

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 11 October 2012
TRIBUNAL SITTING No. 111 / CASE 1
CASE REFERENCE: 09300

Level 2 provider: Time Corporation Ltd

Type of service: Internet technical support (The Tech Line, The Helpline Service, The Help Hotline)

Level 1 provider: Square 1 Communications Ltd

Network operator: The Telephone Number Company and Oxygen8 Communications UK Ltd

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

BACKGROUND

Between 27 June and 29 August 2012, PhonepayPlus received three complaints in relation to three live technical support services (the “**Services**”) operated by the Level 2 provider, Time Corporation Ltd. The Services, which were called The Tech Line, The Helpline Service and The Help Hotline, provided technical information and support to consumers, mainly in relation to a number of popular websites including Hotmail, Yahoo, PayPal and Amazon.

Prior to the Track 2 investigation, PhonepayPlus had received a further six complaints in relation to the Services, which were dealt with using the Fast Track informal complaint resolution procedure.

The Services operated on 0907 124 1244 and 0905 915 0100 and had a £1.53 charge on connection, followed by a charge of £1.53 per minute (from a BT landline).

The Services were promoted using search engine marketing, including Google AdWords. Consequently, where a consumer entered, for example, “PayPal help” into Google, a sponsored link for one of the Services would appear.

A number of complainants stated that the Services’ promotional material and/or operators had led them to believe that the Services were operated by the website they required assistance with (for example Amazon or Hotmail). Executive monitoring of the Service highlighted potentially misleading promotional material and a lengthy delay in relation to the registration of numbers with PhonepayPlus.

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 18 September 2012. Within the breach letter the Executive raised the following potential breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.3.4 – Undue delay

- Rule 2.3.1 – Fair and equitable treatment
- Rule 2.4.3 – Collection of personal information
- Rule 3.10.1 – Prior permission
- Paragraph 3.4.12(a) – Registration of numbers

The Level 2 provider responded on 2 October 2012. On 11 October 2012, and after hearing informal representations from the Level 2 provider, who was accompanied by a representative of the Level 1 provider, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

Rule 2.3.2

“Consumers of premium rate services must not mislead or be likely to mislead in any way.”

1. The Executive noted that a number of complainants stated that they believed they were speaking directly with representatives of the website about which they required assistance, for example, PayPal or Amazon, and did not realise that they had called a separate unaffiliated company.

The Executive noted that on the landing pages for The Tech Line it was stated that (**Appendix A**):

“Please note The Tech Line is an independent company providing telephone support services. We are not in any way connected or affiliated with the organisation/website/product/service you require help or support with...As an independent technical support company, we are not connected or affiliated with any of the companies mentioned on this site”.

However, on the landing pages for The Helpline, consumers were required to scroll down to see the above statement, which was in a smaller font than other text on the page (**Appendix B**).

The Executive submitted that the Services were misleading for the following reasons.

Reason 1: Promotion

The Executive submitted that many consumers accessed the landing pages for the Services using search engines and by entering search terms such as “Hotmail helpline” or “PayPal contact number”. As a result consumers viewed the promotions for the Services in sponsored links. The Executive asserted that some consumers would have selected the sponsored link without viewing any other search results and would have been under the impression that they were being led directly to a number for the company or service they required assistance with.

In addition, the Executive asserted that the appearance of the landing pages for The Helpline Service (**Appendix B**) gave consumers the impression that they were contacting, for example, PayPal or Hotmail, directly. Each landing page for The Helpline Service directly referenced the company for which assistance was required, such as PayPal or Hotmail. For example, it stated, “Need help over the phone with Hotmail?” or, “Need help over the phone with PayPal?” The pages then stated, “We can help with all Hotmail issues/problems,” or, “We can help with all PayPal

issues/problems". The landing pages also contained a link to the website of the company for which it was promoting technical support. The Executive submitted, that while the intention of the Level 2 provider may have been to provide an independent link to the company's webpage, consumers may have viewed the repeated references to the companies to mean that they were viewing a page that belonged to or was affiliated to the company. The Executive submitted that where consumers did not see the disclaimer text on The Helpline Service landing page (because it was below the fold), but saw the various references to, for example, PayPal or Hotmail, they would have been misled, or were likely to have been misled into thinking they were on the referenced party's website.

The Executive asserted that the above elements counteracted the disclaimer text, which was below the webpage fold for The Helpline Service and above the fold for The Tech Line. Consequently, consumers were misled or were likely to have been misled.

Reason 2: Holding out

The Executive noted that prior to the connection of calls to operators, a recorded message was played which stated that the call would be connected to a customer support advisor. No reference was made to any company name. In addition, Executive monitoring, supported by the complainant accounts, highlighted that operators simply announced their own name, and not the Level 2 provider's name, in their introductory remarks to callers.

One of the complainants telephoned the Services three times. In the first call the complainant stated that the operator was asked whether this was, "Amazon Customer Services". The operator was said to have replied, "Yes, this is their tech line and we handle Amazon complaints". In the second call the operator advised it was Amazon's "tech line" and, "We deal with all of Amazon's internet queries". In the third test call, the operator advised that the company, "handle calls on behalf of Amazon".

In one call made by the Executive, the caller asked the operator directly whether he was speaking to Hotmail. The operator stated that it was not Hotmail but a technical support team acting for them and that dealt with Hotmail's enquiries, as Hotmail is based in the United States.

The Executive submitted that it was misleading for call operators to insinuate or tell consumers that they were speaking either directly to, or with, a company affiliated to the one they wanted to speak to.

The Executive asserted that as a result of the points raised in relation to promotional material consumers already believed that they were speaking directly with the company about which they require assistance. The Executive submitted that it was misleading to consumers to have that belief reinforced once the call was connected, either by direct comment, or omission.

Consequently, the Executive asserted that consumers had been, or were likely to have been misled, in breach of rule 2.3.2.

2. In relation to the sponsored advertisements, the Level 2 provider stated that its sponsored adverts on search engines accurately described the nature of the Services being provided. Furthermore, the URL, which was clearly displayed on all sponsored listings, did not include or make reference to any third party names. The

Level 2 provider asserted that it was therefore quite clear to the consumer that by clicking on the advert, they would not be visiting the official website of the product/service they required help with, for example PayPal or Amazon. The Level 2 provider stated that it could not control, and therefore be held responsible, for whether a consumer had read all the search results. However, in informal representations, the provider accepted that, although it did not intend to mislead or take advantage of consumers, it knew that consumers were often in a state of 'panic' when they required the assistance of the Services.

Promotional material

The Level 2 provider stated that it had voluntarily added the disclaimer to its landing pages. The provider queried why any issues with the landing pages had not been raised earlier given that it had co-operated with PhonepayPlus during a number of Fast Track informal complaint resolution procedures and would have made the necessary changes. The Level 2 provider disputed that its landing pages implied that the consumer would speak to any other company directly. The provider stated that it did not use any logos, nor were its webpage layouts, designs or colour schemes similar to those of any of the third party website or companies with which it helped callers. The provider asserted that it made reference to third parties in order to clearly state what websites or products it could help with. It added that it believed that removing the references would have a negative result for the consumer, as it would be unclear what the Services could help with and the consumer could incur unnecessary call charges. The Level 2 provider highlighted that, it is very common for technical support companies to make reference to the brands they can support, but it does not mean they are implying they are that brand directly. For example, if a website for a computer repair company said, "We can fix your Microsoft computer", it would not be presumed that they were Microsoft. The Level 2 provider stated that the link to external companies' websites was purely to comply with Google's recent advertising policy change. Google state that a direct link to the official website must be in a prominent location giving the consumer the choice to easily visit the official website if they wish to. Therefore the Level 2 provider state that this was beyond their control.

Holding out

The Level 2 provider stated that all of its operators are fully aware that it is an independent company and that it is not connected or affiliated with any of the websites or services it assists callers with. It was asserted that there would be no advantage for operators to advise callers otherwise. The Level 2 provider stated that it strongly believed that the operator(s) did not intentionally set out to mislead. The provider added:

"We rarely get asked 'am I speaking with Hotmail' (or similar) so it is our belief that the operator was innocently trying to reassure the caller that they could help them with the particular website/company they were experiencing issues with, but because this isn't a frequently asked question, perhaps the operator was put on the spot and didn't word it as well as he/she could have done. The fact that we rarely get asked 'is this Hotmail' (or similar) demonstrates that the vast majority of callers are under no illusion as to who we are and that we're an independent company. The test calls made to our service do not appear to be typical of the types of calls we receive on a daily basis; many callers require help with multiple websites in one call (such as Facebook and Hotmail where accounts have been hacked) and in such instances, this reinforces even further

that we are an independent, unrelated company. If, however, any of our operators were found to be insinuating that we are another company, they would be immediately removed from the helpline and face disciplinary [sic] action.”

The Level 2 provider accepted that it had received a complaint from one of the companies that it offered assistance with, but that it did not accept the company's account of various test calls that it had made. The provider stated that as a result of the complaint it had stopped providing assistance in relation to that company.

Finally, the Level 2 provider stated that to address the concerns raised by the Executive it proposed to make the following changes:

- Re-position the disclaimer on landing pages to ensure it appears above the fold.
 - Provide additional staff training.
3. The Tribunal considered the evidence, including the written and oral submissions made by the Level 2 provider. In relation to the promotional material, the Tribunal found that the positioning of the disclaimer along with the references to third parties was misleading for the reasons given by the Executive. Having regard to the calls recorded by the Executive and the named complainant's accounts, the Tribunal held that, even though the Level 2 provider may not have designed the Services with the intention of holding itself out as a third party, there was evidence of some operatives holding themselves out to be third parties. Consequently, the Tribunal upheld a breach of rule 2.3.2 of the Code for the two reasons advanced by the Executive.

Decision: UPHELD

ALLEGED BREACH TWO

Rule 2.3.4

“Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged”.

1. The Executive noted that a number of complainants referenced that they experienced delay when using the Services and that they felt that they were kept on the line for an unnecessarily lengthy time period. In addition, one complainant, a company, stated that on calling one of the Services it had been subjected to a five minute long recorded message that advised, “Trained UK advisors are here to help you,” followed by an announcement to call back in ten minutes as all of the operator were busy. The Executive also asserted that it had experienced delays of up to 25 seconds when conducting monitoring calls. As a result of the above, the Executive asserted that the Level 2 provider had acted in breach of rule 2.3.4 of the Code.
2. The Level 2 provider denied the breach. Specifically, the provider denied that it had a queuing system or a lengthy interactive voice response (IVR) and therefore the complainant who stated otherwise was mistaken. In relation to the periods of delay allegedly experienced when talking to operators, the Level 2 provider stated that, although its operators tried to avoid delay and/or communicate the reason for any delay to consumers, the nature of the Services meant that some short delays and/or pauses were unavoidable.
3. The Tribunal considered the evidence and the Level 2 provider's submissions and concluded that the Executive had not established its case on the balance of probabilities. It was not satisfied on the evidence that the IVR was unreasonably long

or that the operators had indulged in undue delay. Accordingly, the breach of rule 2.3.4 of the Code was not upheld.

Decision: NOT UPHELD

ALLEGED BREACH THREE

Rule 2.3.1

“Consumers of premium rate services must be treated fairly and equitably”.

1. The Executive noted that a number of complainants stated that the Services did not assist with their problems. The Executive noted the degree of consistency in the complainants’ comments and submitted that, on the balance of probabilities, that queries and/or issues were not resolved satisfactorily by operators in breach of rule 2.3.1 of the Code.
2. The Level 2 provider denied the breach and stated that it treated all its customers fairly and equitably. The provider asserted that it assisted hundreds of callers everyday with confusing and frustrating issues. The Level 2 provider stated that it would have been beneficial to all parties if it was able to solve 100% of problems but that this was simply unrealistic. It asserted that no technical support service or helpline can guarantee to solve every problem and that its landing page stated:

“The advice and information we give is impartial and to the best of our knowledge; we make no guarantees or warranties with regards to it’s accuracy or effectiveness”.
3. The Tribunal considered the evidence, including the Level 2 provider’s response, and concluded that the Service had value. It found that there was not sufficient evidence to uphold a breach of rule 2.3.1 of the Code. Accordingly, the Tribunal did not uphold a breach of rule 2.3.1 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH FOUR

Rule 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 a consumer”.

1. The Executive noted that a number of complainants, who thought they were speaking to the company about which they required assistance, were asked to disclose their passwords for third party services, such as Hotmail, and personal information such as their name, address and postcode. In one monitoring call the Executive was asked to disclose its Hotmail password.

The Executive submitted that, as a result of being misled, consumers thought they were disclosing their passwords or personal details to the company whose service they required assistance with, for example they had been misled into the belief that they were disclosing their Hotmail password to Hotmail. Consequently, the Executive asserted that the consent given by complainants was not valid and the Level 2 provider had acted in breach of rule 2.4.3 of the Code.

2. The Level 2 provider denied the breach and stated that all personal information was given with consent. The provider added that consumers were not pressured into disclosing personal details and were at liberty to continue the call without disclosing them. The Level 2 provider stated that it did not record any passwords. The Level 2 provider asserted that it operated within UK Data Protection and privacy laws and stated that in order to address the Executive's concerns it had amended its IVR message to advise consumers to change their password if they disclose it to an operator.
3. The Tribunal considered the evidence, including the Level 2 provider's response and concluded that there was insufficient evidence to find that consumers had given their personal information without consent or that the information had been passed to any other person. Accordingly, the Tribunal did not uphold a breach of rule 2.4.3 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH FIVE

Paragraph 3.10.1

"PhonepayPlus may require that particular categories of service must not be provided without its prior written permission. PhonepayPlus will give reasonable notice of such requirement and the category of service to which it applies, and will publish a full list of such service categories on its website from time to time."

1. In its formal breach letter the Executive asserted that the Level 2 provider had acted in breach of paragraph 3.10.1 of the Code as it had operated a Service which required prior permission without obtaining the requisite prior permission certificate. However, after hearing informal representations from the Level 2 provider, the Executive accepted the Level 2 provider's assertion that the Services did not require prior permission.
2. The Level 2 provider stated that its Service did not require prior permission as the maximum call spend from a BT landline was under £30 (as calls were automatically cut off after 17-18 minutes). In addition the charge per minute was only over £1.50 as a result of the recent VAT increase.
3. The Tribunal noted that the Executive accepted that prior permission was not required in order to operate the Services and concluded that the Level 2 provider had not acted in breach of paragraph 3.10.1 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH SIX

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 noted the following:
 - i. The 0907 124 1244 number became operational on 23 May 2011 and was registered with PhonepayPlus on 30 November 2012 (13 weeks after the Code came into force).

- ii. The 0905 915 0100 number became operational on 28 March 2011 and was registered with PhonepayPlus on 16 April 2012 (32 weeks after the Code came into force).

The Executive submitted that the delay in registering both numbers was unreasonable. Consequently, the Executive submitted that the Level 2 provider had failed to register the number used to provide premium rate services in a timely manner and therefore was in breach of paragraph 3.4.12(a).

2. The Level 2 provider accepted that the two numbers had not been registered in a timely manner in breach of the Code and that it was responsible for the breach. In relation to 090 5915 0100 the Level 1 provider accepted that it had agreed to register the number on the Level 2 provider's behalf but, as a result of an oversight, it had failed to do so in a timely manner. The Level 2 provider stated that the 0907 124 1244 number was not registered as a result of an oversight on its part. The Level 2 provider asserted that as soon as it became aware of the oversight the numbers were registered.
3. The Tribunal noted the Executive's admissions 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 in relation to the registration of both numbers 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:

- In some instances the Service was promoted in such a way as to impair consumers' ability to make a free and informed transactional decision.

Rule 3.4.12(a) – Registration of numbers

The initial assessment of rule 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 factor:

- The Level 2 provider failed to register numbers despite being put on notice by numerous Notices to industry and updates.

Although the Tribunal did not find any mitigating factors, it noted that the Level 2 provider intended to take the following steps to ensure future compliance:

- Appointment of a compliance manager.
- Publish its refunds, privacy and complaints policy on its website.
- When the spend cap is reached, the Level 2 provider will telephone the consumer back free of charge.
- The disclaimer will appear above the fold on all of the Level 2 provider's websites.
- Where there is a pause, operators will tell consumers why and provide updates.
- Operators will be provided with additional training to ensure that consumers are not misled.

The Level 2 provider's revenue in relation to the Service was within the range of Band 1 (£500,000+).

Having taken into account the 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 £60,000; and
- A requirement that the Level 2 provider must refund all complainants 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.

Appendices

Appendix A: Screenshot of The Techline landing page:



Appendix B: Screenshots of The Helpline landing page:

