

Case studies

Mobile – contracts

The complaint

In August 2007, Brian signed two mobile telephone contracts, but cancelled both within the cooling-off period. In September 2007, he complained to the provider after receiving a bill. He received bills and cancellation of service notices in October and November. He said a supervisor at his service provider then told him that the matter had been resolved, with the accounts cancelled. He asked for written confirmation, but received nothing. He continued to receive debt collection letters and was issued with a credit default (See Glossary, page 67), despite indicating that the bills were in dispute.

TIO response

As Brian had not made any progress trying to resolve the matter with the provider, the TIO decided to formally investigate. While the investigation was under way, Brian said he continued to receive debt collection letters from the provider and an external debt collection company.

The outcome

The TIO presented Brian's letters to the provider and detailed his grievances. The provider agreed to send him a written apology, although it could not explain the delay in resolving the complaint other than to say that it had no record of Brian previously contacting it and that it had a backlog in processing returned handsets. The provider agreed to remove the complainant's credit default listing and waive outstanding charges of \$480.

Internet – privacy

The complaint

Christine contacted the TIO in early February 2008 claiming that for the past year she had been receiving accounts addressed to a person who did not and, to her knowledge, had never lived at her address. She said she had returned a number of accounts marked "unknown at this address". The provider told Christine it could not authorise a change of address for the account as she was not an authorised account holder. She said that debt collectors had called her demanding payment of the debt.

TIO response

The TIO told Christine to give the provider a last chance at resolving the complaint. She came back in mid-March saying that the provider had sent her a letter confirming that it had fixed the matter.

Several weeks later, Christine started receiving letters and phone calls from the provider's debt collectors. The TIO contacted the provider on her behalf but did not receive a response. Christine said that in the meantime the provider had called her apologising for the problem and saying it had now correctly modified its systems. By this time, the TIO was formally investigating the case and it still required a written response from the provider. Over six weeks, the TIO sent five e-mails and made one telephone call seeking a record of the resolution. When the resolution finally came through, the provider merely attached a copy of the initial letter sent to Christine in February 2008 claiming that the matter had been resolved.

The outcome

After further follow up from the TIO the provider agreed to:

- cease all debt collection letters to Christine
- provide a letter to the TIO and Christine that the matter had been resolved
- provide Christine with a letter stating that she did not owe the provider any outstanding monies.

Since the TIO's intervention Christine has confirmed that the matter had been resolved to her satisfaction.

Mobile – contracts

The complaint

Melanie's wallet was stolen and the offenders used her identification and credit cards to open two false mobile phone contracts with a service provider. She subsequently received bills for the mobile phone accounts, which she refused to pay, and then a letter from a collection agency demanding \$4 182. The collection agency then had her default listed. (See Glossary, page 67)

Melanie, who was 19, said she knew the people who had committed the fraud, but refused to tell the service providers as she feared retribution. She said that she wanted the charges waived as they were the result of fraud, but the provider said it required the identities of the people before it would consider doing this. The debt collection agency referred Melanie to the TIO.

TIO response

The TIO called Melanie and was advised by her mother that one of the fraudsters was in jail and one was free, so her daughter's fears were justified. The TIO asked Melanie to send it the debt collection letter so it could arrange for the debt to be suspended while the matter was investigated. We then asked the provider to reopen the case where it was revealed that the signatures on the mobile phone contracts were unlike Melanie's. No customer identification had been attached to the contracts, which was a breach of the provider's sales protocols.

The outcome

The provider agreed with the TIO that no fair-minded person could conclude that Melanie's signature and that on the mobile phone contract were the same. It said it was also concerned about the conduct of the dealer as there were no identification documents attached to the contract as per company policy. It agreed for the charges to be waived and for the default listing to be removed.

Landline – disability

The complaint

Jenny has trouble gripping a handset for long periods and so she signed up for a landline service that offered a disability handset with SMS function. She discovered that she could not send SMS messages as she had a silent phone number.

Although the provider said it had told Jenny when the phone was installed that SMS was not available from silent phone numbers due to technical and privacy reasons, she denied being informed.

She said she would need the SMS function and a silent line as she had an abusive ex-husband who had made threatening calls. Jenny also asked for help with a \$700 phone bill that was incurred by her schizophrenic son on her account.

TIO response

The provider confirmed to the TIO that SMS messages could not be sent from silent lines as the receiving phone service needed a number in order to respond. The TIO recommended to Jenny that she buy a pre-paid mobile service in order to send SMS, and also ensure her son did not incur unpayable bills on her behalf.

The outcome

The provider said even if it were possible to develop telephone networks that allowed SMS services with silent lines, it was under no obligation to provide a customer with one. As a gesture of goodwill, the provider offered Jenny a credit of \$250 towards a pre-paid mobile that could be used to send SMS messages. It said the \$700 phone bill was in fact \$469 and arranged a \$30 a week payment plan for the outstanding debt. The TIO believed these outcomes were a fair and reasonable compromise and recommended that Jenny accept the offer, which she did.

Case studies continued

Internet - faults

The complaint

Peter had a wireless internet connection and he signed up for a Voice over Internet Protocol (VoIP) (See Glossary, page 67) service with a VoIP service provider. He said the VoIP service dropped out frequently and he was not able to hear calls due to garbled and broken sound quality. His VoIP service provider performed a number of tests and told him that the fault might have been caused by an unstable internet connection. It also said:

- that the quality of a VoIP service would not always be perfect
- he should provide documentation from his wireless service provider that proved his internet connection was stable and met the VoIP service provider's minimum requirements
- it would release him from his contract without penalty if quality issues could not be addressed after verification from his wireless service provider
- it did not believe that he was helping to resolve the complaint.

Peter disputed the VoIP service provider's claim that it had told him when he bought the service of VoIP's limitations.

TIO response

Based on the customer notes sent to the TIO by the VoIP service provider, the TIO did not agree that Peter was not helping to resolve his own complaint. Peter had contacted the VoIP service provider about the fault, conducted a connectivity test, reported the results to the VoIP service provider and installed a new router. The TIO asked the VoIP service provider to demonstrate what action it had taken to assist Peter in repairing the fault.

The outcome

Despite its best efforts, the VoIP service provider was unable to resolve the technical issues affecting the quality of Peter's VoIP, and agreed to:

- credit all access fees for the service for the duration of the connection; a total of \$149.50 for 10 months of service
- release Peter from the remainder of his contract without penalty (normally \$99) due to the VoIP service provider's inability to guarantee the quality of the VoIP service.

While the service provider was not able to solve the problem, the TIO believed it had offered a fair and reasonable outcome which was that Peter was released from any contractual obligations, and not financially disadvantaged as a result of his complaint.

Internet - provisioning

The complaint

A previous occupant of Nicola's house had had ADSL connected and she was surprised when her application to have the service connected was knocked back. The provider told her that she was too far away from the exchange and there was too much transmission loss on her line.

TIO response

The service provider told the TIO Nicola's number did not pass its qualification test. It said the previous service had been connected in error as the line had never met the minimum specifications required for an ADSL service.

The outcome

The TIO believed that the service provider's response was fair and reasonable as it had demonstrated to Nicola that ADSL could not be supported to a proper standard at her home. The TIO's jurisdiction does not extend to directing a service provider to upgrade its infrastructure so that an ADSL service can be delivered, nor does the TIO have the authority to force a service provider to make a decision that is not in its own commercial interest.

Mobile - billing and payments

The complaint

Sasha's phone was stolen while she was in Europe but she only discovered the theft once she arrived back in London. She immediately reported the theft to police but failed to inform her service provider. Once back in Australia, she received a bill for about \$12 000 which had accrued after her phone was stolen. The service provider offered to cut the bill to \$6 000, for charges incurred before the phone was barred for high usage. Sasha felt the service provider should provide her with a further reduction and approached the TIO.

TIO response

We considered what opportunities the service provider had had to detect the high use and what steps they could have taken to prevent further debt accruing. The TIO also examined how the provider monitored typical use by customers. We asked the provider for the bilateral agreement it had with the overseas carrier. Many of these agreements allow for the "home" carrier to be notified when the pre-bill total exceeds a prescribed amount during a fixed period.

The outcome

We concluded that as the charges accrued in such a short time, neither the provider nor the overseas carrier could have detected or acted upon the large amount of pre-bill charges any sooner than they did. We felt that the offer to waive charges accrued after Sasha was notified of the high pre-bill spend was a fair and reasonable resolution and Sasha should pay the remaining \$6 000. The TIO also concluded that Sasha was obliged to report the theft of her phone to them as soon as she discovered it, and this was a fair and reasonable expectation on behalf of the provider.

Mobile premium services

The complaint

Nadine received an unsolicited text message in December 2006 inviting her to download a free ring tone, which she did. She began receiving regular text messages, which she ignored. She believed they were junk mail as she was not charged for the messages. Nadine claimed that \$370 charges for premium text messages then appeared on her September 2007 bill. She sent a stop message to the third party SMS content provider. Nadine felt that had she been made aware that she was being charged for the premium text messages she would have instructed them to be stopped much sooner. Accordingly, she requested that the \$370 be waived by the provider.

TIO response

We asked the provider for an itemised copy of all text messages sent to Nadine by the content provider. It showed that charges for text messages only began to accrue after 13 March 2007. As no charges were accrued for the first three months, we thought that it was not unreasonable for her to assume that such messages were junk mail. Based on the information supplied the TIO did not believe it was fair and reasonable to assume that Nadine was aware that the services were accruing charges, particularly if no charges were being reflected in her monthly bills.

The TIO also noted that under the Guidelines to the Mobile Premium Services Industry scheme, a \$30 expenditure notification must be sent to the customer once they reach or exceed a \$30 expenditure increment. In Nadine's case this notification was not sent, despite her reaching the \$30 spend in March 2007. The TIO believed that had Nadine received a notification she would have become aware that charges were accruing on her account that she claims she felt were free, and would have had the opportunity to discontinue the service if she did not wish to incur additional charges.

The provider also requested that the TIO pursue the third party SMS content provider regarding Nadine's complaint. However, the TIO declined to do so as it does not have the jurisdiction to raise complaints against third party suppliers.

The outcome

Due to the complication of the billing issue as a result of the third party SMS content provider, the telecommunications provider offered to resolve the complaint by agreeing to waive the premium text charges of \$368.50. The TIO believed this was a fair and reasonable outcome for Nadine and she accepted the offer.

Case studies continued

Mobile Premium Services

The complaint

Stephen said his son used his pre-paid mobile phone to enter a competition. He said that his son followed the instructions to unsubscribe immediately after entering the competition. Soon thereafter, Stephen said he began to regularly receive premium messages, forcing him to top up his mobile phone credit weekly. Stephen said he contacted the content service provider and was told that he would no longer receive messages. This was confirmed through a message on his phone. However, Stephen said he continued to receive premium messages. Stephen claims that based on the frequency of topping up his credit on his pre-paid mobile phone, he estimates he lost \$250 – \$300 within a four to five month period. He believed that a reasonable outcome to his complaint would be for the service provider to stop all premium messages to his phone and refund the credits lost as a result of the unwanted premium messages.

TIO response

The TIO detailed Stephen's grievances to the service provider who said they had provided Stephen with step-by-step instructions on how to unsubscribe from the premium message service/competition, and how best to prevent any further unsolicited premium messages being sent to his service. The service provider also supplied the TIO with a spreadsheet detailing the premium messages received on Stephen's mobile and the charges incurred. The TIO acknowledged that the service provider was not directly responsible for Stephen receiving the alleged unsolicited premium messages, but emphasised that it did bill or deduct credits on behalf of the content provider, and as such did have responsibility to address and facilitate the resolution of Stephen's complaint. This was supported by the guidelines under the Mobile Premium Services Industry scheme (MPSI) which state: "the mobile carriage service provider is the first point of contact for the customer as it ensures that the customer's issue is dealt with by the party who is in the best position to offer a resolution".

The outcome

After intervention by the TIO, the service provider offered to pay Stephen \$278. This payment was reimbursement for premium messages received from the time Stephen first unsubscribed from the competition. The TIO believed this was a fair and reasonable offer from the service provider, and the offer was subsequently accepted by Stephen.