



Tribunal meeting number 160 / Case 2

Case reference: 48460
Level 2 provider: Total Recruitment Consultancy Limited (UK)
Type of service: Recruitment and recruitment advice/training service
Level 1 provider: N/A
Network operator: Numbers Plus Limited (UK)

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

BACKGROUND

Between 30 June 2014 and 5 September 2014, PhonepayPlus received 21 complaints from consumers in relation to a recruitment and recruitment training and advice service, (the "**Service**"), which is operated by the Level 2 provider, Total Recruitment Consultancy Limited (the "**Level 2 provider**"). The Service operated on various 090 premium rate numbers that had been allocated to the Level 2 provider by the Network operator, Numbers Plus Ltd (the "**Network operator**"). Consumers were charged between 77p and £1.53 per minute (plus Network charges). The Service operated from June 2014 and continues to operate.

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 22 September 2014. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.2.5 – Pricing prominence and proximity
- Rule 2.2.1(a) – Provision of information
- Paragraph 3.4.12(a) – Registration of numbers

The Level 2 provider responded on 6 October 2014. On 13 November 2014, after hearing informal representations from the Level 2 provider, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The complainants' accounts;
- The emails and job specifications received by the complainants;
- The emails and job specifications provided by the Level 2 provider;
- Job application forms completed by the complainants;
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider's responses);
- Correspondence between the Executive and the Network operator;
- Screenshots of the Level 2 provider's website;
- Third party forum commentaries on the Service submitted by the Executive;
- Correspondence between the Executive and a well-known job vacancy website;
- Incorporation documentation for the Level 2 provider;



- Extracts from the PhonepayPlus registration database for the Level 2 provider;
- PhonepayPlus Guidance on “Promotions and promotional material”;
- PhonepayPlus Guidance on “Employment, employment information and business opportunity services”;
- Screenshots from the PhonepayPlus website containing the number checker results;
- The breach letter of 22 September 2014; and
- The Level 2 provider’s response of 6 October 2014, including screenshots of training conducted with three candidates.

Complaints

The majority of complaints reported having been contacted directly by the Level 2 provider, in most cases by telephone, as a result of them uploading their curriculum vitae (“**CV**”) to well-known job vacancy websites. Upon ascertaining that the consumer remained a job seeker, the Level 2 provider would email the complainant with a date and time for a training telephone interview and provide them with an 090 number to call. Some complainants reported receiving a job specification attached to the email.

Complainants stated that they had called the 090 number, unaware that they would incur premium rate charges, as such many experienced bill shock. Many complainants interacted with the Service in the belief that they had been shortlisted for a job interview. In addition, some complainants reported being kept on the line for extended periods of time or being asked a series of unnecessary or repetitive questions. One complainant reported incurring charges of £200 after interacting with the Service and many complainants reported being on the call for over an hour.

Of the 21 complainants, six provided PhonepayPlus with a copy of the email they had received from the Level 2 provider and four complainants provided a copy of the job specification they had received. The Executive relied on the following complainant accounts:

“Consumer rec'd a cold call after uploading a CV to totaljobs Provider discussed various job roles & job descriptions with [sic] consumer Provider mention salaries that were much high than the expectations [sic] of the job-seeker - Consumer believes this to be part of being mis-lead into calling the number After being pressed for further information the provider explained that the telephone interview would be recorded and then sent to prospective employers Provider refused to give [sic] details of any of the employers that roles were with Consumer confirmed phone interview Rec'd email confirmation thought it odd that he had to contact them No pricing information was given out with number Disclaimer at the bottom of the email said that the consumer would be responsible for all costs Consumer believes the only place to find pricing information on the website: <http://www.totalrecruitmentconsultancy.com/#!/terms-and-conditions/c1v4w> [screenshot attached] consumer is not confident there would be sufficient potential for employment to call the number.”

“Phone interview for a job recruitment agency, where I had registered online, by uploading my CV etc.... A few days after uploading my information to the website, I was contacted from a withheld number and informed that I would need to do a phone interview. They send me a time and number to call. I was told at the beginning of the call that it would cost £1.50 per minute, thinking it wouldn't last too long. It ended up lasting 2 HOURS! I spoke to a lady who asked me thorough questions about myself and my CV/career etc...”

“...Consumer received a e-mail for job for a receptionist. Consumer saying the e-mail did not say that he was going to be charged. Consumer also received a call from the lady saying that he is going to have a phone interview. The lady said that someone will call him on saturday for a interview he received no phone call so he called the 091 number. "as soon as i was connected i asked them



how long the call is going to last she said she does not know but she is going to ask me questions, they asked me loads of questions call lasted for over half an hour this is a total scam" Consumer felt that they were keeping him on the call for longer so that they can generate money Consumer saying she kept confirming the information from me "could you confirm your name?, could you confirm your number?." Consumer called the number twice. The first call lasted around 9 mins, there was a fault on the number so he called again and the call lasted for over 1 hour."

"Consumer says she is looking for a job, consumer says she is not registered with them, Consumer says she doesn't know where they got her details. Consumer says she got a call and following the call she got an email. Consumer says when she called she heard the information but as she didn't her [sic] properly the details of the price, consumer says that after the interview that was around 56 minutes, consumer called again to verify the price of the call and it was when she realised the price. Consumer says that there are not details of the call on the email. The position was for PA in London, consumer says that it seems that they made the profile looking to her cv. Consumer doesn't know where they got to her cv for. After the call, consumer got an email requesting all the information that was already on the email, they also asked consumer for her NHS number. Consumer has been told that she will received [sic] an email with the time to call them again if she was successful."

The Executive noted that emails received by the complainants all contained similar wording, save for the name of the recipient, the date and time of the telephone interview, the premium rate number and the name of the sender. An example of the email received by a complainant states:

"Dear [name redacted]

It was a pleasure speaking to you. Many thanks for allowing us to review your c.v. I am pleased to inform you have been short-listed to conduct our training telephone Interview as we feel we can provide you with the necessary tools that will equip you into successful employment.

I can confirm you have been booked in on Thursday 10th July at 10.05am. Kindly contact us on the office line accordingly at the above interview time given 0913 XXX XXX

Please see attached our application form acknowledgement form which should be filled and signed before your appointment also the potential job specification which is seen below.

Please kindly return your application form to my email as confirmation.

I look forward to you response and wish you the best of luck.

Kind Regards
[Name redacted]
Diary Training Consultant
Tel:09131XXXXXX
ext:XXX

website: www.totalrecruitmentconsultancy.com

DISCLAIMER:

We aim to provide a training programme with all our candidates which we believe will help assist them in finding the right future job roles. We agree to provide a service to our clients and candidates under the terms and agreement meaning the contract, and understanding between the company and the candidate/clients to which these terms&conditions apply for the duration that any services are provided. Once contacting our service, the candidate abides to pay the fees and extra charges of our training telephone interview. which is stated on our telephone recording . (Service) meaning



one to one conversation with consultant is aimed to ensure we guide you in the right direction to successful employment. Although we will not at any point compensate for not being able to help. Candidates must be aged 18+ and needs bill payers' permission before calling our office line that is used to conduct our training telephone Interview. Please be aware that at any time candidates are free to end the training, total recruitment consultancy will still ensure that we leave you with right tools for successful employment. Total recruitment consultancy aims is to help the candidate look for work by training them, giving them tips and help search for suitable work but do not guarantee that all candidates will be placed in successful work. All advice that is given is completely impartial and to the best of our knowledge."

Some complainants reported receiving job specifications that had been attached to the email they received (**Appendix A**). The job specifications provided were for the roles of receptionist and switchboard, sales assistant/supervisor and administrative assistant.

Monitoring

The Executive acknowledged that, according to complainants' accounts, interaction with the Service is normally initiated by the Level 2 provider calling a consumer and following it up with an email inviting them to call the Service. However on 15 July 2014, the Executive phoned the Service by calling an 090 number referred to by some of the complainants and enquired about a receptionist job. During the course of the call, it became apparent that the Level 2 provider would ordinarily require a job seeker to complete an application form before an interview was conducted. The operator agreed to send the Executive an application form, which it stated should be completed before the telephone interview. During the course of the call, the operator stated that there was a receptionist job available, amongst other positions, and that the Level 2 provider had an office in Wimbledon and many other offices in north and central London. On 15 July 2014, the Executive received a call from the Level 2 provider to clarify its contact details. Subsequently, the Executive received the following email:

"Dear Tamara Bennett
It was a pleasure speaking to you. Many thanks for allowing us to review your c.v. I am pleased to inform you have been short-listed to conduct our training telephone Interview as we feel we can provide you with the necessary tools that will equip you into successful employment.

I can confirm you have been booked in on Wednesday 16th of July at 14.05pm
Kindly contact us on the office line accordingly at the above interview time given 09131XXXXXX.

Please see attached our application form acknowledgement form which should be filled and signed before your appointment also the potential job specification which is seen below.

Please kindly return your application form to my email as confirmation.

I look forward to you response and wish you the best of luck.

Kind Regards
[name redacted]
Diary Training Consultant
Tel:09131XXXXXX
ext:XXX
website: www.totalrecruitmentconsultancy.com

DISCLAIMER:



We aim to provide a training programme with all our candidates which we believe will help assist them in finding the right future job roles. We agree to provide a service to our clients and candidates under the terms and agreement meaning the contract, and understanding between the company and the candidate/clients to which these terms&conditions apply for the duration that any services are provided. Once contacting our service, the candidate abides to pay the fees and extra charges of our training telephone interview. which is stated on our telephone recording . (Service) meaning one to one conversation with consultant is aimed to ensure we guide you in the right direction to successful employment. Although we will not at any point compensate for not being able to help. Candidates must be aged 18+ and needs bill payers' permission before calling our office line that is used to conduct our training telephone Interview. Please be aware that at any time candidates are free to end the training, total recruitment consultancy will still ensure that we leave you with right tools for successful employment. Total recruitment consultancy aims is to help the candidate look for work by training them,giving them tips and help search for suitable work but do not guarantee that all candidates will be placed in successful work. All advice that is given is completely impartial and to the best of our knowledge.”

SUBMISSIONS AND CONCLUSIONS

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 acted in breach of rule 2.3.2 as consumers had been or were likely to have been misled by the promotion and operation of the Service. Specifically, consumers were misled into the belief that they had obtained a job interview for a genuine job vacancy, when the Service offered job advice and training.

Guidance

The Executive relied on the content of the PhonepayPlus Guidance on “Employment, employment information or business opportunity services” and “Promotions and promotional material”. The Guidance states:

Employment, employment information or business opportunity services

“Types of employment services

1.1 These services fall into four categories, all of which carry different expectations:

- *Services offered by employment agencies and employment businesses*
Subject to the exception in point 4 below, no charge can be applied to a service which finds, or seeks to find, employment for persons. If providers are found to be charging premium rates to such services, they are likely to be found in breach of paragraph 2.1 of the Code of Practice
- *Services which give general advice about careers and employment, including self-employment* These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice. Those providing advice should also see Service-Specific Guidance on Advice services
- *Services which give information about the providers own vacancies*
These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice.



- *Services which seek to find work for performers and certain other workers in the entertainment field (except photographic and fashion models)* These services can charge for their services to work-seekers in respect of the occupations listed in Schedule 3 to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010) (“the regulations”), subject to various limitations and requirements set out in the Regulations. Providers should note that the use of PRS is likely to breach the Regulations where it takes the form of ‘up-front’ costs, unless the PRS charges relate directly to the entry of work-seekers into in a job seeker or job search publication **and** various other requirements are satisfied, including the provision of a cooling off period. Providers are strongly advised to refer to the Regulations for further information, and seek legal advice accordingly.

2. How to avoid the service being considered misleading

2.1 Section 2.3 of the PhonepayPlus Code of Practice (Fairness) sets out a number of Rules to ensure consumers are treated fairly and not misled in any way. In particular, Rules 2.3.2 and 2.3.10 are relevant to employment and business opportunity services.”

“Promotions and promotional material

3. Misleading promotions

3.1 If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, an important term or condition likely to affect their decision to use the service.

Rule 2.3.2 of the Code states the following:

2.3.2

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

3.2 PhonepayPlus expects that all promotions must be prepared with a due sense of responsibility to consumers, and promotions should not make any factual claims that cannot be supported with evidence, if later requested by PhonepayPlus to do so.”

Complaints

The Executive relied on the content of all the complaints received but particularly noted the complaints in the “Background” section. The Executive also relied on the content of the emails and the job specifications received by the complainants. The Executive submitted that complainants’ accounts demonstrated that many believed that they had obtained a job interview rather than a training interview.

Consumers had been or were likely to have been misled into believing that they had obtained a job interview for a genuine job vacancy, when the Service offered them job advice and training.

The Executive noted that the emails received by the complainants all referred to a “training



telephone interview” yet, other wording in the emails received suggested that the complainants had successfully obtained a job interview for a job vacancy. Specifically, the Executive noted the following wording:

- “I am pleased to inform you have been shortlisted to conduct our training telephone interview...”
- “Please be aware if successful and placed into employment we will reimburse you for your telephone interview”
- “Kindly allow up to two weeks for a decision to be made”
- “Please find our direct office line below if you have any queries. However if you do not receive a response within 2 weeks then unfortunately take it as your application has been unsuccessful.”
- “Please do not be dismayed if you have been unsuccessful in finding suitable job role, upon your request we will retain your cv as we aim to put it forward to various suitable employers that match your job criteria” [emphasis added].

The Executive noted that the Level 2 provider had supplied copies of emails that it stated had been sent to the complainants and the content was very similar. The Executive submitted that in addition to the wording detailed above, the emails provided by the Level 2 provider also contained the following wording:

- “Please see attached...the potential job specification which is seen below”
- “I look forward to you [sic] response and wish you the best of luck.”

The Executive submitted that wishing a consumer “luck” was likely to lead a consumer to believe that they had obtained a genuine job interview for a real vacancy and referring to a job specification as “potential” did not make it sufficiently clear that the interview was only for training purposes.

In response to the Executive’s direction for information, the Level 2 provider was asked to provide the job specifications that had been sent to each complainant and to identify the respective client that it had been recruiting for. The Level 2 provider stated in its response:

“There are no specific job specs we do refer candidates to specific job posting with job specs which can be seen online.”

However, the Executive noted that a number of complainants had received job specifications and four complainants’ had provided the Executive with copies of the job specification they had received. The Executive asserted that the job specification did not make any reference to it being an example for training purposes, and a candidate who had read the job specification in conjunction with the email was likely to believe they had successfully obtained a job interview for a genuine job.

Further, the Level 2 provider supplied copies of the application forms completed by the complainants prior to engaging with the Service. The Executive submitted that requiring a consumer to complete an application form, without explaining that it was for training purposes was likely to mislead consumers into believing that this was part of the application process for a genuine job.

The Executive acknowledged that the email and application form contained the wording “training” but, the Executive maintained that not enough has been done to ensure that consumers were not misled regarding the nature of the service.



The Executive also relied on its monitoring of the Service and submitted that although the promotional email referred to a “training telephone interview”, the preceding telephone conversation with the Level 2 provider had clearly stated that there was a receptionist job amongst others available and the purpose of the call was to explain how the Executive could apply for the position. At no point during the calls was the Executive told that the Service offered job training and advice.

The email sent to the Executive was identical to the emails received by other complainants, save for the interview date and time. The Executive noted that the email it received appeared to be a standard template, as it referred to receipt of a CV, when the Executive had not submitted a CV. In addition to the email received, the Executive had received a receptionist job specification and an application form. The Executive submitted that the inclusion of a job specification and an application form was likely to mislead consumers into believing that interaction with the Service was for a genuine job interview.

The Executive noted that the promotional emails that had been sent to the complainants contained a link to the Level 2 provider’s website. The Executive visited the website on 12 August 2014 and obtained a screenshot (**Appendix B**). The Executive acknowledged that the website did not contain the method of access to the Service, but by including a link to the website on the promotional email, consumers who received the email may view the Service website. The Executive submitted that the wording used on the website created the impression that the purpose of the Service was to find job seekers employment.

In particular, the Executive noted the following statements on the Level 2 provider’s website:

- “100’s of employees placed in jobs every month!”
- “Total Recruitment Consultancy is a leading provider of executive search, focusing on executive jobs and executive candidates in emerging markets.”
- “...one of the UK’s leading recruitment consultancy specialists.”
- “We use traditional recruitment methods...”
- “Working in the executive search market, you have to focus on quality and professionalism. That’s why our Recruitment Consultants are all highly trained in head hunting techniques and work unique specialist markets, focusing on executive jobs in their specialist field.” [emphasis added by the Executive]

The Executive submitted that the wording used to describe the Service was likely to give consumers the misleading impression that the Level 2 provider was a recruitment consultancy that was recruiting for third party companies. The Executive noted that in response to a direction for information on 23 July 2014, the Level 2 provider stated that the “service is not used for recruitment”. Contrary to this assertion, the Executive submitted that the webpage was likely to give consumers the impression that the Service offered recruitment to job seekers.

In light of the consistent complainant accounts, the evidence supplied by the complainants, the monitoring of the Service and the wording on the Level 2 provider’s website, the Executive submitted the Service and its promotions misled consumers about the nature of the Service. Accordingly, it submitted that the Level 2 provider has breached rule 2.3.2 of the Code and outcome 2.3 has not been met.

2. The Level 2 provider partially admitted that a breach of rule 2.3.2 of the Code had occurred. It acknowledged that although the Service provided training and job advice, some consumers



may have assumed that, as the Level 2 provider was a recruitment company, there were job opportunities.

The Level 2 provider asserted that the content of its website was justified, as it was doing what any reasonable company would do by promoting its brand. It highlighted that the website states, that it offers additional services such as CV building and various other forms of training. The Level 2 provider supplied a certificate that had been issued to a job seeker after successful completion of training from the Service.

In relation to the Executive's monitoring of the Service, the Level 2 provider submitted that the member of staff that the Executive spoke to was newly employed and was not fully appraised of its procedures. It accepted that the information given to the Executive on this occasion was not appropriate and it accepted that it was its responsibility to ensure that its staff had been given the correct information to pass on to consumers.

During informal representations, the Level 2 provider confirmed its written submissions but stated that, contrary to its responses to directions for information during the course of the investigation, it had used the premium rate numbers to recruit staff for internal positions within the Level 2 provider and another company that had the same directors. The main purpose of the Service was as a recruitment advice and training service but it accepted that the premium rate numbers that were allocated to the Level 2 provider were also used to recruit for internal positions. Further, it admitted that when consumers contacted the Service for job training and advice, it would retain the consumers' information with the hope of being able to match them with external vacancies in the future, as its aim was to become a recruitment consultancy that placed candidates with third party employers.

The Level 2 provider accepted that it had made some mistakes with the Service, which could have been avoided. It also accepted that the promotional emails for the Service were, in some respects misleading but it stressed that it had never been its intention to mislead consumers and regretted that it had happened. The Level 2 provider asserted that, in its experience, consumers of premium rate services often deny that they have incurred any cost, even when Level 2 providers have evidence. It had decided to record calls to the Service in the future to ensure that it could prove that consumers had been given pricing information.

By way of background, the Level 2 provider explained that one of its directors had been a manager of a premium rate service providing technological support and, after four successful years in the role, the director had decided to set up a company. After some time operating a technological support service, the directors sought to develop the business of the company into a recruitment consultancy service. In an effort to keep the services separate it had commenced the Level 2 provider. The director of the Level 2 provider accepted that she had limited experience in recruitment but she stated that she had a keen interest in this type of work and a willingness to learn. The director had teamed up with her brother, another director of the Level 2 provider, who had studied business and law at University and had previously worked in recruitment. The Level 2 provider stated that it had seen a gap in the market and thought that combining recruitment with a premium rate service was a good idea. The Level 2 provider stated that it had read the PhonepayPlus Code and the Guidance and understood that it was a legitimate to use premium rate numbers for internal recruitment as such, after conducting some research it was satisfied that it had a viable business model. The Level 2 provider stated that it was aware that some may disagree with using premium rate numbers in this way but it did not believe that it was doing anything wrong. The Level 2 provider had not received any professional support in drafting a business plan but it had had some help from an organisation that specialised in helping small companies.



The Level 2 provider explained how the Service operated and stated that it would review CV's posted on certain well-known job websites and if a job seeker appeared suitable for its training, the Level 2 provider would make contact and invite the consumer by email to call one of its premium rate numbers for a training telephone interview. The Level 2 provider stated that it always had a number of internal positions available as it had a high turnover of staff. Although, the main purpose of the Service was job training, it had also conducted internal job recruitment and it accepted that some consumers may have called the Service for internal job vacancies. A successful candidate may be invited for a face-to-face interview and required to complete unpaid probationary work on a temporary basis. Many of the staff that it had recruited had been employed to make calls to other job seekers in an effort to recruit staff for the Level 2 provider. It planned to start a recruitment consultancy and accordingly was recruiting for positions for its new venture.

In relation to the Level 2 provider's endeavours to set up a recruitment consultancy, it stated that it had found it hard as a relatively new company with limited experience to get recruitment business. It had pitched to companies to persuade them to let the Level 2 provider supply them with candidates. More recently, two companies had agreed for the Level 2 provider to conduct its recruitment on its behalf, one of which was a care home. It stated that it was currently in the process of building a CV website that enabled job seekers to upload their CV and a short audio file for prospective employers to hear. The Level 2 provider confirmed that it did not require consumers to call a premium rate number to use this website and at the moment it was currently supporting this venture through savings but it hoped in the future that it could charge employers for access to the information held on the website. It stated that it had put this on hold, until the PhonepayPlus investigation had concluded.

The Level 2 provider stated that its main source of revenue was from the calls to its premium rate numbers for its internal vacancies. It clarified that the revenue information provided by the Level 2 provider and confirmed by the Network operator had been generated by use of the premium rate numbers for the internal recruitment campaign and providing job advice and training.

The Level 2 provider stated that it had not placed any candidates with external jobs as the recruitment consultancy service was still in its infancy. The job specifications that had been sent to the complainants were for training purposes. It stressed that it had attempted to be as transparent as possible and if a consumer was being invited to apply for a job or training, it had tried to make it very clear.

The Level 2 provider urged the Tribunal to have regard to the fact that its directors were young individuals, who were trying to make a success of a small business and although it accepted that some mistakes had been made along the way and "it could have done better", it was keen to improve the transparency of the Service by ensuring there was greater clarity regarding the cost of the Service. The Level 2 provider acknowledged that it could see why some consumers may have believed that the Service was a "scam" but it stated that was not the case.

It explained that PhonepayPlus had been very helpful and it was keen to continue to work alongside PhonepayPlus. The Level 2 provider explained that it had taken on board any suggestions and advice from PhonepayPlus and it believed that the Service was fully compliant with the Code.

3. The Tribunal considered the Code, the Guidance and all the evidence before it, including the Level 2 provider's written and oral submissions. The Tribunal noted that the Level 2 provider



had supplied inconsistent and conflicting accounts in its responses to the Executive's requests for information which had caused confusion and delayed the Executive's investigation into the Service. In particular, the Tribunal noted that the Level 2 provider had provided additional information during its oral submissions that had not previously been stated in its written responses. It noted that the Level 2 provider had stated in correspondence that the purpose of the Service was to offer job training and advice to consumers, yet during its oral submissions the Level 2 provider had stated that the same premium rate numbers had been used to recruit for internal vacancies with its company and an associated company and, it had also gathered consumers' information in the hope that it may be able to place candidates in positions within third party companies in the future, in furtherance of its desire to set up a recruitment consultancy business.

In making its determination, the Tribunal considered all the complainants' accounts and the evidence provided by the complainants, which it found was consistent and credible.

The Tribunal noted that the Level 2 provider had accepted that the complainants had engaged with the Service for job training and advice. However, it was clear from the complaints that complainants thought they were applying for a genuine job vacancy. The Tribunal particularly noted the language used in the emails and commented that attaching a job specification and an application form, which did not make it sufficiently clear that it was only for training purposes misled consumers into interacting with the Service in the belief that they had obtained a genuine job vacancy.

Further, the Tribunal noted the Executive's monitoring where a call operator clearly stated that there was a job available, and it was followed by receipt of an email for a "training job interview". Accordingly, the Tribunal found that the Service and the promotions misled consumers about the purpose of the Service. The Tribunal commented that operating three different recruitment services on the same premium rate numbers was particularly confusing for a consumer and had further misled consumers about the true nature of the Service. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.2.5

"In the course of any promotion of a premium rate service, written or spoken or 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 the Level 2 provider had acted in breach of rule 2.2.5 of the Code as during the course of the promotion of the Service the cost was not included or presented prominently and proximately to the premium rate number. Accordingly, consumers were not fully and clearly informed of all information likely to influence their decision to purchase.

Guidance

The Executive relied on the content of PhonepayPlus Guidance on "Promotions and promotional material" (the "**Guidance**"), which states:

"Paragraph 1.3



...as a basic starting point, the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- The total cost of the service, including price per minute and/or text, and any initial charges (such as a joining fee);
- The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
- Whether the service bills by subscription - i.e. carries a repeat charge which ends only upon termination by the consumer."

How should pricing information be generally presented?

Paragraph 2.2

As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged. Examples of unclear descriptions would include the following:

- 'premium rate charges apply',
- '100ppm',
- '1.50 GBP'
- '50p/min'

Prominent and proximate

Paragraph 2.8

Pricing information where consumers are unlikely to see it, or where it is hard to find, is unlikely to be judged as 'prominent', or 'proximate', by a PhonepayPlus Code Compliance Panel Tribunal ('PhonepayPlus Tribunal').

Paragraph 2.9

'Proximate' is a new term within this edition of the PhonepayPlus Code of Practice, and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of information not being proximate is providing pricing information which is too far from the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion.

Paragraph 2.11

Lack of prominence, or proximity, also takes place in print, where, as online, the price is provided in small print elsewhere on the page from the call to action. As with online advertising described in the paragraph directly above, we have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'standalone' information. As before, in such cases, a PhonepayPlus Tribunal is likely to uphold a breach of PhonepayPlus' Code of Practice for lack of pricing prominence.

Legible and visible

Font size and presentation

**Paragraph 2.13**

Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, 'close examination' will differ for the medium, whether on a static webpage, a fleeting TV promotion, in a publication, or on a billboard where you may be at a distance or travelling past at speed."

Complaints

The Executive relied on the content of all the complaints. In addition to the complaints outlined in the "Background" section, the Executive noted that the complaints below indicated that consumers were unaware that they had interacted with a premium rate service and/or were unaware of the cost of the Service.

"Consumer saying he received a phone call from Total recruitment asking him when he was available for a phone interview He told them when then [sic] he received a e-mail saying that he needs to call 09 number. Consumer saying the e-mail he received from the company did not mention that it was going to cost him to call the number Consumer saying the interview lasted for 1 hour and he called the 09 number from his mobile phone consumer was shocked to have a bill for £130.00 "the interview was just normal they did not put me on hold fo [sic] no reason, the job sounded too good that i had to call the number, they did not say in the call that i was going to be charged"

"Hi, I have bbeen [sic] contacted by Total Recruitment Company about a telephone interview. The phone call lasted 2 hours and they sounded really promising in getting me a face to face interview. However, I recieved [sic] my phone bill today and it came up to £211.78. This is unreasonably high for someone who is unemployed. The email i was sent had no information of the exact rate and that I would be charged this amount. It also showed on the email that I have been given training which that's [sic] not true. I am unemployed and have no money to give my phone provider. I would very much appreciate if this is reimbursed."

The Executive noted the content of the emails received by the complainants and in particular, that the wording in the emails was very similar, save for the name of the recipient, date and time of the telephone interview and the name of the sender. Further, all the emails contained a premium rate number for the Service.

The Executive noted that five of the emails received by the complainants did not contain the cost of the Service but had the following wording in the disclaimer at the end of the email which stated:

"Once contacting our service, the candidate abides to pay the fees and extra charges of our training telephone interview, which is stated on our telephone recording"

The Executive submitted that the information about the cost of the Service was not sufficient and the full cost of the Service should have been included in the email. Notwithstanding this, the display of the information above was buried within a block of text, and not standalone or prominent of proximate to the premium rate number. In addition, informing consumers about the cost of the Service at the beginning of a call did not ensure that consumers were informed of the cost of the Service before a purchase was made.

As stated in the "Background" section, as a result of the Executive's monitoring of the Service, it received an email from the Level 2 provider inviting it to call a premium rate number. The



Executive noted that this email did not contain the cost of the Service but included the same wording.

During the investigation, the Level 2 provider had provided the Executive with copies of the emails that it stated had been sent to complainants. These emails contained pricing information in the text at the end of email under the heading “disclaimer”. The Executive noted that the content of the emails received by some complainants differed to those that the Level 2 provider had provided. The Executive submitted that it was clear from the emails received by the Executive during its monitoring session and the emails received by complainants, that emails for the Service did not contain the cost of the Service.

Consequently, the Executive submitted that promotions for the Service did not contain the cost of the Service and consumers were not fully and clearly informed of all information likely to influence their decision to purchase, before any purchase was made. Accordingly, the Executive submitted that a breach of rule 2.2.5 of the Code has occurred.

2. The Level 2 provider accepted that it had breached rule 2.2.5 of the Code, as it conceded that more could have been done to highlight the cost of the Service by placing it in bolder text outside the disclaimer and placing it next to or near the premium rate number.

The Level 2 provider did not accept that the promotional emails contained no pricing information whatsoever. It asserted that the complainants had altered the emails sent to the Level 2 provider to support their assertion that they were unaware of the cost of the Service.

The Level 2 provider submitted that it had now taken steps to ensure that the promotional emails had prominent and proximate pricing information and were compliant with the Code.

During informal representations, the Level 2 provider reiterated its written submissions in relation to the breach of rule 2.2.5 of the Code. It accepted that, in hindsight, the cost of the Service was not always clear in the emails that were sent to consumers but it submitted that the cost of the Service was always clearly stated on an interactive voice recording (“IVR”) at the beginning of the call.

3. The Tribunal considered the Code, Guidance and all the evidence before it, including the Level 2 provider’s admission.

The Tribunal commented that the premium rate nature of the Service was not clear from the promotional emails that were sent to consumers and given that the Level 2 provider was promoting to consumers, some of which would have been unemployed, it was particularly important that the cost of the Service was made extremely clear.

The Tribunal did not accept the Level 2 provider’s assertion that complainants had tampered with the evidence. A number of complainants had provided copies of emails they had received, which clearly demonstrated that the cost of the Service was not included. The Tribunal noted that one complainant had provided an email that contained the pricing information in the “disclaimer” but it found that the presentation of the pricing information was still not sufficient, as it was not proximate to the means of access to the Service and was contained in a dense block of text. The Tribunal commented that the Code and Guidance was clear that pricing information must be provided before a purchase was made and only providing pricing information on an IVR at the commencement of the call when the consumer was already incurring charges was not sufficient.



Accordingly, the Tribunal concluded that consumers had not been fully and clearly informed of all information likely to influence their decision to purchase.

Decision: UPHELD

ALLEGED BREACH 3

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

(a) 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 submitted that the Level 2 provider had acted in breach of rule 2.2.1 of the Code as consumers were not fully and clearly informed of all information likely to influence the decision to purchase, before any purchase was made. The Executive asserted that the Level 2 provider’s identity and a non-premium rate UK contact telephone number was either absent or not clearly presented in the promotional material.

Guidance

The Executive relied on the content of PhonepayPlus Guidance on “Promotions and promotional material” (the “**Guidance**”), which states:

“Paragraph 1.3

...as a basic starting point, the following information is considered key to a consumer’s decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- The total cost of the service, including price per minute and/or text, and any initial charges (such as a joining fee);
- The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
- Whether the service bills by subscription - i.e. carries a repeat charge which ends only upon termination by the consumer.”

The Executive relied on the content of the promotional emails submitted by complainants and the Level 2 provider during the investigation.

The Executive noted that the identity of the Level 2 provider was only contained within a link to the Level 2 provider’s website and was not separately stated in the promotional emails for the Service. The Executive submitted that a single reference to the Level 2 provider in a web address did not fully and clearly inform consumers of the Level 2 provider’s identity before a purchase was made.

In addition, the Executive submitted that the email promotions for the Service did not contain the non-premium rate UK contact telephone number for the Level 2 provider.



Accordingly, the Executive maintained that consumers were not fully and clearly informed of all information likely to influence their decision to purchase, before any purchase was made in breach of rule 2.2.1 of the Code.

2. The Level 2 provider stated that it partially accepted that a breach of the Code had occurred. It stated that when consumers called the Service they were introduced to the Level 2 provider and its operators would provide consumers with any information they required. Further, it stated that its website provided consumers with information about the Service.
3. The Tribunal considered the Code, Guidance and all the evidence before it, including the Level 2 provider's written and oral submissions. The Tribunal noted that the Level 2 provider's identity was contained within a website address on the promotional email. It commented that it was desirable for this information to be presented separately to the website address but as the information was included, the Tribunal did not find that the breach was made out on this ground. However, the Tribunal concluded that a non-premium rate number should have been included, when it was not. Accordingly, for the second reason raised by the Executive, the Tribunal upheld a breach of rule 2.2.1(a) of the Code.

Decision: UPHELD

ALLEGED BREACH 4

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 submitted that the Level 2 provider acted in breach of paragraph 3.4.12(a) of the Code as the Services operated on the premium rate numbers 09131300178, 09131300189 and 09070670018 and they were not registered with PhonepayPlus.

The Code requires that Level 2 providers supply relevant details to identify services to consumers. The PhonepayPlus Registration Scheme is in place to facilitate providers supplying relevant details to identify their services to consumers. Once a provider has supplied details of its services, including which premium rate numbers it operates on, the details then appear on the "Number Checker" section of the PhonepayPlus website, www.phonepayplus.org.uk. The Number Checker allows consumers to enter a phone number they may not recognise on their phone bill, and find out information regarding that number.

On the 19 September 2014, the Executive conducted a search of the premium rate numbers used by the Service and found that while one of the premium rate numbers used by the Service was registered with PhonepayPlus, the following numbers were not registered, 09131300178, 09131300189 and 09070670018.

The Executive submitted that where services are not registered, consumers do not have the ability to access information relating to the Services, which impairs PhonepayPlus' regulatory function. The Executive called all three premium rate numbers on the 19 September 2014 and ascertained that all the numbers were operational. The Network operator stated that the three numbers were transferred to the Level 2 provider from another company on the 21 August 2014. Accordingly, the numbers were operating when they were not registered with PhonepayPlus.



The Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.12(a) of the Code as the Services were operating on premium rate numbers which the Level 2 provider had not registered with PhonepayPlus.

2. The Level 2 provider admitted that a breach of the Code had occurred and stated that the necessary steps should have been taken to register all the premium rate numbers that it was operating, rather than within a staggered timeframe.
3. The Tribunal considered the evidence, including the Level 2 provider's admission. The Tribunal recognised that the Level 2 provider had registered one number but three numbers had not been registered with PhonepayPlus, when they should have been. 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 breach of the Code was as follows:

Rule 2.3.2 - Misleading

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

- Serious cases have had a clear detrimental impact, directly or indirectly, on consumers and the breaches have a clear and damaging impact or potential impact on consumers.
- The nature of the breach means the Service would have damaged consumer confidence in premium rate services.
- The cost incurred by consumers was higher as a result of the breach of the Code.
- The Service has been operated in such a way that demonstrates a degree of reckless non-compliance with the Code.

Rule 2.2.5 – Pricing prominence and proximity

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

- Many consumers would not have entered the Service if the promotional material had included the cost of the Service.

Rule 2.2.1 (a) – Provision of information

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

- The Service failed to supply adequate details relating to the Level 2 provider, which may have hindered consumers' ability to contact the Level 2 provider.

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.

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

Final overall assessment

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

- There have been numerous prior adjudications published concerning misleading promotions, the requirement for clear pricing information before a purchase is made and the registration of numbers.
- The Executive notified the Level 2 provider about its concerns regarding the Service but the Service had continued to operate in a non-compliant manner.

The Tribunal did not find any mitigating factors. The Tribunal noted that the Level 2 provider had sought to remedy the non-compliance with the Code but the Tribunal was not satisfied that the breaches of the Code had been remedied.

The Level 2 provider's revenue in relation to the Service was in the range of Band 6 (£5,000 - £49,999).

Having taken into account the aggravating 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 requirement that the Level 2 provider seek compliance advice for the Service and any other services that it operates within two weeks of the date of publication of this decision and thereafter implement that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus;
- a fine of £8,000;
- 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 imposed:

100%

Appendices

Appendix A – A job specification sent to a complainant:

Sales Assistant/Supervisor

Location: London
Salary: £17,000-£24,000 per annum
Hours- (based on 40 hours Mon - Fri) -9am-6pm
Job type: Permanent

ROLE:
this role acts as coach and mentor to a team of Sales Assistants.

RESPONSIBILITIES:
a) Supervising and motivating a team of Sales Assistants
b) Along with the team, delivering high levels of customer service and store standards at all times
c) Promoting and selling their products to achieve sales targets and store objectives

ESSENTIAL SKILLS / EXPERIENCE:
a) Experience within a similar role, Key-holder, Team Leader
b) Excellent communication skills to build productive relationships with customers and the team
c) A passion for their brand, in order to inspire and motivate the team
d) Good I.T skills including Word, Excel, email and internet

Appendix B – A screenshot of the Level 2 provider’s website:

