

## **DETERMINATION**

### **Subject: Intermittent fault; eligibility for compensation under the CSG Standard Determination accepted by complainant**

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#### **Circumstances of the complaint**

This complaint is about a claimed intermittent/recurring fault condition on the complainant's telephone service over a period of approximately 11 months. The fault appears to have been permanently repaired and the central issue in dispute is whether the complainant is eligible for rebates under the Customer Service Guarantee (CSG) Standard.

#### **Complainant's position**

The complainant contacted the TIO in April 2008 regarding a fault he claimed to be experiencing on his telephone service. He told the TIO that he had experienced problems with his telephone service from the time he moved to his current residence on 1 November 2007. He told the TIO that the problem manifested intermittently, but regularly, as a no-dial-tone on pick-up. The complainant told the TIO that he had contacted the Carriage Service Provider (CSP) several times regarding this continuing service difficulty, and that technicians attended his property on several occasions, but the fault persisted until October 2008 when he claims that the CSP rectified the fault by replacing or swapping the voice line from the exchange to the pit.

#### **The CSP's position**

In response to the complaint, the CSP advised the TIO that 12 fault reports had been logged in relation to the complainant's service between November 2007 and October 2008. It claimed that on each occasion of a fault report being logged, the CSP attended within the timeframes outlined in the CSG Standard, and that no fault was found.

The CSP claimed that the complainant did not report a fault on his service between 14 March 2008 and 1 August 2008, so CSG could not be applicable for any claimed intermittent fault during this period. It therefore claimed that there are two distinct fault periods: from November 2007 to March 2008, and from August 2008 to October 2008.

The CSP claimed that it did not replace or swap the voice line from the exchange to the pit in October 2008. Rather, it claimed that it replaced a cable pair within the exchange rack that "may have been loose." The CSP's fault reports indicate that a Gel joint was remade on 28 October 2008 and that no further service difficulties were reported after that. The CSP does not believe that the Gel joint was responsible for all faults that the complainant reported from November 2007 because "gel affected joints are generally the result of moisture being drawn into the joint and therefore corroding from the inside of the gel housing [and] it would be expected that the moisture, most likely as a result of heavy rain fall over the winter months, was not present during the first period of faults". The CSP also claimed that moisture-related faults are generally noisy or static faults, whereas no dial tone faults generally mean that a connection has broken completely.

#### **TIO's consideration**

In assessing this complaint, the TIO has considered the information provided by both parties, and has had regard to the law (including the CSG Standard), good industry practice and what is fair and reasonable in all the circumstances.

The details of the dispute are set out below.

#### Reporting service difficulties

The TIO is of the view that when a telecommunications provider is notified of a service difficulty, it should attend to this notification in accordance with the timeframes set out in the CSG Standard, which states that faults in rural areas must be repaired by the end of the second working day after the fault is reported. The TIO notes that the complainant is in a rural area for the purposes of the CSG Standard. The TIO notes that faults may be reported in a number of different ways and are characterised by the provider being notified by any reasonable means that a customer has a service difficulty. The provider may decide how to log these reports, but the absence of a 'fault report' when a provider has been notified of a service difficulty is not sufficient grounds to claim that rebates under the CSG Standard do not apply. Complaints made via the TIO to the CSP can include notification of service difficulties and the TIO expects that these reports are acted on accordingly.

#### System fault reports from November 2007 to 14 March 2008

The complainant has told the TIO that he experienced service difficulties from the time he moved into his residence on 1 November 2007. The CSP's records indicate that he first reported the service difficulty on 12 November 2007 and that fault reports were also logged on 17 November 2007, 29 November 2007, 8 December 2007, 19 December 2007, 20 December 2007, 11 January 2008, 28 February 2008 and 14 March 2008. Each fault report is addressed in turn below.

##### *12 November 2007*

The fault was logged as an outgoing call problem. The CSP called the complainant to discuss the fault on 14 November 2007, but notes indicate that it could not hear the customer over the static on his phone. The fault was attended on 15 November 2007 and no fault was found and no action taken.

##### *17 November 2007*

The fault report is unclear how this fault was logged, or whether the complainant reported the service difficulty. The fault notes indicate that there is an intermittent issue with no dial tone. It appears that the complainant was offered diversion, but that he declined this. There are no notes to indicate what kind of diversion was offered, or why the complainant declined the offer. The report indicates a possible fault in the first socket (which is the complainant's responsibility) and no other fault found. This fault was reported on a Saturday so needed to be attended by close of business on Wednesday 21 November 2007. The fault was attended on the evening of 20 November 2007, within CSG timeframes.

##### *29 November 2007*

The complainant reported a no dial tone fault and requested an appointment for 4 December 2007 between 5:00pm and 7:00pm. As it appears that the complainant specifically requested this appointment time, CSG timeframes do not apply. The technician attended and noted that the line tested OK and that no fault was found.

##### *8 December 2007*

The complainant lodged another no dial tone fault after 5:00pm on 8 December 2007, which was attended by a technician on 11 December 2007, within CSG timeframes. The complainant was not in attendance. No fault was found.

##### *19 December 2007*

A no dial tone fault was reported by the complainant and the CSP attended on 21 December 2007, within CSG timeframes. The CSP noted that the line tested OK but that the joint may be a factor.

*20 December 2007*

This fault docket appears to have been created in error. It contains a note that the technician should keep accurate notes in relation to the complainant's service and that it was possible that a "Level 2 investigation" or Customer Network Improvement would be required to resolve the fault.

*11 January 2008*

This no dial tone fault was logged on a Friday. Under the CSG standard, the fault needed to be rectified within 2 working days, by 15 January 2008. The CSP attended on this date and testing showed that the line was within specifications to the pit and no corrective action was taken. The CSP staff noted on 11 January 2008 that there was a lot of static on the line. The complainant was offered call diversion, but he declined this due to poor mobile reception.

*28 February 2008*

This no dial tone fault was reported after 5:00pm on a Thursday. Under the CSG standard, the fault needed to be rectified by 4 March 2008. A technician attended on 2 March 2008 and no fault was found and no corrective action taken.

*14 March 2008*

This no dial tone fault was reported after 5:00pm on a Friday. Under the CSG standard, the fault needed to be rectified by 19 March 2008. This fault was not attended until after business hours on 19 March 2008 and is therefore classed as a missed appointment.

- In the TIO's view, the complainant is entitled to CSG payments for this missed appointment.

The clear codes indicate that no fault was found and that no corrective action was taken. However, the fault report indicates that the fault is an ongoing issue and may require a Level 2 investigation or a Customer Network Improvement. On 19 March 2008 an entry states "pls give to Level 2 to investigate". Although no fault was found on testing, it appears that the need for a Level 2 investigation could reasonably be understood to be an acknowledgement of an ongoing service difficulty.

#### Level 2 investigation from 20 March 2008

The CSP's records indicate that a complaint report was opened on 20 March 2008 in relation to the complainant's claims. The complaint summary indicates that the complainant was unhappy that the CSP missed the 19 March 2008 appointment and that he was unhappy that he had had an ongoing issue for about four months and that this issue had not been resolved despite numerous technician's visits.

On 11 April 2008, the complainant indicated that he was very frustrated with the intermittent faults on his line and that he was refusing to pay 100% of his rental because he had not had 100% use of the line. Despite the complainant indicating that his service was faulty, the CSP does not appear to have logged a fault report or attempted any action to address the fault.

On 30 May 2008, the complainant continued to pursue his complaint, including wanting an apology for the missed appointment of 19 March 2008. In conversation with the CSP's representative, the complainant indicated that one of the resolutions he was requesting was for his line to be fixed and for a technician to attend, including checking for faults in his Customer Premises Equipment. Complaint handling notes of 11 June 2008 indicate that the CSP tested the line on a number of occasions and that no fault was found. There is no indication of a technician attending the complainant's premises at this time.

### TIO complaint notifications

On 9 April 2008 the TIO raised a Level 1 complaint in relation to the faults on the complainant's service. The CSP was notified on this date that the complainant considered that his line was faulty. As noted above, the TIO is of the view that when the CSP is advised of a service difficulty, this amounts to notice of a fault and the TIO expects the CSP to consider it accordingly.

On 4 August 2008, the TIO raised a Level 2 complaint and again informed the CSP that the complainant claimed to have a faulty service.

The TIO's Level 3 letter sent on 12 September 2008 states that the complainant claimed that the fault was ongoing.

### Letter of apology

A letter of apology was sent to the complainant on 9 July 2008. The letter contained an apology for not contacting the complainant in a timely manner in relation to the fault attended after hours on 19 March 2008. I note that the complainant continues to request an apology from the CSP for missing this appointment, despite having received this letter. In my view, the CSP's letter is specific in apologising for any inconvenience caused by not contacting the complainant in relation to attending the 19 March 2008 fault. Whilst the complainant continues to be aggrieved by the CSP's failure to notify him in a timely manner, I am of the view that the CSP has apologised and that it should pay CSG entitlements in relation to this particular fault report (as above), and that this is sufficient resolution to this aspect of the complainant's complaint. CSG entitlements are discussed and calculated below.

### System fault reports from 1 August 2008 to present

#### *1 August 2008*

The complainant reported that he had an intermittent noisy and no dial tone fault. This fault should have been repaired by 5:00pm on 3 August 2008. The CSP attended on 4 August 2008 and no fault was found.

- In the TIO's view, the complainant is entitled to CSG payments for a delay in attending this fault report.

#### *19 August 2008*

A no tone fault was reported by the complainant and line testing indicated a possible fault. A technician attended on 21 August 2008, within CSG timeframes. The technician noted that the line tested OK, but was unable to check inside because the complainant was not in attendance. On 22 August 2008, the CSP's notes indicate that it needed to check inside the complainant's premises to determine if the fault was in his equipment. The note indicates that the case may be escalated to a Level 2 investigation because of "obvious ongoing issues".

On 26 August 2008, a note indicates that the complainant was advised that the CSP needed to check inside his premises. A technician attended on 28 August 2008 and removed unused telephone cable from the first socket. The technician found no fault, but the complainant called the CSP when the technician left and again advised that he had no dial tone. The CSP representative called back and noted that the service was noisy and that s/he could not hear the complainant because the service was noisy. The complainant was offered diversion, but refused this offer because the mobile reception in his area is "not great". The CSP then noted on 29 August 2008 that a Level 2 investigation needed to be done, including checking the exchange, main pair, distribution pairs and customer premises equipment.

The Level 2 investigation appears to have been performed on 15 September 2008 and testing revealed that the service was within specifications at the time. The CSP changed the main pair

to one with no multiples and noted that one leg of the jumper wire in the exchange was possibly loose and could have been the cause of problems.

### *3 October 2008*

A 'non-standard fault' was logged by the CSP after the complainant informed the CSP that he had no dial tone. The CSP notes indicate that it suspected an internal fault because it states that all external cable had been changed (although the TIO notes that no fault reports indicate that this is the case). It appears that the fault was attended on 9 October 2008 when it should have been attended by 5:00pm on 7 October 2008.

On 9 October 2008, the technician found a wet joint and "was able to fix it up". The complainant spoke with the CSP on 10 October 2008 and indicated that he was frustrated that the fault was still not fixed.

Notes from an internal email of 13 October 2008 state that the customer "has had the fault for almost 12 months and is pretty frustrated".

A technician again attended on 28 October 2008 and remade the previously identified gel joint. Since this date, no further faults have been reported and the complainant has indicated that his service has worked properly from this date.

### **TIO's preliminary view**

The TIO formed the preliminary view that these records, in their totality, indicated a pattern of repeated contact with the CSP, by the complainant, seeking to have the fault fixed and, most saliently, mentioning on several occasions that the previously reported service difficulty was ongoing. The TIO noted that a number of these contacts did not appear to have translated into official CSP system fault reports, but this does not mean that the fault was not reported. The TIO therefore does not accept the CSP's assertion that there are two distinct fault periods. Rather, the pattern of contact indicates an ongoing intermittent fault. The TIO also noted that, although the CSP technicians found no fault when they attended, the CSP staff have noted on occasions that the complainant's line was very noisy. The CSP also noted on 13 October 2008 that the complainant had had the fault for almost 12 months, indicating that the CSP agreed that the service difficulties experienced by the complainant were ongoing and related to the same fault.

### Cause of the fault

The fact that no further faults had been reported since the remaking of a gel joint on 28 October 2008 led the TIO to believe that it was more likely than not that this joint was the cause of the service difficulties. Whilst the TIO appreciates the CSP's position that it believes that if this joint was the problem it would have been found during numerous attendances, the causal link between the remaking of the gel joint and the complainant receiving full uninterrupted service is compelling.

The TIO also noted that the CSP believed that moisture-related faults, such as the gel joint, generally result in noisy, static type faults, whereas no dial tone faults are generally the result of a connection being broken completely. The TIO noted that the CSP noted on a number of occasions that the complainant's line was noisy and that this may be consistent with a moisture-related fault. The TIO was also of the view that no dial tone faults are not necessarily the result of a connection being broken completely; indeed it would be unusual for an intermittent fault to be the result of a completely broken connection. It is worth noting that the complainant has claimed that in situations where he had no dial tone, dial tone sometimes returned after a period of time. Accordingly, the TIO formed the preliminary view that the most likely cause of the fault was the gel joint that was remade on 28 October 2008.

### CSG entitlements

For the reasons set out above, the TIO formed the preliminary view that there was, more likely than not, a fault on the complainant's telephone service between 12 November 2007 and 28 October 2008. The TIO noted that the fault was intermittent in nature and appeared to have amounted at various times to an absence of dial tone, disruption to communications by excessive noise levels, and/or a condition making the service partly unworkable. Consequently, the TIO took its position statement on *Intermittent Faults and the CSG* into consideration when considering the complainant's entitlement to CSG payments for the period of the fault.

CSG rebates may be applicable to services that have any of the following faults:

- Absence of dial tone or ring tone
- Inability to make or receive calls
- Disruption to communications because of excessive interference
- Repetition of service cut-offs
- Any condition that makes the (voice) service wholly or partly unusable
- An inoperative enhanced call handling feature

In this instance, the TIO was of the view that the complainant had experienced an intermittent fault that made his service partly unusable. The TIO position statement states:

The CSG is unclear in how it relates to intermittent faults, i.e. where a service is workable between faults, or where a provider attends to a fault but the fault recurs. Each case has to be assessed on its own merits with consideration given to what is fair and reasonable in the circumstances.

The following factors should be considered in any given case to determine whether the CSG should reasonably apply:

- How often does the fault occur?
- Is it the exact same fault?
- What action has a provider taken to rectify any underlying cause of intermittent faults (e.g. replacing cables)?
- How promptly does the provider attend to the fault?
- How inconvenienced is the customer?
- What is the quality of service like between faults?
- How does the customer's calling pattern vary across the period in question? i.e. Does the fault appear to affect the customer's ability to use their service, and does this vary across the period or improve after the fault is attended to?

In considering these sorts of complaints, the TIO examines:

- the provider's fault history for the service (to examine the nature of each fault, how and how often it was reported, the fault's likely impact on the customer, and any action taken by the provider)
- the provider's customer care notes (to examine complaints raised with the general customer service area and the provider's response)
- the complainant's itemised phone records (to examine the extent to which the customer has been able to use the service before, during and after the fault).

The TIO noted that, based on the contact the complainant had with the CSP and the TIO, the fault appeared to have occurred consistently over an eleven month period. Whilst the symptoms of the fault appeared to vary slightly, most reports related to no dial tone faults.

The nature of the fault had consistently been described as intermittent, with particular difficulties encountered on pick-up. As discussed above, the TIO formed the preliminary view that the service disruptions appeared most likely to have been caused by one fault, namely the gel joint that was remade on 28 October 2008.

The TIO acknowledged that the majority of fault reports that were logged in the CSP's system were attended within the timeframes specified by the Customer Service Guarantee Standard, with two exceptions noted above. However, the TIO also noted that the technicians' visits did not appear to have repaired the fault until 28 October 2008. The TIO has the view that a provider cannot claim that its obligations under the CSG Standard stop once it has attended to a fault that has not been rectified. If a continuing fault is the same or similar fault to that originally notified to the provider, and this fault is not rectified, it is our view that the customer is entitled to receive compensation for the period following the expiration of the guaranteed maximum rectification period up until the fault is actually rectified. The TIO also considered that fault reports that were not logged in the CSP's system do not appear to have been acted upon within the CSG timeframes, if at all.

The TIO considered call usage records provided by the CSP and the complainant's claim that the service was intermittently faulty for the whole fault period. The call records are instructive in showing that the complainant was able to make calls on his service, so it is clear that the service was not wholly unusable. The CSP has refused to provide call records from 4 April 2008 to 28 October 2008, so the TIO only considered the complainant's claim for this period, alongside the various fault notifications during this time to conclude that the service remained partly unusable, but that calls were also made throughout this period.

The TIO acknowledged that the complainant was offered 'diversion' on two occasions and that he declined on both occasions. The CSP's notes indicate that the second time the complainant declined the offer of a diversion was because he did not have good mobile service in his area. The TIO noted that there was no indication in the CSP's notes as to why the complainant declined the diversion on the first occasion, but considered it was reasonable to assume, in the absence of any evidence to the contrary, that he declined the service for the same reason. There was no indication that the CSP offered a more suitable interim service to the complainant. Given that the complainant indicated that he had poor mobile coverage and did not accept diversion because of this, the TIO formed the view that the CSP should have offered the complainant a more suitable interim service. Consequently, the fact that the CSP offered the complainant a diversion did not impact on his entitlements to CSG payments in this instance because the offer was not an appropriate interim service.

In the circumstances of this case, it was evident to the TIO that the complainant experienced a significant degree of inconvenience and frustration over a period of time, whilst also having some use of his service during this period. Having regard, amongst other things, to the nature of the disruptions, the period over which the disruptions were experienced, the number of occasions on which the complainant attempted to have his service repaired, and the quantum of compensation that would be payable if the CSG Standard were to be strictly applied, the TIO believed that half of the full amount of CSG, which results in the amount of **\$5,723.30**, was a fair and reasonable amount of compensation. This amount is calculated as 240 working days from 15 November 2007 (by which date the fault should originally have been repaired) to 28 October 2008. The first five working days are calculated at \$14.52 per day, with the remainder calculated at \$48.40 per day. Half of this amount is \$5,723.30. I note that in ordinary circumstances, the CSP would be required to rebate the complainant \$14.52 for each missed appointment on 19 March 2008 and 1 August 2008, however in this instance, the TIO calculation of CSG entitlements already include a \$24.20 rebate for each of these days and there is no provision in the CSG Standard for two forms of rebate to be applied for the same day.

Having considered all of the evidence provided to the TIO by both parties in relation to this complaint, and having had regard to the law, good industry practice and what is fair and reasonable in all the circumstances, the TIO formed the preliminary view that a fair and reasonable outcome to this complaint is for the CSP to pay the complainant **\$5,723.30** in entitlements for the service difficulties he experienced between November 2007 and October 2008.

### **Responses to the Preliminary View**

As is its normal practice, the TIO circulated the Preliminary View to the parties for their review and comment. Neither party has chosen to provide any comment on the Preliminary View. Accordingly, the TIO has determined this matter in line with the Preliminary View.

### **Directions**

**For the reasons set out above, and having regard to the law (including the CSG Standard), good industry practice, and what is fair and reasonable in all the circumstances, I am of the view that a fair and reasonable outcome to this complaint is for the CSP to pay to the complainant the sum of \$5723.30 in CSG compensation. Accordingly, I direct the CSP to pay \$5,723.30 to the complainant by cheque.**

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

**Simon Cleary  
DEPUTY OMBUDSMAN**

**March 2009**