



Tribunal Sitting Number 138 / Case 2

Case Reference: 26962
Level 2 provider: R S Premium Limited
Type of Service: 070 personal number service
Level 1 provider: N/A
Network operator: Atlantic Communications Corporation Limited

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

BACKGROUND

Between 15 April 2013 and 7 October 2013, PhonepayPlus received 120 complaints from consumers in relation to misleading promotions for jobs and rental properties which directly and indirectly led consumers to interact with various 070 numbers (the “**Service**”). The numbers had been allocated to the Level 2 provider R S Premium Limited by the Network operator Atlantic Communications Corporation Limited. Calls to the numbers were charged at 50 pence per minute (plus VAT and network extras). The numbers commenced operation on approximately 13 April 2013 and were suspended by the Network operator on 19 August 2013.

Complaints

A number of complainants stated they had seen classified advertisements for job vacancies and rental properties. Other complainants had received an email notifying them that they had been selected to attend a job interview. The complainants were invited to call an 070 number directly or a mobile telephone number and upon calling the mobile number were directed to call an 070 number. Many consumers reported that they had believed the calls to the 070 number were to a mobile number and therefore experienced bill shock. Consumers also reported being kept on hold or being asked a series of unnecessary questions in an effort to prolong the telephone call.

Of the 120 complaints, 107 came from consumers who stated that they had received an email inviting them to attend a “job interview”. Consumers were directed to arrange an appointment by telephoning a 070 number. The email was entitled “Invitation to a job interview” and the Executive noted that the email address, sender and 070 number differed. The Executive relied on the following complainant accounts:

“I received an email purporting to be about a job I applied for recently ...I thought the number was a mobile number so just rang it from my mobile phone. I first noted the slightly different ring-tone and thought it off and looked at my phone whilst it rang. I then noted the payout of the numbers, being in a 3, 4, 4 pattern, as when you dial a land line (070 6484 8717). I then waited to see if anyone would answer and it rang until an answer machine picked it up, which then went on to explain who the company is and what they do and then put me in a queue. It was whilst in this queue alarm bells started to ring and I search 070 numbers...”

“Am currently am looking for contract-based software development work... received an email advising me I had been selected for an interview, and should call a provided number to schedule a suitable time/date. The automated service gives you an options to get through to a recruitment advisor, but basically leaves basically leaves you on hold for 5 minutes. Only after searching the contents of the received scam email online I discovered the number itself was premium rate... [sic]”.



“This was supposed to be about a job interview but it was a recorded advertisement and there was NO indication that a high rate would be charged.”

In addition, a PhonepayPlus member of staff also received a similar unsolicited email which stated that she had obtained a job interview and invited her to telephone the 070 number to arrange an appointment.

Some complainants reported that they had received a second email inviting them to call the 070 number to arrange an interview and stated that there had previously been a problem with the telephone line.

A further 13 complaints came from consumers who had called an 070 number for a rental property or a job vacancy. These numbers were directly or indirectly promoted in classified advertisements on websites, including, Gumtree and DSS Cribs. The Executive specifically noted the content of the following complainant accounts:

“Was given as a number for a "manager" by job advert. Was told i was to be given an interview and had to stay on the line, was on hold and only realised when was given a different number when i rang back after being on hold. Was on hold for 30 minutes got told i was waiting in line to speak to a manager for an interview date.”

“I was not told this was a premium rate telephone number. The advert on Gumtree did not suggest the contact mobile number would lead on to having to dial another mobile number on a 070 number... It is only after half an hour of being asked questions and when I asked if they could call me back and was told they could not that I became suspicious...”

The Executive noted that none of the complainants who responded to the classified advertisements or email promotions obtained a rental property or were offered employment.

Monitoring

On 14 and 15 August 2013, the Executive telephoned a sample of the 070 numbers referred to by some of the complainants and heard an interactive voice response (IVR) from “Team Recruit”. The Executive was kept on hold for a period of time and recorded messages were played intermittently but eventually the Executive terminated the call.

The Executive took a sample of the complainant accounts, and conducted an internet search utilising the references that had been provided. The listings were no longer active. As a result, the Executive was only able to view cached results. The Executive obtained a Gumtree job listing (**Appendix A**) and a DSS Cribs rental property listing (**Appendix B**).

The Investigation

The Executive conducted this matter as a Track 2 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 24 October 2013. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.3.10 – Vulnerability



- Rule 2.4.2 – Consent to market

The Level 2 provider did not respond to the breach letter. On 14 November 2013, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

PRELIMINARY ISSUE

The use of 070 numbers

The Tribunal noted the content of PhonepayPlus Guidance on “The appropriate use of number ranges” (the “**Guidance**”). The Guidance states:

Paragraph 2.3

“List of non-premium rate numbers which will fall under PhonepayPlus’ regulation where ‘inappropriate use’ (misuse) is deemed to have occurred:

- 070x – this number range is primarily used for personal ‘follow me’ services. They are defined by Ofcom as: “enabling End-Users to be called or otherwise contacted, using a single Personal Telephone Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers”. For example, plumbers or locksmiths might use them as a single point of contact and have calls diverted to different mobile phones, or landlines, at different times.”

Paragraph 2.4

“070 numbers cost the caller up to 50p per minute to call from a BT landline. PhonepayPlus only regulates 070 numbers in situations where: a) they are found to offer premium rate-style services and/or there is evidence of misuse; and b) where the cost of the call exceeds 10p per minute.”

The Tribunal noted that during correspondence the Level 2 provider initially stated that it had allocated the 070 numbers to a named “end user”. The Executive made efforts to contact the “end user” at the contact details provided by the Level 2 provider. Later, the Network operator and the Level 2 provider informed the Executive that the “end user” was in fact a company called “Team Recruitment”. The Executive again attempted to contact the “end user” but despite its efforts it did not receive a response. The Level 2 provider produced a cover sheet purportedly for an agreement between the Level 2 provider and the “end user”. However, it did not include the full agreement or the name of the “end user”, and the signature was illegible.

The Network operator advised the Executive that the numbers had been used for a variety of purposes including customer support services, recruitment and customers who wanted to protect the identity of their personal mobile numbers. The Network operator produced copies of letters purportedly sent to “Team Recruitment” by companies who had used the recruitment service. The Executive had concerns about the authenticity of the letters as they did not contain any specific details of the service “Team Recruitment” had provided, both letters were in the same font and contained electronic signatures. The Executive attempted to make contact with the companies using the contact telephone number contained in the letters but the number repeatedly rang without any answer.

The Tribunal noted that, following the above correspondence the Level 2 provider did not answer any further queries regarding the purported “end user”. The Level 2 provider also failed to provide a clear copy of the purported “end user’s” identification documents and/or any other documents to



support its assertion that the purported “end user” existed. Further, the Level 2 provider failed to provide any evidence in support of its assertion that the 070 numbers had a legitimate use. In addition, the Tribunal noted that the Network operator and the Level 2 provider had provided contradictory evidence about the identity of the “end user”.

The Tribunal noted the content of the 120 complaints and commented that generally the complaints were consistent and appeared to indicate that the 070 numbers were used in a way that resulted in complainants inadvertently incurring charges.

In the absence of credible evidence of the 070 numbers being used for a legitimate purpose and/or the Level 2 provider not being the end user, and having considered all the evidence before it, including the consistent and detailed complainant accounts, the Tribunal concluded that, on the balance of probabilities, the 070 numbers had been used as part of a scam designed to generate revenue and therefore had been misused. The Tribunal also found that the numbers had been used to provide a premium rate style service.

ALLEGED BREACH 1

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 of the Code as consumers had been misled or were likely to have been misled by the promotion and operation of the Service.

The Executive relied on the complainants’ accounts and the monitoring outlined in the “Background” section. The Executive submitted that consumers were directed to call the 070 numbers after viewing online promotions that appeared to offer genuine and legitimate job or house rental opportunities or an email purporting to offer a job interview. The Executive asserted that once consumers had called the 070 numbers, they continued to be misled into believing there was a genuine and legitimate employment opportunity or property to rent as a result of extended questioning from the call recipient. The Executive noted that some complainants received a second email and asserted that this was particularly misleading as it reinforced the belief that there was a genuine job opportunity.

Further, the Executive noted that some complainants stated that when they called one of the 070 numbers they were connected to an IVR for the recruitment company “Team Recruit”. The Executive’s investigation revealed that “Team Recruit Limited” was in liquidation and winding up orders were dated 27 March 2009. Internet searches highlighted that many consumers had mistakenly believed that “Team Recruit” was linked to “Team Recruitment”, an entirely separate legal entity. “Team Recruitment” informed the Executive that it had received a number of complaints from consumers who believed they had called their company, when that was not the case. Similarly, the Executive was unable to establish that there was a legitimate recruitment company called “Team Recruit”, which indicated that it was highly unlikely that there had been any job opportunities available.

The Executive submitted that the complainants’ accounts demonstrated that the 070 numbers were used in a scam solely to generate illegitimate revenue. The Executive accordingly submitted consumers interacted with the numbers as a result of intentionally misleading statements in the classified advertisements and emails in breach of rule 2.3.2 of the Code.

2. The Level 2 provider failed to provide a response to the breach letter.



During the course of the preliminary investigation, the Level 2 provider corresponded with the Executive and provided the brief information outlined in the “Background” section above.

3. The Tribunal considered the evidence, including the detailed complainant accounts. In particular, the Tribunal noted that some complaints had been led to call the 070 numbers as a result of promotional material which explicitly stated that the consumer had obtained a job interview. The Tribunal commented that in some cases the position was exacerbated by the receipt of a further email inviting the consumer to call the 070 number again. Further, the Tribunal noted that there was no evidence that any job or rental opportunities existed. As a result, the Tribunal found that, on a balance of probabilities, the Service was a scam and that consumers had been misled for the reasons given by the Executive. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

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 Level 2 provider had breached rule 2.3.10 of the Code as the nature of the promotions took advantage of a vulnerability caused to consumers as a result of their personal circumstances.

The Executive asserted that the promotions which led to consumers interacting with the 070 numbers appealed to those looking for low skilled employment, or affordable housing particularly suitable for those in receipt of housing benefits. The Executive asserted that people seeking job and rental accommodation who are in receipt of housing benefit are likely to be in difficult financial and personal circumstances and therefore vulnerable as a result of those circumstances.

The complaint evidence received by PhonepayPlus supported the Executive’s submission that the nature of the promotional material for the Service took advantage of people in difficult financial circumstances. One complainant stated that:

“Please can these scams and this number along with all similar ones be blocked as its costing innocent unemployed people like myself a lot of money who do not have an income”.

A further three complainants reported being unemployed and unable to pay the costs incurred. The Executive also asserted that sending an email directly to an individual seeking employment was an example of targeting an individual’s vulnerability.

Consequently, the Executive submitted that the nature of the promotional material appealed and sought to take advantage of a vulnerability caused to consumers by their personal circumstances. The Executive accordingly submitted that, for the reasons outlined above rule 2.3.10 of the Code had been breached.

2. The Level 2 provider failed to provide a response to the breach. The Level 2 provider’s response to pre-breach letter correspondence with the Executive is set out in the “Background” section above.



3. The Tribunal considered the evidence before it and commented that those looking for employment and/or accommodation are not necessarily vulnerable per se. However, on the evidence before it, the nature and placement of the promotions which led consumers to interact with the 070 numbers were likely to be attractive to consumers who had limited financial means, many of whom were likely to be in receipt of welfare benefits. The Tribunal considered that the difficult circumstances that such consumers found themselves in (be it the potential offer of employment or difficult to locate housing for those in receipt of benefits) were personal circumstances that made them vulnerable. The Tribunal also found that the promotions took advantage of such consumers' vulnerability. The Tribunal further found that encouraging such consumers into calling a valueless Service clearly took advantage of their vulnerability. Accordingly, for the reasons set out above and advanced by the Executive the Tribunal upheld a breach of rule 2.3.10 of the Code.

Decision: UPHELD

ALLEGED BREACH 3

Rule 2.4.2

"Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a premium rate service, the Level 2 provider of that service must be able to provide evidence which establishes that consent."

1. The Executive submitted that the Level 2 provider had breached rule 2.4.2 of the Code as consumers had been contacted without their consent when they were sent an unsolicited email encouraging them to call an 070 number.

The Executive relied on the complainant accounts outlined in the "Background" section above. Many complainants received an email informing them they had been successful in obtaining a job interview and they were invited to call an 070 number to arrange an appointment.

The Executive noted that some complainants accepted that they had registered with a number of recruitment agencies and online job websites but there were also a number of complainants who stated that they had not. It was extremely difficult for the Executive to identify the source of the email. However, the Executive asserted that on the balance of probabilities, due to the consistency of the complainant accounts, emails were sent to consumers. The Executive accepted it was a possibility that some consumers had registered with a specific job website but in light of the complainants who had not, it was clear that not all consumers had consented to receive the promotional emails. Further, it was highly unlikely that consumers would have knowingly consented to receiving communications when they were not generally searching for employment.

The Executive accordingly submitted that for the reasons outlined above rule 2.4.2 of the Code had been breached.

2. The Level 2 provider failed to provide a response to the breach. The Level 2 provider's response to pre-breach letter correspondence with the Executive is set out in the "Background" section above.
3. The Tribunal considered the evidence and, in particular, the content of the complainant accounts and the lack of evidence to establish that consent had been obtained. The Tribunal

found that it was feasible that consumers had given consent for contact to companies regarding bona fide job opportunities but were highly unlikely to have consented to receiving contact from those operating scams. In any event it was clear that there were consumers who had not consented to receive emails at all as they had not registered with any job website. Therefore, for these reasons together with those outlined by the Executive, the Tribunal upheld a breach of rule 2.4.2 of the Code.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

The Tribunal's initial assessment of the breach 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 was designed with the specific purpose of generating revenue streams for an illegitimate reason.
- The Service purported to provide a service that does not, and has never existed (i.e. a scam) and sought to leverage vulnerable consumers in order to generate an income.

Rule 2.3.10 – Vulnerability

The initial assessment of rule 2.3.10 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 was designed with the specific purpose of generating revenue streams for an illegitimate reason.
- The Service purported to provide a service that does not, and has never existed (i.e. a scam) and sought to leverage vulnerable consumers in order to generate an income.

Rule 2.4.2 – Consent to market

The initial assessment of rule 2.4.2 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 was designed with the specific purpose of generating revenue streams for an illegitimate reason.
- The Service purported to provide a service that does not, and has never existed (i.e. a scam) and sought to leverage vulnerable consumers in order to generate an income.

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

Final Overall Assessment

The Tribunal found no aggravating or mitigating factors. The Level 2 provider's revenue in relation to this Service was in the range of Band 4 (£50,000 - £100,000). The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.



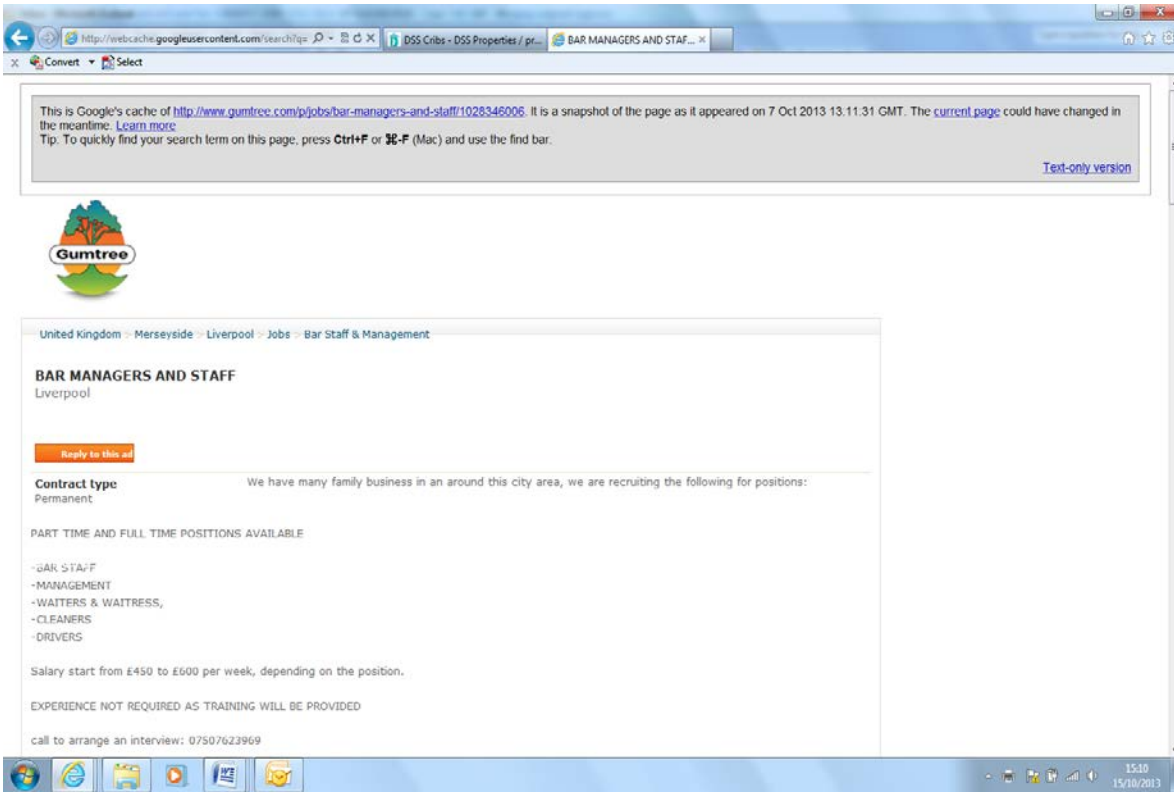
Sanctions Imposed

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

- a formal reprimand;
- a fine of £120,000;
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years (starting from the date of publication of this decision); 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: Screenshot from the Executive’s monitoring of a cached “Gumtree” job listing:



Appendix B: Screenshot from the Executive’s monitoring of a cached “DSS Cribs” rental property listing:

