

## **Credit Management: provision of unlimited credit**

**Date of determination: 8 February 2005**

**Decision accepted by the complainant: Yes**

### **The Complaint**

The complainant contacted the TIO about a large number of 190 calls that had been billed to her telephone account in January 2003. She stated that the calls had been made by her son without her knowledge. The complainant advised that she was “angry” that her telephone company had not notified her of the charges before they accrued to approximately \$3000. She stated that her usual monthly account was approximately \$40 to \$50. The complainant advised that the matter had been referred to debt collectors and her son was paying off the debt. However, she stated that she remained unable to make local or 13 calls from her phone after requesting that her service provider place her on incoming only calls until the debt was paid. The complainant stated that she sought a resolution whereby her access to local calls was reinstated while her son continued to pay off the debt. Or, ideally, she advised that she would like the remaining debt waived.

### **TIO Response**

The TIO initially raised the complaint as a Level 2 and asked the telephone company to present its perspective on the matter. Responding to the TIO’s investigations, the telephone company advised that it was its view that, as the account holder, the complainant was responsible for the security of the service and therefore liable for the charges. The telephone company also provided evidence that the complainant had previously had a 190 bar in place but requested that this be lifted. The telephone company submitted details from past accounts on which the complainant had been charged for 190 calls. The TIO asked the complainant to comment on this information and the complainant responded that she had had 190 access installed for her benefit only so that she could enter competitions. She also noted that the maximum charge she had received for such calls in the past was \$3.85 and that she had never expected her son to make 190 calls totalling \$3000.

Failure to resolve the matter at Level 2 resulted in the TIO upgrading the case to a Level 3. The TIO focussed its investigation of this complaint on the telephone company’s actions in relation to the TIO position statement on Unlimited Credit – Overcommitment (premium rate services). The telephone company responded that it believed its actions were in accordance with the position statement. Specifically, the telephone company advised that it had barred the complainant’s service on 5 January 2003 as soon as it noted the high pre-bill amount. The telephone company stated that its Fraud Department had reviewed the account and noted the charges. The information provided to the TIO indicated that a total of \$2994.86 in 190 charges had been incurred on the account before it was barred. The telephone company advised that the disputed calls commenced on 16 December 2002.

In its Level 2 response letter to the TIO the telephone company had stated that it was trialling a process where it would advise a customer of unbilled charges when there was a “significant amount of unbilled charges on the pre-bill”. The telephone company stated that the complainant’s disputed charges were accrued after the trial commenced and “upon identifying an unusual increase in calls to 190 numbers from [her]...service, the telephone company reviewed the account and barred the service on 5 January 2003.” However, in its Level 3 response, the telephone company advised that the complainant’s service “was not a part of the stated trial for unusual calls on a customer’s service”. The telephone company also stated that it had in place “a courtesy call program” where it called customers who had unbilled charges

that exceeded \$1000 and that “as a result of adherence to the courtesy call program, the complainant’s service was barred.”

The TIO upgraded the complaint to Level 4 and issued a preliminary view. In its preliminary view, the TIO noted that the telephone company’s initial response suggested that the complainant’s account was included in its trial and that therefore it should have responded to the high-unbilled charges in accordance with the procedures on the trial. While the TIO noted that the telephone company’s later response contradicted the earlier information, referring instead to the “courtesy call program”, the TIO found, after examining the telephone company’s customer care records, that there was no evidence that the telephone company had contacted the complainant as per this program.

The TIO noted in its preliminary view that the telephone company had maintained that it had acted in accordance with the TIO’s position statement because it had barred the service once it became aware of the unusually high charges. However, the TIO commented that the position statement states that the TIO considers not only when the carrier “became aware”, but when the carrier “ought reasonably to have become aware that the customer was incurring an unusual amount of debt.” The TIO noted that, despite the complainant’s usual average monthly account, \$2994.86 had been incurred before the telephone company reviewed the account. The TIO noted that the telephone company had advised that its current trial targeted customers who had accrued a pre-bill debt of “at least \$1000” and for whom this is “double the average usage and charges incurred in relation to calling patterns on the prior bill.” The TIO found that the complainant’s account fell within this category: an account reconciliation provided by the telephone company indicated a \$65.53 average monthly bill prior to the period of the disputed calls. However, the TIO noted that, while the telephone company had provided conflicting information on this point, its most recent advice was that she was not part of the trial.

Also in its preliminary view, the TIO noted that the telephone company had advised that it did not take into account a customer’s payment history when considering whether to bar a service due to unusually high calls. However, the TIO stated that its position statement does outline that the TIO will take into account the customer’s usage and payment history when determining a reasonable resolution to such complaints. The TIO commented that the complainant appeared to have a history of payment difficulties and had paid the majority of her accounts in instalments.

Having considered the complainant’s usage and payment history and the particular circumstances of this complaint, the TIO formed the preliminary view that a fair and reasonable resolution to this complaint would see the telephone company waiving all 190 charges incurred after 28 December 2003, minus the amount already paid by the complainant’s son. The TIO noted that in July 2004 the complainant’s son had paid approximately \$340 towards the debt. Based on the itemised record of the Information calls provided by the telephone company, there appeared to have been a period of high activity on the account on 27 and 28 December 2003, which the TIO stated the telephone company could reasonably have been expected to note. The TIO also noted that several of the calls made between 16 and 28 December 2003 alone cost over \$100, which was almost double what the complainant’s average monthly account was prior to this period. Based on the itemised record, the TIO calculated that \$678.83 had accrued in 190 calls by the time of the last call made on 28 December 2003. The TIO advised that it had considered the telephone company’s position that the customer is responsible for the security of the service and its advice that the complainant was aware of the availability of barring as she had previously had 190 barring in place. However, the TIO stated that it accepted the complainant’s advice that she had no reason to expect her son to make such calls and accrue such a debt.

The TIO also noted that the complainant was concerned that she would have to pay a reconnection fee when her incoming calls only bar is lifted. The TIO stated that it was unsure whether the telephone company would normally charge a reconnection fee in this instance but believed that it would be reasonable for the telephone company to waive the reconnection fee given that the complainant proactively requested that the bar be placed on her service while the debt was paid.

Responding to the TIO's preliminary view, the telephone company denied that it had provided conflicting information in relation to its trial of contacting customers who have a high pre-bill. The telephone company stated again that the trial commenced after the period that the disputed calls were made. The telephone company also stated that its Fraud Detection Unit, which noted the complainant's high-unbilled charges, was "not a part of the courtesy call process".

The telephone company advised that it remained its position that the complainant was liable for the disputed charges. However, the telephone company stated that "in an effort to resolve the matter" it would withdraw charges accrued after 3 January 2003, when the usage on the account reached \$1000. The telephone company stated that a further \$1678.59 was accrued after this date. The telephone company advised that it would accept a payment arrangement for the remaining debt.

In response to the TIO's request that it waive a reconnection fee when the complainant's outgoing call bar was lifted, the telephone company advised that the complainant was connected to a service with local call access on 1 October 2004 and had paid a reconnection fee of \$27.50 for connection. The telephone company stated that it was not prepared to refund this fee. The complainant confirmed to the TIO that she has access to outgoing calls and stated that she believed this aspect of her complaint resolved.

The TIO advised the complainant of the telephone company's offer to waive all charges accrued after 3 January 2003. The complainant stated that she rejected this offer and sought a resolution whereby all the remaining charges were waived.

### **Resolution**

As the TIO had not been provided with information that had caused it to alter its preliminary view and the parties had not been able to resolve the dispute through conciliation, the TIO made the decision that this matter would best be resolved by way of a formal determination.

The Ombudsman issued a determination in line with the TIO's preliminary view. He stated that he believed it reasonable that the telephone company waive all 190 charges accrued on the complainant's account between 29 December 2002 and 5 January 2003. The Ombudsman advised that the telephone company could reasonably have been expected to note the high charges after the period of high activity that occurred on the account on 27 and 28 December 2003. Further he stated that the \$678.83 that had occurred by 29 December 2003 was a reasonable amount for her to pay considering her usual monthly account and the fact that she was responsible for the security of her service and aware of the availability of 190 barring.

The Ombudsman determined that the telephone company should waive the amount of \$2316.03 from the complainant's account.