

**Tribunal Sitting Number 139 / Case 2**

**Case Reference:** 27612  
**Level 2 provider:** Subhan Universal Limited, Birmingham, UK  
**Type of Service:** 090 fixed line – voting service number  
**Level 1 provider:** N/A  
**Network operator:** Subhan Universal Ltd

**THIS CASE WAS BROUGHT AGAINST THE NETWORK OPERATOR UNDER PARAGRAPH 4.4 OF THE CODE**

**BACKGROUND**

The Level 2 provider Subhan Universal Limited operated ten 090 numbers that, save for one digit, were identical to the numbers used as voting lines by the television programme “Britain’s Got Talent” and “I’m A Celebrity Get Me Out Of Here!” (the “**Service**”). Calls to the numbers were charged at £1.02 per call (plus network charges). The Service operated between 6 May 2012 and 31 May 2013, when it was voluntarily suspended by the Level 2 provider following correspondence with PhonepayPlus.

Following the receipt of a complaint about the Service, PhonepayPlus conducted monitoring which highlighted concerns regarding consumers not being treated fairly. Consumers who dialed the Level 2’s numbers in error, believing they had voted for a contestant on “Britain’s Got Talent” and/or “I’m A Celebrity Get Me Out Of Here” would hear an interactive voice recording (“**IVR**”) which stated, “thanks for voting”.

**The Investigation**

The Executive conducted this matter as a Track 2 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 4 November 2013. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.1 – Fair and equitable treatment
- Paragraph 3.4.1 – Registration of an organisation

The Level 2 provider did not provide a response. On 28 November 2013, the Tribunal reached a decision on the breaches raised by the Executive.

**SUBMISSIONS AND CONCLUSIONS**

**Preliminary issue**

The Tribunal noted that during correspondence the Level 2 provider stated that on 2 May 2012 it had allocated the relevant 090 numbers to an end user called “Telecom Media” based in Birmingham, who intended to use the numbers “to run voting service on current issues”. The Level 2 provider provided contact details for “Telecom Media” but stated that it could not provide any documentary evidence of its relationship with the company as the Level 2 had moved offices a few times and could not find the paperwork. In addition, the Level 2 provider maintained that its email server had crashed and data had been lost. Despite several requests, the Level 2 provider did not provide any evidence of its financial or other relationship with “Telecom Media”.

The Tribunal noted that the Executive had been unable to make contact with “Telecom Media” by any means and it had discovered that the contact address did not exist. A Companies House search revealed that there was a company named “Telecom Media Limited” listed but that it had been dissolved in April 2012 and was not based in Birmingham. The Tribunal noted that at the time the Service commenced operation “Telecom Media Limited” had been dissolved.

The Tribunal further noted that following the above correspondence, the Executive specifically communicated its view that the Level 2 provider was both the Network operator and the Level 2 provider responsible for the operation and content of the Service. However, the Level 2 provider did not provide any substantive evidence to support its assertion that the numbers had been allocated to “Telecom Media”.

Having regard to the failure of the Level 2 provider to provide adequate evidence to support its assertion that “Telecom Media” existed and the Executive’s unsuccessful attempts to contact “Telecom Media” and ascertain its existence, the Tribunal found that, on the balance of probabilities the Service was operated by the Level 2 provider and not “Telecom Media”.

## **ALLEGED BREACH 1**

### **Rule 2.3.1**

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

1. The Executive submitted that the Level 2 provider had breached rule 2.3.1 of the Code as consumers were not treated fairly and equitably for the following reasons:
  - i. The Service had no value and took advantage of misdials to the television programmes “Britain’s Got Talent” and “I’m a Celebrity Get Me Out Of Here!”
  - ii. Consumers did not intend to engage with the Service but incurred a charge; and
  - iii. Consumers were likely to have been under the impression that they had registered a legitimate vote to one of the programmes.

The Executive noted the content of the complainant’s account which stated that it had attempted to call a voting number for “Britain’s Got Talent” on 09020442401 but misdialled and called 09050442401. On connection, it heard an IVR message that stated, “thanks for voting,” but it did not give an indication of what the vote was for. The Executive commented that it would be unlikely to receive consumer complaints as consumers who interacted with the Service were likely to have believed that they had successfully voted for a contestant on one of the programmes.

The Executive noted that ITV broadcasts the television programmes “Britain’s Got Talent” and “I’m a Celebrity Get Me out Of Here!” annually at different times of the year. Both programmes operated premium rate voting lines and used the same premium rate numbers (09020442401– 09020442410).

The Level 2 provider operated ten 090 numbers (09050442401 – 09050442410 inclusive) which were one digit different to the numbers operated by the television programmes. The Executive monitored the Service in the early stages of the investigation between 31 May 2013 and 3 June 2013 and all numbers were active and rang through to the IVR described by the complainant.

The Level 2 provider provided call volume statistics for the Service, which the Executive stated demonstrated that vast majority of the calls were made to these numbers during

the voting periods for the programmes and the calls peaked on the days leading up to the finals of each programme.

The Executive noted that the Level 2 provider did not provide any evidence to show that the Service had any value. The Executive asserted that on the balance of probabilities the Service did not have any value and took advantage of misdials to the programmes. In addition, consumers were likely to have been under the impression that they had registered a legitimate vote to one of the programmes. The Executive also submitted that consumers had not been treated fairly and equitably and accordingly the Level 2 provider has breached rule 2.3.1 of the Code.

2. During the course of the investigation, the Level 2 provider corresponded with the Executive and provided the brief information outlined in the “Preliminary issue” section above. The Level 2 provider did not provide a response to the breach letter.
3. The Tribunal considered the evidence, including the Level 2 provider’s initial response to correspondence with the Executive. The Tribunal noted the call volumes to the Service during the voting periods of the two programmes, their increase towards the end of the voting periods and that there were virtually no calls to the Service at other times. The Tribunal also noted the content of the IVR message, which stated, “Thanks for voting”. The Tribunal concluded that, on the balance of probabilities, the 090 numbers had been used as part of a valueless service that was a scam designed to generate revenues. The Tribunal found that consumers did not intend to engage with the Service but incurred a charge whilst being under the impression that they had registered a legitimate vote to one of the programmes. Accordingly, the Tribunal found that the Service did not treat consumers fairly and equitably and upheld a breach of rule 2.3.1 of the Code for the reasons outlined by the Executive.

**Decision: UPHELD**

**ALLEGED BREACH 2**

**Paragraph 3.4.1**

“Before providing any premium rate service all Network operators, Level 1 and Level 2 providers must register with PhonepayPlus subject only to paragraph 3.4.3 below.”

1. The Executive submitted that the Level 2 provider had breached paragraph 3.4.1 of the Code as the Service operated between 6 May 2012 and 31 May 2013 when the Level 2 provider was not registered as required by the Code.

The Executive noted that the Level 2 provider had registered as a “known organisation” with PhonepayPlus pursuant to the 11<sup>th</sup> edition of the Code. After the Executive had alerted the Level 2 provider that it had not registered under the current edition of the Code (12<sup>th</sup> edition) it had done so on 12 June 2013. The Executive submitted that the Level 2 provider had not registered for the whole period the Service was in operation.

The Executive accordingly submitted that for the reasons outlined above paragraph 3.4.1 of the Code had been breached.

2. During the course of the investigation, the Level 2 provider corresponded with the Executive and stated that it had registered in June 2008. Since then, it had moved offices and could not find its registration number. It stated that if it could not find the

number it would re-register. The Level 2 provider did not provide a response to the breach letter.

3. The Tribunal considered the evidence, including the Level 2 provider's comments made during correspondence with the Executive. The Tribunal commented upon the importance of registration with PhonepayPlus. Amongst other things, a failure to do so usually results in the inability to register the service and, without a service being registered, consumers are unable to use the "number checker" to ascertain who is responsible for a number about which they may wish to complain. The Tribunal found that the Level 2 provider had failed to register as an organisation as required by paragraph 3.4.1 of the Code prior to the Service becoming operational. Accordingly, the Tribunal upheld a breach of paragraph 3.4.1 of the Code.

### **Decision: UPHELD**

### **SANCTIONS**

#### **Initial Overall Assessment**

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

#### **Rule 2.3.1 – Fair and equitable treatment**

The initial assessment of rule 2.3.1 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- Very serious cases have a clear and highly detrimental impact or potential impact, directly or indirectly, consumers.
- The nature of the breach caused to consumers is likely to severely damage consumer confidence in premium rate services.
- The Service was designed with the specific purpose of generating revenue streams for an illegitimate reason, which is likely to be considered "very serious".

#### **Paragraph 3.4.1 – Registration of an organisation**

The initial assessment of paragraph 3.4.1 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 its organisation with PhonepayPlus.

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

#### **Final Overall Assessment**

In determining the final overall assessment for the case, the Tribunal took into account the following two aggravating factors:

- PhonepayPlus has published several "Notices to Industry" that dealt with registration.
- Failure to register is an important part of the regulatory framework as failure to register as an organisation may preclude registration of the service.
- There has been a previous adjudication involving a provider taking advantage of television voting misdials.



In determining the final overall assessment for the case, the Tribunal took into account the following mitigating factor:

- The Level 2 provider suspended the numbers in June 2013 following correspondence with PhonepayPlus.

The Level 2 provider's revenue in relation to this Service was in the range of Band 5 (£1 - £5,000).

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

#### **Sanctions Imposed**

- a formal reprimand;
- a fine of £6,000; 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.