

Determination

Subject: Entitlement to compensation under the Customer Service Guarantee Standard

Date of determination: June 2007

Decision accepted by the complainant

Circumstances of the complaint

This complaint is about whether the telecommunications provider (to be referred to in this Determination as the CSP, acronym for Carriage Service Provider) is liable to the complainant for any customer service guarantee ("CSG") payments under the *Telecommunications Customer Service Guarantee Standard 2000 (No.2)* ("the CSG Standard"), as a result of the way it responded to the complainant's notifications to it of faults with his landline service.

The complainant's perspective

The complainant claims that he reported a number of faults to the CSP with his service due to excessive noise levels between May 2005 and March 2006. He has claimed to the TIO that his landline services were disrupted during this period as there was "*crackling and a lot of noise*" and at times he could not make or receive calls due to this fault. The complainant has claimed to the TIO that when he reported the fault to the CSP he was regularly advised it was a problem with his handset and despite testing with replacement handsets and his neighbour's handset "*the fault was always the same and the noise was always the same*".

The complainant claims that he was advised by a technician in March 2006 that he had placed a temporary line into his property from the pit in the street to his house as the tube that held the line was broken and the sharp edge of the break had been piercing the outer layer of the wires and that this was causing the noise on the line. The complainant claims that the noise and intermittent inability to make or receive calls did not cease until this repair took place.

The CSP's perspective

The TIO asked the CSP to reconsider its view that the handset was the cause of the fault, given the repair of the line had solved the problems with the service that were reported to the complainant. The TIO also asked the CSP to consider whether proper diagnosis of the fault occurred. The CSP advised that the complainant informed the CSP that his phone was faulty and that the CSP was acting in good faith in its attempts to rectify the problem. The CSP advised that although there were 3 faults logged in 30 days on 23 August 2005, 25 August 2005 and 7 September 2005 the faults were logged under different trouble types and thus did not qualify for "escalation" as part of its response procedures.

The TIO has also drawn attention to call records which appear to show repeated drop outs with the service and extended periods of not being able to use the service when a fault report was made. The CSP has advised that considering the lack of fault reports related to call interruption causing redials it would be unfair to use this data as a basis of evidence that an intermittent fault existed.

During the course of the investigation, the TIO has been advised by the CSP of its view that no CSG entitlement was applicable for the complainant's service due to the nature of the faults recorded and the lack of evidence that the service was affected by the fault.

The TIO's assessment of evidence

The CSG Standard does not cover Customer Premises Equipment (CPE) faults. Central to this dispute, however, is whether it is reasonable for the CSP to have repeatedly classified the faults reported by the complainant in this case as CPE faults. In considering this question, the TIO has taken into account the evidence presented by both parties to the dispute, and whether that evidence supports the view that the faults should be CSG eligible.

As a preliminary consideration, the TIO also acknowledges that the complainant bears some responsibility to report faults that have not been adequately repaired and that a failure to do so leaves open the reasonable interpretation by the CSP that the problem is resolved.

The TIO has examined the seven fault reports that have been made on the following dates to the CSP, 19 May 2005, 23 August 2005, 25 August 2005, 7 September 2005, 28 December 2005, 13 February 2005 and 10 March 2005, and comments as follows in relation to each fault.

Fault report #1 made on 19 May 2005. The TIO notes that on this occasion the CSP fault report shows that the complainant reported a faulty phone and a technician appears to have attended his premises and replaced the handset. The fault was cleared on the CSP's records and the complainant did not call the CSP back to report any further problems.

The TIO considers that in this instance it is reasonable for the CSP to assume the fault has been diagnosed and cleared correctly as the handset is replaced.

Fault report #2 made on 23 August 2005. Again the CSP has noted this fault as Customer Premises Equipment and another handset was dispatched to the complainant for his use. The fault was cleared upon the CPE being replaced.

The TIO considers that the CSP acted appropriately by responding to the complainant's report of a faulty phone, and although the phone had been replaced 3 months prior, it was not unreasonable at this stage to consider that CPE may again have caused the problem reported by the complainant.

Fault report #3 made on 25 August 2005. The cause of this fault was noted as a Non Standard Fault (NSF). The TIO notes that the customer said his line was ringing softly and he had been unable to increase the volume. The CSP advised in its response to the TIO's request for Additional Information at Level 3 that during this report the line was sent for diagnosis in order to do remote testing, however the complainant did not return the CSP's messages and as such the case was closed without further diagnosis taking place.

The CSP also advised that the complainant called on 30 August 2006 in relation to his TIO Level 1 complaint, and that he was very unhappy with the assistance that was offered to him by the CSP as all he wanted was a technician to come and check his phone. The CSP advised that it refused this request advising he could perhaps have a friend or associate check the phone to ensure it was "set up correctly". The TIO notes that the CSP's customer care notes on 30 August 2006 advise that "*Cus rung [name of department] via TIO to log complaint re ongoing fault on landline service. log [number of complaint] and transferred to relevant area. . . [name of representative].*" A further record of the transfer on this date "*call escalated to TL to complaint about handset that he could not increase volume advised cust to speak to faults as he claims there was fault on line transferred to [name of representative] in [faults department].*" From these notes recorded by the CSP it is clear from the customer care notes that the complainant considered there was a fault on his line. The TIO notes that while the fault report states that further testing was necessary and the CSP was willing to do this, there appears to be a refusal to schedule a visit for a technician to the complainant's premises.

Considering that the complainant had by this time had his phone replaced on two occasions, and had directly informed the CSP that he believed there was a fault on his line and had requested a visit from a technician the TIO does not consider it reasonable to classify this fault as reported a fault relating to CPE or a NSF. Nor does the TIO consider that this fault was cleared after the complainant's discussion with the CSP.

Fault report #4 made on 7 September 2005. The fault was noted as Customer Premises Equipment. The CSP dispatched a technician to replace the handset as fault report notes stated that he wanted a technician out as he needed help to use it and change the volume, etc. From the fault report it appears that a technician did attend the complainant's premises on 8 September 2005. The CSP has further advised in its response to the TIO's request for further information that no further diagnosis of the fault was required.

The TIO requested further information regarding the entry in this fault report that states "**Potential level 2 fault.* please contact team leader to attend*", particularly whether appropriate escalation of the fault had occurred. The CSP advised that the service did not qualify for escalation as it did not have a minimum of 3 fault reports with the same trouble type or four unrelated reports in one calendar month. The CSP also advised the TIO that:

"the escalation call back queue is for "level 1" faults (3 faults logged) where a manual review is performed to see if escalation to level 2 is warranted. In this case notes were made to indicate this could be a "potential" level 2. Soon after this case was closed without contacting the complainant or escalating. We believe this was because a review of the three reports at this time would have shown that escalation criteria had not been met and the report made on 25 August 2005 was closed without further investigation as we did not hear from the complainant."

By the time this fault was reported the complainant had had two previous handsets. He advised the CSP in previous dealings that he believed there was a fault on this line and had made 3 fault reports within a 15 day period. The CSP advised that no escalation was warranted according to its guidelines, particularly as the complainant had not contacted it back. The TIO considers, as stated above, that the complainant had contacted the CSP back and had not received the assistance he requested. Accordingly, the TIO considers that had further testing on the line been done by the CSP during this visit as requested 8 days earlier, the service may have been permanently restored at this time rather than several months later on 13 March 2006. The TIO considers that it is unreasonable for the CSP not to have conducted further testing on the service given the recent fault and complaint history reported by the complainant.

Fault report #5 made on 28 December 2005. The fault was described by the complainant as "*crackling noise heard during phone conversations ... calls are dropping in and out*". The CSP's notes further record that "*... isolation test not done ... started to advise [standard advicere potential costs if the fault is confirmed to be caused by CPE] and customer said don't worry about it and hung up.*" The fault was then closed.

The complainant has claimed to the TIO that on this occasion he went to his neighbour's property and borrowed the phone to test his handset, however he found no difference so called the CSP back and continued the report. During this investigation the TIO has not found any evidence to support this claim.

In the circumstances, the TIO considers that the CSP acted appropriately by closing this fault without taking further action.

Fault report #6 was made on 13 February 2006 and the fault was recorded as a Customer Premises Equipment fault and that there was trouble storing the numbers on the handset. The

CSP responded to this request by couriering out a new phone on 15 February 2007. The TIO agrees with the CSP's view that the fault was specifically mentioned as a problem storing the numbers and as a result a replacement of the handset should have resolved this problem as described by the complainant.

Fault report #7 was reported as noisy on 10 March 2006 and the CSP's records showed that a technician attended on 13 March and the service was restored as workable. The CSP advised as the service was workable throughout the fault period the complainant is not eligible for CSG.

The TIO's assessment of the complainant's eligibility for compensation under the CSG Standard

As a result of this examination, for the reasons given above, the TIO has ruled out five of the seven instances as being potentially CSG eligible because on each of those occasions the CSP acted appropriately given the circumstances of each fault report.

It is in relation to the faults reported on 25 August 2006 and 7 September 2006 that the TIO has found that the CSP did not act reasonably in addressing the fault. Relevant to this finding, was the TIO's consideration of the call records for the dates around this time. Those records show evidence of periods where the service has been significantly disrupted. The TIO particularly notes that there are no calls whatsoever made from the service between 24 August 2005 to 29 August 2005 or 5 September 2005 to 13 September 2005 and that only a few short calls are made between 29 August 2005 and 5 September 2005. The TIO considers that the number of calls in this period is dramatically fewer than what was recorded, for example, in the months of both January and February 2006.

As a result of this evidence the TIO considers that these faults are consistent with the definition of a "fault or service difficulty" in s4 of the CSG Standard under the grounds of "repetition of service cut off" and "disruption to communication because of excessive noise levels."

As a result the TIO considers that the CSP should pay CSG between the fault reported on 25 August 2005 and the closing of the fault report on 16 September 2005. The TIO finds that the CSP should pay the amount of \$420.00 of CSG entitlements to the complainant. This is based on fourteen working days after mandatory completion date of 26 August 2005, from 29 August until 15 September 2005, at \$12 per day for the first 5 working days, and \$40 per day for the 9 working days thereafter.

DIRECTIONS:

Having considered all the information before the TIO relating to this complaint, and having had regard to the law, good industry practice and what is fair and reasonable in all the circumstances, I believe that it is appropriate for the CSP to compensate the complainant in accordance with its obligations under the CSG Standard. Having considered all the evidence and information before the TIO relating to this complaint, and for the reasons set out above, I consider it reasonable that the CSP should provide a credit of \$420.00 to the complainant in compensation under the CSG Standard.

This action should be completed within 14 days of the TIO providing the CSP with a completed TIO Release Form signed by the complainant.

Simon Cleary
Deputy Ombudsman
June 2007