domain name, removal of Government logos and removing connection to a number of Government departments.
- The Level 2 provider asserted that it had taken steps to minimise the risk of any breaches reoccurring, including implementing a system to ensure numbers cannot go "live" until registered.
- The Level 2 provider took steps to refund four complainants.

The Level 2 provider's revenue in relation to the Service was within the range of Band 5 (£5,000- £50,000).

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

Sanctions Imposed

Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- A formal reprimand;
- A fine of £8,000; and
- A requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Services, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.