

BETWEEN:

PHONEPAYPLUS LIMITED

Executive

-and-

INTRUGO LIMITED

Respondent

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**ADJUDICATION BY CONSENT (“CONSENT ORDER”)**

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**Introduction**

1. This Consent Order shall relate to the matter under PhonepayPlus case reference 71971, and the oral hearing listed for 30 November 2016, requested by the Respondent.
2. This Consent Order is made following admissions of liability by the Respondent for the breaches set out in the schedule to this Consent Order.
3. This Consent Order further sets out the agreement of the parties in respect of the sanctions to be imposed on the Respondent and the administrative charges to be paid by the Respondent.
4. The agreed sanctions and administrative charges have been approved by a legally qualified member of the Code Compliance Panel pursuant to paragraph 3.16(d) of Annex 3 to the PhonepayPlus Code of Practice (thirteenth edition) (“the Code”).

**Agreed sanctions**

5. The sanctions hereby agreed by the parties are:
  - a. a formal reprimand;
  - b. a requirement to remedy the breach by ensuring that the Respondent has robust verification of each consumer’s consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service;
  - c. a fine of £250,000; and

- d. a requirement that the Respondent 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 and legal charges**

6. The Respondent shall pay the further legal and administrative charges incurred by PhonepayPlus in relation to the oral hearing proceedings in the sum of £19,906.11 and within 30 days of the date of this Consent Order.

**Oral hearing date**

7. The Oral hearing date of 30 November 2016 shall be vacated.



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Mr Julian Weinberg (Chair)  
On behalf of the Oral Hearing Tribunal  
17 September 2016

**Schedule**

**IN THE PHONEPAYPLUS TRIBUNAL**

**CASE REF: 71971**

**BETWEEN:**

**PHONEPAYPLUS LIMITED**

**Executive**

**-and-**

**INTRUGO LIMITED**

**Respondent**

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**SUMMARY OF SERVICE AND ADMITTED BREACHES OF THE CODE**

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**The Service**

1. The Service is a glamour video subscription service operating under brand names 'Hot New Babes', 'Unlimited Babes' and 'Hot Mobi Babes', operating on the shared shortcodes 66033, 88150, 82999, 81300, 88222, 80208 and 80252. The Service is charged at £3 per week.
2. The Respondent is the Level 2 provider of the Service and has been registered with PhonepayPlus since 17 November 2011.

**Previous Investigation**

3. From 10 December 2014 to 12 January 2015 the Executive conducted a Track 1 investigation (Case ref: 15633).
4. On 10 December 2014 the Respondent was sent a Track 1 action plan in respect of breaches of Outcome 2.3, Rule 2.3.3 and Rule 2.3.1 of the Code. It was required to rectify the issues by 2 January 2015.
5. On 12 January 2015 the Respondent confirmed that it had taken action to provide robustly verifiable evidence of consumers' consent to be charged. The Respondent confirmed that it was now using GoVerifyIt ('GVI') full online robust verification on its WAP based services and had stopped promoting all offline versions of GVI. The Respondent also indicated that it was no longer promoting any applications.

## **Current Investigation**

6. The Service was subsequently the subject of 450 complaints between 19 March 2015 and 8 September 2016 from members of the public, alleging that they had not opted-in to the Service and had received messages from the Service for which they had been charged.
7. As part of its investigation, the Executive requested information from the Respondent, relevant Level 1 providers and a third party verifier for the Mobile Network Operator Vodafone (“the Verifier”). In its Statement of Case, the Executive focussed on message logs in respect of 18 of these complaints.
8. Message logs provided by the Respondent suggested that the complainants opted-in to the Service in 2014, but that attempts to send chargeable and non-chargeable service messages routinely failed in respect of these complainants from the date of opt-in until January 2015 at the earliest.
9. Message logs supplied by the Level 1 providers and the Verifier did not indicate that complainants opted in to the Service prior to the closure of the previous Track 1 investigation; the first chargeable and non-chargeable Service messages in the Level 1 provider and Verifier logs dated from January 2015. In addition, information provided by the Level 1 providers and the Verifier during the course of the investigation indicated that some of the failed chargeable service messages contained in the logs provided by the Respondent (but which did not have a corresponding entry in the Level 1 provider or Verifier logs) would have appeared in the Level 1 provider logs if they had in fact been sent by the Respondent.
10. In light of (i) the credibility of the complaints, (ii) the substantial discrepancies between the Respondent's message logs and those of the Level 1 providers and the Verifier for the complainants and (iii) the fact that the Respondent provided no verifiable evidence to show that issue(s) had occurred which explained why all the messages for the complainants had consistently failed to reach the Level 1 providers or customers, and (iv) the fact that the Respondent provided no evidence, other than its message logs, of the complainants' consent to charge, the Executive considered that there was sufficient evidence to allege the breaches of the Code set out below.
11. The matter was heard by a Tribunal on 31 March 2016. Following this, on 27 April 2016 the Respondent submitted a notice of a requirement for an oral hearing of this matter, which denied the alleged breaches, and suggested that 'server abuse' had prevented messages from reaching the Level 1 provider. It further stated that message failures that occurred (including after November 2014) '*were an outcome of transmission ports being blocked*'. Finally it submitted that any inconsistency in logs was caused by technical issues affecting transmission to the Level 1 providers. The Respondent has not provided substantive evidence of such issues actually occurring.

## **The Admitted Breaches**

12. Breaches of Paragraph 4.2.4 and Rule 2.3.3 of the Code are admitted by the Respondent in respect of the Service.

**Paragraph 4.2.4 of the Code provides:**

**"A party must not knowingly or recklessly conceal or falsify information, or provide false or misleading information to PhonepayPlus (either by inclusion or omission)."**

13. The Respondent accepts that, having examined its records and made all reasonable inquiries, it is unable adequately to explain and evidence why its logs for the cited complainants (who state they did not consent to be charged for the service) all show messages consistently failing to be delivered for a lengthy period prior to the initial charge, but equivalent "failed" messages do not appear in the Level 1 provider or Verifier logs for those complainants.
14. The Respondent therefore accepts that the message logs for complainants do not constitute robust evidence of the complainants' consent to be charged for the service.
15. The Respondent accepts by virtue of the situation described in paragraph 13 above that it has breached para. 4.2.4 of the Code (provision of false information).

**Outcome 2.3 provides:**

**"Fairness**

**That customers of premium rate Services are treated fairly and equitably."**

**Rule 2.3.3 of the Code provides:**

**"Customers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent."**

16. The complaints received by the Executive all state that the complainants have been charged without their consent. The Respondent did not provide evidence which establishes that the complainants consented.
17. The Respondent accepts that it has breached Rule 2.3.3 of the Code.

**Aggravating Factors**

18. The Executive noted the following aggravating factors which are accepted by the Respondent:
  - a) Previous adjudications have made clear to the industry the importance of ensuring that customers' consent to charge is obtained and that evidence of this is held and supplied to the Executive on request; and
  - b) The Respondent had already been subject to a Track 1 procedure which had included requirements regarding consent to charge.

### **Mitigating Factors**

19. The Respondent noted the following mitigating factor which is accepted by the Executive:
- a) At least fifteen of the complaints refer to the customer being promised a refund although it is not known whether the Respondent issued any refunds.

### **Seriousness**

20. The breaches are each individually regarded as **very serious** and collectively, after final assessment, the case is regarded as **very serious** and it is agreed that appropriate sanctions should be imposed accordingly.