



Hardship and payment difficulties

1. [Introduction](#)
2. [Definitions](#)
 - a. [Hardship](#)
 - b. [Credit management processes](#)
3. [Customer's liability for debt](#)
4. [Core principles](#)
5. [Payment plans](#)
6. [Credit management processes](#)
7. [Level of access/restrictions](#)
8. [Disconnection of services](#)
 - a. [Service not yet disconnected](#)
 - b. [Service already disconnected](#)
9. [Fees & charges](#)
 - a. [Late payment](#)
 - b. [Reconnection fees](#)
 - c. [Line rental fees/service charges](#)
10. [Telecommunications Consumer Protections Code & Guideline](#)

Introduction

The TIO Constitution gives the TIO jurisdiction over complaints relating to the recovery of debts owed by customers. The TIO is able to investigate complaints irrespective of whether the debt is being pursued by a TIO member or its agent (including collection agencies and factors).

Definitions

Hardship

For the purpose of this position statement, "hardship" is defined as a state of disadvantage which results in an individual or household being unable to pay bills as required. Hardship can be ongoing or of limited duration, and can be triggered by a variety of factors, including:

- Unemployment/partial or full loss of employment
- Death in the family
- Acute/chronic illness of an individual or their family member, e.g. incident requiring hospitalisation, depression
- Poor literacy

"... providing independent, just, informal and speedy resolution of complaints"

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

Website: www.tio.com.au
Email: tio@tio.com.au

Postal address:
PO Box 276
COLLINS ST WEST VIC 8007

Street address:
Level 3
595 Collins Street
MELBOURNE VIC 3000

Tel freecall*: 1800 062 058
Fax freecall*: 1800 630 614
Telephone: (03) 8600 8700
Fax: (03) 8600 8797
TTY: 1800 675 692
*calls from mobile phones may incur charges

- Family breakdown

As hardship can be either ongoing or of limited duration, this position statement covers situations where customers have discrete debts and/or ongoing problems paying their accounts.

Credit management processes

In this position statement, the term “credit management processes” refers to suppliers’ standard processes for dealing with all aspects of managing an account, from a first bill to payment reminders and notices from collection and legal agents (up to but not including a Court issuing a Summons to attend legal proceedings). It also refers to suspension/disconnection of service, the imposition of late payment, reconnection and/or collection fees, and the registration of credit defaults with a Credit Reporting Agency.

Customer’s liability for debt

It is important to note that the TIO will only investigate complaints in accordance with this position statement where there is no dispute as to the customer’s liability for the debt (i.e. where the customer accepts that they are responsible for the debt in question and there are no unresolved billing or over-commitment issues) and where the customer has a genuine commitment to paying the debt.

Core principles

In the course of dealing with complaints involving hardship and payment difficulties, it has become evident to the TIO that it is not sufficient for a supplier to simply have processes in place, e.g. a process that allows customers to ask for a payment arrangement. Nor should a payment arrangement simply be a procedural step undertaken solely as part of a disconnection process. Rather, the TIO takes the view that credit management processes should be reasonable, in that they should accommodate a customer’s individual circumstances. Suppliers should offer payment arrangements with the intent of assisting customers who wish to pay their bills.

Where it is identified that a customer cannot pay a debt due to hardship, a supplier should:

- Quarantine the customer from its usual credit management processes so as to be able to deal with that customer individually. See also Management of debt process below.
- Commence negotiations with customers on the understanding that the agreement of both parties is a fundamental aspect of any payment arrangement.
- Adopt a flexible approach when negotiating with customers who request a payment arrangement.
- Keep its customers fully informed of their obligations under any arrangement negotiated and agreed to by both parties.

Payment plans

When investigating claims by a complainant that, due to hardship, they cannot negotiate a reasonable payment plan or adhere to an existing payment plan, the TIO will have regard to what that person can reasonably be expected to pay, given their individual circumstances.

The TIO will advise complainants that they have an option to see a financial counsellor to help them work out what they can pay, and that the TIO will have regard to any information provided by a financial counsellor. A list of financial counselling services is kept by the Australian Financial Counselling & Credit Reform Association at <http://www.afccra.org/counselling.htm>.

The TIO will ask the complainant to make a realistic offer as to what they can afford.

In making their assessment, the complainant will be asked to consider their level of income and the following expenses:

- Rent/mortgage
- Other utilities, e.g. electricity, gas, water
- Food & groceries
- Transport, including car expenses
- Childcare and school fees
- Clothing
- Holidays/gifts
- Chemist/medical/dental
- Any loan repayments

In addition, when determining what they can afford to repay, a complainant should take into account their likely future usage of telecommunications services.

The TIO generally accepts a complainant's self-assessment in good faith. Other than in exceptional circumstances, the TIO does not require specific evidentiary proof from a complainant that they are in a situation of hardship.

The TIO will also have regard to the following issues when investigating payment difficulty/hardship complaints:

- Adherence to previous payment plans, with particular regard to the reasonableness of those plans.
- The reasonableness of previous payment plans offered by the supplier
- The reasonableness of any payment plan proposed by the supplier
- The complainant's individual circumstances
- The size and age of the debt
- How the debt was incurred
- The nature of the services used
- The complainant's payment history
- The appropriateness of any fees incurred (e.g. late payment fees)
- The services the complainant requires on an ongoing basis

Credit management processes

It is the TIO's view that customers should repay amounts they consider affordable while a complaint is being investigated. At the same time, the TIO expects suppliers to withdraw the accounts in question from their standard credit management processes (with the possible exception of [access/restrictions, discussed below](#)).

In addition, if a customer and supplier form an agreement about a payment arrangement, and the customer adheres to that arrangement, the TIO would expect a supplier to cease related credit management action. This would include the supplier or its agent imposing late payment fees and listing credit defaults with a credit reporting agency (either directly or indirectly, i.e. by notifying a credit reporting agency of an overdue debt).

Level of access/restrictions

In general, it is the TIO's view that customers in circumstances of hardship should have basic access to their telephone service. What constitutes "basic access" may depend on the complainant's individual circumstances and the complaint itself.

The TIO acknowledges that there may be circumstances where it is appropriate to further restrict a customer's access.

Where there is a dispute about restriction of access, the TIO will consider the following issues:

- The kinds of restriction the provider is technically able to offer
- The level of access the complainant needs, e.g. 13, 1800, local, national and/or mobile access
- The complainant's usage history
- The effects of any restriction of services on the complainant's circumstances, social, financial and/or other
- Whether the outstanding debt is attributable to any particular usage, e.g. international calls
- The availability of other services to the complainant

When assessing disputes about restriction of access, one of the TIO's guiding principles is that it would not be an appropriate outcome if continued use of a service exacerbated a situation of hardship.

It is important to note that the TIO does not necessarily consider that pre-paid services (landline, mobile, and calling cards) are viable alternative services for customers in situations of hardship, due to the higher call costs that may be charged.

Disconnection of services

Service not yet disconnected

In situations where a complainant claims that they are unable to pay a telephone account due to hardship, and the service has not yet been disconnected, the TIO will ask suppliers not to disconnect the service pending resolution of the complaint.

In situations where a payment plan has been negotiated, the TIO takes the view that suppliers should not disconnect services because customers in hardship should be able to have basic access to a telephone service (see [Level of access/restrictions above](#)).

Where a supplier is considering disconnecting a service because its customer did not adhere to an existing payment plan, the TIO would expect a provider to consider why the customer did not adhere to the plan, having particular regard to

the reasonableness of the original plan and/or any notification from a customer of any change in their circumstances.

Service already disconnected

The TIO will investigate claims from complainants that their supplier has disconnected their service. In such cases, the TIO will consider:

- whether the customer is in financial hardship
- whether the customer has attempted to negotiate, or actually negotiated, a payment plan, with their service provider, and
- the reasonableness of any payment plan (see [above](#))

The TIO may ask a supplier to reconnect a service without charge, possibly with [restricted access](#).

The TIO's position statement 'Disconnection of service due to non-payment of another service' may also apply.

For the TIO's position on reconnection fees, see [below](#).

Fees & charges

Late payment fees

Late payment (or equivalent administration) fees can exacerbate a situation of financial hardship. The TIO takes the view that it is not reasonable for a supplier to apply such fees where a customer and supplier have negotiated a payment plan on the basis of financial hardship.

Where a complainant disputes a late payment fee, the TIO will have regard to the following factors when considering the reasonableness of that fee:

- whether the customer is in financial hardship
- whether the customer has attempted to negotiate, or actually negotiated, a payment plan, with their service provider
- the reasonableness of any payment plan (see [above](#))
- the financial impact of such a fee

Reconnection fees

Where a supplier imposes a fee after reconnecting a service, the TIO will consider the reasonableness of such a fee, having regard to:

- whether the customer is in financial hardship
- whether the customer has attempted to negotiate, or actually negotiated, a payment plan, with their service provider
- the reasonableness of any payment plan (see [above](#))
- the financial impact of such a fee.

Line rental/service charges

On a case-by-case basis, the TIO will also consider the reasonableness of a supplier continuing to charge line rental fees/service charges for services that have been suspended/disconnected for non-payment.

Telecommunications Consumer Protections Code

Chapter 7 of the Communications Alliance industry code 'Telecommunications Consumer Protections Code' deals with Credit Management. It requires suppliers to have flexible financial hardship policies to assist customers in hardship and to make the existence of these policies known to customers (when appropriate). The Code also contains rules for assessing financial hardship and the formation of payment arrangements.

The TIO has regard to the Telecommunications Consumer Protections Code when considering and investigating complaints.

Communications Alliance has published a companion 'Guide for a Financial Hardship Policy' to assist carriage service providers develop procedures for customers having difficulty paying their bills.

Effective: 29 July 2004

Last updated: 20 August 2008

