

## **DETERMINATION**

**Subject:** reconnection delay; type of service being reconnected; entitlement to compensation under the CSG Standard

**Date:** August 2009

**Determination accepted by complainant**

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### **Circumstances of the complaint**

This complaint is about a claimed delay in connecting a restricted call telephone service, and a dispute over the validity of charges relating to that service. The CSP has resolved the complainant's dispute over the validity of charges by applying a goodwill credit equal to her outstanding account balance at that time. The complainant's service has now been connected, however the amount of compensation payable under the Customer Service Guarantee (CSG) Standard remains in dispute. The central outstanding issue is whether the complainant requested an incoming calls only service, which is capable of attracting compensation under the CSG Standard, or a specific CSP product with inbuilt outgoing call restrictions [called "the CSP's own product" in this document], which is not.

### **Complainant's position**

The complainant contacted the TIO on 15 October 2008 to complain about two unusually high bills she had received, which she said were caused by an error made by a staff member who was in training when she signed up for her services. She said that due to the difficulties she had had with her bills, and the problems she had had resolving this issue with the CSP, she wanted to cancel all of her communication services except for her landline telephone service, which she wanted restricted to incoming calls only. She later explained that the reason she wanted an incoming calls only service was to prevent her children making calls and incurring charges on the account.

The complainant claims that she contacted the CSP on 20 October 2008 to request that her landline telephone service be restricted to incoming calls only and that her mobile and internet services be disconnected. She claims that she was told to call back the next day to finalise the changes, however the CSP then disconnected all of her services, which prevented her from doing so.

The complainant told the TIO that she is suffering from cancer and required access to a telephone service so that she could be contacted by medical professionals about her treatment. She also said that she is the full-time carer for two children, and that she experienced difficulty communicating with schools and day-care services as a result of having her telephone service disconnected. She referred on numerous occasions to the additional stress that she was experiencing as a result of her difficulty dealing with the CSP, and to the negative impact this was having on her health.

On 23 October 2008 the complainant wrote to the TIO, and enclosed with her letter two further letters which she had written to the CSP about the disconnection of her service. These letters were dated 20 October 2008 and 21 October 2008. The complainant has said that she was advised by a customer service representative at the CSP's shop that the CSP 'tended to dismiss complaints in writing', and that on the basis of this advice she sent the letters to the TIO rather than to the CSP directly. Both of these letters advised that she wished the CSP to connect an incoming calls only service. It is apparent from these letters that the complainant

was becoming increasingly frustrated and distressed by her inability to make any progress in resolving this issue.

The complainant also said that the CSP had undertaken to apply a credit of \$1300.00 to resolve her billing dispute.

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

On 23 April 2009 the CSP advised that although it had no record that the complainant had been offered a rebate of \$1300.00, it was willing to accept her claim in good faith, as a gesture of goodwill with a view to resolving the complaint expediently. It has subsequently provided evidence showing that a credit of \$1301.68 has now been applied to her account.

The CSP has also advised that the complainant is entitled to compensation under the CSG Standard for a delay in completing a connection order made through the TIO's Level 2 notification letter, which was sent on 23 December 2008. The CSP has offered to pay the complainant a CSG payment of \$3363.80 for a delay of 73 working days between 30 December 2008 (being the third clear business day after receipt of Level 2 notification) and 16 April 2009 (being the date of connection).

The CSP has reiterated its position that it does not consider that the complainant is entitled to a further CSG payment in respect of her initial request in October 2008, because this initial request is recorded as being for the CSP's own product. The CSP advised that this request was changed to a request for an incoming calls only service, however by this stage the complainant's service had been disconnected, and it was not able to connect an incoming calls only service on a disconnected service. The CSP claimed that the complainant did not call back to request any further connections until 6 April 2009.

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

#### Billing issues

The TIO is not in a position to form a view as to whether the complainant's billed charges were valid or whether any refund was justified. This is because the TIO has not received sufficient information from either the complainant or the CSP regarding the charges or the reason they were disputed. However, as the dispute regarding the complainant's billed charges appears to have been resolved between the CSP and the complainant, the TIO does not at this stage intend to investigate this issue further. The TIO notes that this dispute does not appear to relate to the complainant's requests for a restricted service to be connected, and as such it does not appear that the credit reduces the CSP's CSG liability towards the complainant.

#### December 2008 connection request (Level 2 notification letter)

The TIO sent the CSP notification of a Level 2 complaint on 23 December 2008. This notification stated, among other things, that the complainant wished the CSP to connect an incoming calls only service. Regrettably, no response was received to this letter, nor to the Level 3 notification sent on 22 January 2009. This complaint was upgraded to Level 4 status on 26 February 2009. The CSP responded to this Level 4 notification on 1 April 2009 (outside of the designated timeframe) and advised that an order had been placed to connect the complainant's service on 6 April 2009. The service was eventually connected on 16 April 2009.

As stated above, the CSP has offered to pay the complainant a CSG payment of \$3363.80 for a delay of 73 working days between 30 December 2008 (being the third clear business day after receipt of Level 2 notification) and 16 April 2009 (being the date of connection). The TIO has formed the view that this calculation accurately reflects the complainant's CSG entitlement for this period.

#### October 2008 connection request

In regards to the outstanding issue of whether an earlier CSG entitlement exists, the TIO has carefully considered all of the available information and has formed the view that the complainant has a further CSG entitlement of \$1282.60, being for the period between 28 October 2008 and 8 December 2008.

#### *Start date of liability*

The complainant has claimed that she requested an incoming calls only service over the phone on 20 October 2008, and then made another request in person at the CSP Shop on 23 October 2008 after her service was disconnected.

Both the CSP and the complainant have been able to provide the TIO with records of their conversation of 20 October 2008 made either at the time (in the CSP's case) or close to the event (in the complainant's). The CSP has provided the TIO with a system note made at the time of the conversation. The complainant has provided a letter dated 20 October 2008, written after the conversation later on in the day. It appears that while the complainant understood from her conversation with the CSP on 20 October 2008 that she was requesting that her telephone service be restricted to an incoming call service, the CSP understood that she requested that her existing service be disconnected and the CSP's own product be connected in its place.

The TIO understands that the CSP offers its own product on a discretionary basis to provide people in financial hardship with the ability to receive telephone calls, with no charge for line rental, while they pay off their debt(s). The TIO is satisfied that the CSP's own product is not a Standard Telephone Service, and as such is not capable of attracting compensation under the CSG Standard. The TIO understands that an incoming calls only service is a restricted version of a Standard Telephone Service, which incurs a monthly line rental fee, but is not able to make outgoing calls (except to emergency services).

the CSP's customer care notes record a conversation on 20 October 2008 as follows:

“Customer called in wanting a disconnection. Have put that through for tomorrow. She was also needing [name of CSP's own product] as well. Went to set her up in STS. It was saying that it wasn't available in [CSP's provisioning system]. Advised customer of this and she said she would call in tomorrow to get [name of CSP's own product]. Customer wants to retain [number].”

In the complainant's letter dated 20 October 2008, she states “I only want incoming calls on my phone all other services barred.” In her letter dated 21 October 2008 she states, “I was told to ring back today to go on to just incoming calls and I can't ring because you just disconnected me... Rectify this now.”

The TIO notes that neither the CSP's customer care notes nor the complainant's correspondence make any reference to the CSP explaining the difference between an incoming calls only service and the CSP's own product at this time.

Both the CSP and the complainant have also been able to provide records of her visit to the CSP's shop on 23 October 2008 made close to the event. Again, the CSP's record is a system note made immediately after the conversation, and the complainant's record is a letter written later on the same day. The CSP's record of this conversation is as follows:

“23/10/2008 12:53:16 cus id'd instore. cus req'd change to incoming calls only. seems disconnect has been completed however there has been no order to reconnect. will investigate

23/10/2008 01:50:30 cus told onphone whilst instore that a complaint was to be raised. asked consultant for a complaint no & was advised that would not get one until he found out the process. cus advised that someone would call her in 48hr to rectify issue. cus contact no is [mobile number].”

The complainant's record of this conversation is her letter to the TIO of 23 October 2008, which reads as follows:

“I have been advised by the CSP shop that it is highly unlikely I will get any response to my correspondence as they tend to dismiss complaints in writing. Therefore I am sending the enclosed letters to you. Have tried everything to sort these issues out. I have now been disconnected for 3 days and will not be contacted by the CSP for another 48 hours.

Visited the above store today Thursday 23/10/08 after being advised my phone would be back on the previous day with all services barred except incoming calls.”

The TIO received the complainant's letter of 23 October 2009 (and the attached letters to the CSP of 20 October 2009 and 21 October 2009) after it had sent its Level 1 notification to the CSP. This correspondence was forwarded to the CSP on 23 December 2008, with the TIO's Level 2 notification. Because these letters were not forwarded until 23 December 2008, the TIO does not consider that they in themselves constitute a request for a connection. However, the TIO is of the view that these letters go towards illustrating the complainant's concerns and wishes upon entering the CSP's Shop on 23 October 2008. Accordingly, the TIO is satisfied that these letters are likely to reflect the issues raised with the CSP shop's staff member on that day.

The TIO notes that the two accounts of the conversation in the CSP Shop, while covering somewhat different ground, are not in dispute on any particular fact. The CSP has not at this stage made any comment as to whether it was made aware, through its agent at the CSP shop, of the matters raised by the complainant in her letters during her visit on 23 October 2008. In any event, it appears from this evidence that the complainant did request the connection of an incoming calls only service on 23 October 2008 and that the CSP acknowledged this request. The TIO has therefore formed the view that the CSP was subject to a mandatory connection timeframe under the CSG Standard beginning on 23 October 2008, and that liability under the CSG Standard began accruing on 28 October 2008.

### *End date of liability*

The TIO has given careful consideration to whether the CSP's liability to the complainant under the CSG Standard stopped accruing on 8 December 2008. The CSP records a conversation with the complainant on this date as follows:

“Spoke to cus who was transferred for reconnection– I asked customer if she could spare 10 min for me to place connection application – customer asked me to call the complaints area and liaze [sic] with them as she did not want to wait online – I advised I could not do that as I am in an incoming call centre – have advised customer that I can issue the connection right now though but will need 10 mins of time – customer hung up on me.”

The complainant disputes this note. She has told the TIO that while she does not have an actual recollection of this conversation she finds it hard to believe that she would have rejected such an offer, especially as the note indicates that she had initiated the phone call, as she was desperate at the time to have her service reconnected. However, as the CSP's system note was entered in real time, in a format which cannot be changed after the event, the TIO accepts this note as an accurate description of the conversation it records.

While the TIO could not find any provision in the CSG Standard which provides that liability would stop accruing upon such an offer being made and declined, the TIO regards it as unfair for compensation to be payable in respect of a connection delay after a company has made a reasonable offer to connect the service in dispute.

The TIO accepts the CSP's position that it is necessary for a customer to remain on the line while a connection order is completed in order to avoid errors and ensure that all necessary information is collected. Accordingly, the TIO accepts that the complainant's eligibility for CSG ceases on 8 December 2008, but (as noted earlier) begins again on 30 December 2008.

### **The TIO's Preliminary View**

For the above reasons, the TIO had formed the preliminary view that:

- the complainant requested the connection of an incoming calls only service on 23 October 2008
- this service is capable of attracting liability under the CSG Standard, and
- the CSP did not meet the CSG Standard in respect of the complainant's request.

The CSP has argued that CSG compensation is not payable in respect of this connection request as it initially recorded the request as for the CSP's own product, which is not subject to the CSG Standard. However, the TIO considers that an incoming calls only service was requested two days after this initial request, on 23 October 2008, and that a mandatory connection timeframe under the CSG Standard began running on that day.

### Calculation of liability – October 2008 connection request

The TIO had formed the preliminary view that the complainant is entitled to an additional CSG payment of \$1282.60 for a delay of 30 working days between 28 October 2008 and 8 December 2008, being five days at \$14.52 per day and 25 days at \$48.40 per day.

### Total CSG entitlement

The TIO had formed the preliminary view that the complainant has a total CSG entitlement of \$4646.40, being compensation for 10 working days at \$14.52 per day and 93 working days at \$48.40 per day.

An earlier assessment of the complainant's CSG eligibility by the CSP calculated her eligibility at \$266.20. This assessment has now been reconsidered and replaced by the CSP's current offer to pay CSG of \$3363.80.

As noted earlier, no evidence has been provided which suggests that the credit of \$1301.68 was applied in relation the delay in connection which gave rise to this CSG liability. Consequently, the TIO is of the view that the CSP is not entitled to reduce its CSG liability by the amount of this credit.

### **Response to the preliminary view**

As is its normal practice, the TIO circulated its Preliminary View to the parties for their review and comment. On Friday 14 August 2009, after the time allowed for review and comment of the Preliminary View had expired, the CSP contacted the TIO and made a number of oral submissions in relation to this matter. The CSP argued that restricted standard telephone services are only very rarely offered where a customer requests a service be restricted to incoming calls only, but that instead, the CSP's own product will be offered.

The TIO extended the timeframe for response to allow the CSP to put its arguments in writing to the TIO for proper consideration. The CSP undertook to provide a written response to the Preliminary View by 19 August 2009, however its response was not sent until 20 August 2009.

### The CSP's response

In its response the CSP offered further information regarding its policy of offering its own product to customers.

It advised that this service is available to customers who meet 2 [specified] conditions.

It further advised that this service is only available on specific exchange technologies and that only a limited number of its own products are available at any one time.

The CSP further advised that its staff are not allowed to offer a restricted Standard Telephone Service to customers who are eligible for the CSP's own product and who request incoming calls only.

The CSP again drew the TIO's attention to the customer care record showing that the complainant was offered the CSP's own product on 20 October 2008, and after being advised that its own product was not available at her exchange at that time, was told to call back the next day. The CSP acknowledges that the disconnection of the complainant's service may have prevented her from calling the CSP back as planned.

The CSP maintains that its own product is not eligible for CSG, and that the complainant was correctly and appropriately offered the CSP's own product when she asked for a service that would only receive incoming calls.

The CSP also advises that it has already applied credits totalling \$1,347.54 to the complainant's account. This is slightly greater than the credit of \$1,301.68 that the TIO was previously aware of and which is discussed above. However, the CSP does not argue that the additional \$45.86 was applied in relation to the connection delays which are the subject of this determination, and it therefore does not appear that this additional credit has the effect of reducing the CSP's CSG liability.

#### The TIO's assessment of the CSP's response

The TIO notes that the CSP has claimed the complainant was offered the CSP's own product on 20 October 2008, and also notes that this claim is supported by the file note of this conversation referred to on page 3 above. However, the TIO considers that even if it were to accept that such a service was offered on 20 October, the evidence before the TIO is clear that the complainant's 23 October request for a service was for an incoming calls only service, which is subject to the CSG Standard. In this respect, the TIO notes that the CSP's response did not address the TIO's preliminary view that the complainant requested an incoming calls only service on 23 October 2008. As discussed above, this view is based on the records provided by both the CSP and by the complainant documenting the conversation which took place that day in the CSP shop. While the CSP claimed in its response that the contact on 23 October 2008 'focussed on lodging a complaint', its own records also support the view that the complainant requested an incoming calls only service at this time.

Without the benefit of further elaboration or reference to evidence by the CSP in relation to the 23 October discussions, the TIO can find no grounds to alter its view that the complainant requested an incoming calls only service on 23 October 2008.

The TIO has also considered the CSP's argument that restricted Standard Telephone Services are not offered to customers who request an incoming calls only service if that customer is eligible for the CSP's own product. The implication of this argument appears to be that any request by a customer for a telephone service restricted to incoming calls only, however worded, should be construed as a request for the CSP's own product if that customer is eligible for that service.

The CSP has not provided any evidence to support this argument, such as policy documents or staff practice manuals. The CSP has also not provided any evidence which shows that the complainant was informed of the difference between the CSP's own product and a standard service restricted to incoming calls only. For these reasons the TIO considers it would be inappropriate to take the evidence of the complainant's request for an incoming calls only service on 23 October 2008 on anything other than its face value.

Accordingly, the TIO has determined this matter in accordance 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 \$4646.40 in CSG compensation.**

**Accordingly, if the CSP has not yet paid to the complainant the previously assessed CSG entitlement of \$266.20, I direct the CSP Corporation to pay \$4646.40 to the complainant by cheque. If the CSP has already paid the previously assessed entitlement, I direct the CSP to pay a further \$4380.20 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  
26 August 2009**