

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

**Thursday 21 February 2013  
TRIBUNAL SITTING No. 120/ CASE 2  
CASE REFERENCE: 14282**

Level 2 provider: Marcus Foley trading as IT Expects Midlands  
Type of service: Scam – Classified advertisements for electronic or ‘white goods’  
Level 1 provider: Numbers Plus Ltd  
Network operator: Telecom 2 Limited

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

**BACKGROUND**

Between 29 October 2012 and 15 November 2012, PhonepayPlus received five complaints from members of the public regarding a service operated on 09131 300015 (“**the Service**”). Calls were charged at £1.53 per minute. The Service was operated by the Level 2 provider Marcus Foley trading as IT Expects Midlands.

Four complainants stated that they had telephoned the number for the Service after seeing it promoted in classified advertisements for discounted electronic or ‘white goods’ (**Appendices A, B and C**). On calling the number the complainants were told that the goods were still available and arrangements were made for the complainant to meet the seller for a possible purchase. On arriving at the meeting point, the complainant was forced to call the premium rate number repeatedly to clarify the exact meeting point. After a number of calls, the complainants either gave up trying to find the seller or were subjected to verbal abuse. None of the complainants met the seller and/or saw any evidence that the advertised goods existed.

**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 (12<sup>th</sup> Edition) (the “**Code**”).

The Executive sent a breach letter to the Level 2 provider on 28 January 2013. Within the breach letter the Executive raised the following potential breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.2.5 – Pricing
- Rule 2.2.1(a) – Provision of a UK contact telephone number
- Paragraph 4.2.5 – Failure to disclose information

The Level 2 provider failed to provide a response to the breach letter. On 21 February 2013, 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 Service was a scam. Specifically, the Executive asserted that the goods advertised in classified advertisements did not exist and that consumers were therefore misled.

The Executive submitted that in accordance with the complainants’ accounts, the listings for the goods for sale were fictitious and the alleged sale a scam. Consumers were also prompted to repeatedly call the premium rate number on the basis that it would assist them in locating the seller when this was not the case.

The Executive noted that one consumer specifically stated that he was kept on the line with false directions to collect the iPad he sought to purchase. A second complainant stated that he was kept on hold. As evidenced from consumers’ telephone bills, repeated calls were made to the Service number. The Executive noted that it appeared that the reason for the repeated calls was because consumers were either disconnected or given a series of misleading directions. One complainant stated that he was forced to call the premium rate number multiple times in an attempt to locate the seller. The Executive noted that none of the five complainants met the seller as arranged and that repeated or extended calls were required on the part of the consumers. Executive monitoring of the Service supported the complainant’s accounts.

The Executive submitted that the Level 2 provider misled consumers into believing that there was an opportunity to purchase genuine goods in order to generate revenue. Accordingly the Executive submitted that there had been a breach of rule 2.3.2 of the Code.

2. The Level 2 did not provide a response to the breach.
3. The Tribunal considered the evidence and concluded that the Service was a scam and upheld the breach for the reasons advance by the Executive. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

**Decision: UPHELD**

## **ALLEGED BREACH TWO**

### **Rule 2.2.5**

“In the course of any promotion of a premium rate service, written or spoken in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”

1. The Executive submitted that, in accordance with rule 2.2.5, where a premium rate number is being operated and promoted, consumers must be clearly informed of the cost of calling the number. The Executive noted that the classified advertisements (**Appendices A, B and C**), which contained the premium rate number for the Service, did not contain any pricing information in breach of rule 2.2.5 of the Code.
2. The Level 2 provider failed to provide a response to the breach.

3. The Tribunal considered the evidence and upheld the breach for the reasons advance by the Executive. Accordingly, the Tribunal upheld a breach of rule 2.2.5 of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH THREE**

#### **Rule 2.2.1(a)**

“Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made. Promotional material must contain the name (or brand if part of the name) and the non premium rate UK contact telephone number of the Level 2 provider of the relevant premium rate service except where otherwise obvious.”

1. The Executive noted that promotional material for the Service did not include the name of the Level 2 provider or a non premium rate UK contact number. Accordingly, the Executive asserted that the Level 2 provider had acted in breach of rule 2.2.1(a) of the Code.
2. The Level 2 provider failed to provide a response to the breach.
3. The Tribunal considered the evidence and upheld the breach for the reasons advance by the Executive. Accordingly, the Tribunal upheld a breach of rule 2.2.1(a) of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH FOUR**

#### **Paragraph 4.2.5**

“A party must not fail to disclose to PhonepayPlus when requested any information that is reasonably likely to have a regulatory benefit in an investigation.”

1. The Executive asserted that the Level 2 provider had acted in breach of paragraph 4.2.5 of the Code as it had failed to respond to a number of requests for information. The Executive submitted that the information was reasonably likely to have had regulatory benefit to the investigation.

The Executive noted that on 9 January 2013 it sent a request for information to the Level 2 provider. The letter sought basic preliminary information, such as details of all websites that the Service number was promoted on, the dates of the listings and revenue information. The request was sent to all known addresses for the Level 2 provider. No response was received to the request. A follow up email was sent on 17 January 2013. On 18 January 2013, having received no response, the Executive attempted to telephone the Level 2 provider, but was unsuccessful. Telephone calls were again attempted on 22 January 2013; the Executive was again unsuccessful. The Executive became aware of an additional mailing address and subsequently forwarded the letter dated 9 January 2013 to the address on 22 January 2013. No response was received.

The Executive asserted that the Level 2 provider failed to provide information that would have had a regulatory benefit to the investigation. The Executive did not receive a response from the Level 2 provider that dealt with basic preliminary matters, such as, dates of operation of the Service or a copy of the contract between

the Level 2 provider and the Level 1 provider. The Executive asserted that such information would have assisted the Executive with its enquiries and investigation.

Accordingly, the Executive submitted that there had been a breach of paragraph 4.2.5 of the Code.

2. The Level 2 provider failed to provide a response to the breach.
3. The Tribunal considered the evidence and upheld the breach for the reasons advanced by the Executive. Accordingly, the Tribunal upheld a breach of paragraph 4.2.5 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 **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Service had no legitimate purpose.
- The Service purported to provide a service/ product that did not exist.
- The nature of the breach meant that the Service would have damaged consumer confidence in premium rate services.
- The breach demonstrated fundamental non-compliance with the Code and was a scam.

#### **Rule 2.2.5 – Pricing**

The initial assessment of rule 2.2.5 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Service had no legitimate purpose.
- The Service purported to provide a service/ product that did not exist.
- The nature of the breach meant that the Service would have damaged consumer confidence in premium rate services.
- The breach demonstrated fundamental non-compliance with the Code and was a scam.

#### **Rule 2.2.1(a) – Provision of a UK contact telephone number**

The initial assessment of rule 2.2.1(a) of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Service had no legitimate purpose.
- The Service purported to provide a service/ product that did not exist.
- The nature of the breach means that the Service would have damaged consumer confidence in premium rate services.

- The breach demonstrated fundamental non-compliance with the Code and was a scam.

#### **Paragraph 4.2.5 – Failure to disclose information**

The initial assessment of paragraph 4.2.5 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Service had no legitimate purpose.
- The Service purported to provide a service/ product that did not exist.
- The nature of the breach meant that the Service would have damaged consumer confidence in premium rate services.
- The breach demonstrated fundamental non-compliance with the Code and was a scam.

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

#### **Final Overall Assessment**

The Tribunal took the following aggravating factors into account:

- The Level 2 provider acted in a manner that was intentionally non-compliant with the Code and Guidance and the breaches continued after the provider became aware of them.
- Over and above the breach of paragraph 4.2.5 of the Code, there was a complete and total failure to co-operate with the investigation on the part of the Level 2 provider.
- The Service was a scam that was deliberately designed to generate illegitimate revenue.

The Tribunal found that there were no mitigating factors for it to take into account.

The Level 2 provider's revenue was in the range of **Band 6 (£1 - £5,000)**.

Having taken into account all the circumstances of the case the Tribunal concluded that the seriousness of the case should be regarded overall as **very 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 £10,000; and
- A requirement that the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund. Refunds should be directly credited to the users' mobile accounts and the Level 2 provider must provide evidence to PhonepayPlus that the refunds have been made.

## Appendices

Appendix A: Screenshots of classified advertisements for the Service:

The screenshot shows the top of the Bargain Pages website. At the top left is the 'Bargain Pages .co.uk' logo. To its right is a green banner for 'Ask the experts!' with a question mark icon and the text 'You don't buy an appliance every day, which is why we're here to answer any question you may have...'. Further right is the 'appliancesonline' logo with the tagline 'the appliance specialist' and a 'LEARN MORE' button. Below the banner is a navigation bar with 'Home', 'Search from thousands of ads on the Midlands original classified marketplace', 'Login', and 'Register'.

The main content area features a search bar with 'All categories' and 'Enter keywords', a 'Post code or location' field, and a 'Place an Ad like this' button. Below the search bar is a breadcrumb trail: 'Electrical / Computing / Handheld and PDAs'. The main advertisement is for an 'Offered Apple iPad' priced at '£200.00 ono', dated '12 11 2012'. The description reads 'Mini, brand new, factor sealed, 16GB white'. A 'Contact seller' button is visible. To the right of the ad is a map showing the location near 'Yardley Green Hospital' and 'Yardley Green Rd'. Below the ad is a 'Back to list' link and a 'Report an ad' button.

At the bottom, there is a 'Featured' section with two items: 'Vauxhall Corsa' and 'Hotpoint Washing machine'. To the right is a 'Favourites' section with 'No Favourites' and a 'Show all' link. A 'Claims & Financial' banner is visible at the bottom right.

This screenshot is identical to the one above, but with a 'Contact seller' modal window open in the center. The modal contains the following text: 'Contact seller', 'Call seller 09131300015', 'Your email', 'Your message', and a 'Send' button. The background content is partially obscured by the modal.

Appendix B: Screenshots of classified advertisements for the Service:

The screenshot shows the Loot website interface. At the top left is the Loot logo. To its right is a promotional banner for BT services: "TV, Broadband and Calls. Only £4 a month Then £18 after 6 months". Below the banner is a navigation bar with "Home", "Search from thousands of ads on the UK's original classified marketplace", "Login", and "Register". A search bar contains "All categories", "Enter keywords", and "Post code or location". A red button says "Place an Ad like this".

The main content area features an advertisement for an "Apple iPad 2". The ad includes the text "Offered", "Apple iPad 2", and "£150.00". Below this, it says "Only been used a few times, excellent condition 16GB white with box,". There are social media sharing options for "Contact seller", "Tweet", "Like", and "Report an ad". A "Back to list" link is also present. To the right of the ad is a map of London. Below the ad is a "Featured" section with three image thumbnails and a "Favourites" section with "No Favourites" and a "Show all" link.

This screenshot is similar to the one above but with a "Contact seller" modal form overlaid on the iPad 2 advertisement. The modal form has a title "Contact seller" and a close button. It contains the text "Call seller" and the phone number "09131300015". There are two input fields: "Your email" and "Your message". A "Send" button is at the bottom of the form. The background content, including the Loot logo, navigation bar, search bar, and the iPad 2 ad, is visible behind the modal.

Appendix C: Screenshot of a classified advertisement for the Service:

The screenshot shows a web browser window displaying a Gumtree classified advertisement. The browser's address bar shows a Bing cache URL for the page. The page content includes a Gumtree logo, a giffgaff advertisement for a £10 monthly service, and the main listing for an Apple iPhone 4S. The listing is for a white iPhone 4S with 16GB storage, sold by Louise on the phone number 09131300015. The price is listed as £170 in Birmingham. The listing includes a map of the location in Dudley, a 'CLINIC COMPARE' banner, and a 'REFUSED A Phone Contract?' advertisement. The browser's taskbar at the bottom shows the system tray with the date 22/01/2015 and time 17:38.

Apple iPhone 4S in Birmingham | Apple iPhone 3G & 3GS Phones for Sale | Gumtree.com - Windows Internet Explorer

http://cc.bingj.com/cache.aspx?u=09131300015&u=4983464229671350&mkta=en-GB&setlang=en-GB&swa=FWyIKPaLxcjgN9ShEFVjGyPDcRGzSL

You have reached the cached page for <http://www.gumtree.com/p/for-sale/apple-iphone-4s-birmingham-170/1004311924>

Below is a snapshot of the Web page as it appeared on 07/01/2013 (the last time our crawler visited it). This is the version of the page that was used for ranking your search results. The page may have changed since we last cached it. To see what might have changed (without the highlights), [go to the current page](#)

You searched for: **09131300015** We have highlighted matching words that appear in the page below.

**Gumtree** **giffgaff** For only £10 a month:  
250 minutes 1GB Internet  
Unlimited texts Free calls to giffgaff **Order a Free SIM**

United Kingdom home Search in United Kingdom Help & Contact My Gumtree Login Post an ad

United Kingdom > West Midlands > Birmingham > For Sale > Phones, Mobile Phones & Telecoms > Mobile Phones > Apple iPhone

**Apple iPhone 4S**  
£170 Birmingham | Show on map

Louise on **09131300015**

White iPhone 4S 16GB with box 4 months old exellect condition, only selling due to getting iPhone 5

CLINIC COMPARE Change your life from only £395 per eye + interest free credit

Ad ref 1004311924

Louise on **09131300015**

Sponsored links

**iPhone 4S on 3 Mobile**  
iphone-4s.three.co.uk/  
No data limits from £32pm. Great deals with 3. Order yours today.

**REFUSED A Phone Contract?**

Internet | Protected Mode: Off 17:38 22/01/2015