

TIO Determination – 29 May 2014

(De-identified for publication)

This document sets out my Determination in relation to a dispute between the Consumer and the Provider.

Background

This complaint concerns a billing dispute the Consumer had with the Provider when his service was terminated in August 2013.

At the time, the Provider agreed to resolve the Consumer's complaint by reducing outstanding charges to \$364.93. The Consumer agreed to the terms of the resolution and, on 2 September 2013, posted a cheque to the Provider for \$364.93 to finalise the matter. The Consumer said that the amount was debited from his account on 9 September 2013.

On 17 October 2013, the Consumer said that, despite the payment, he received a new invoice from the Provider for \$364.93. On 23 October 2013, the Provider advised that a new invoice was issued to the Consumer as it had not received the payment for \$364.93.

In resolution of the complaint, the Provider agreed to do the following:

- waive all outstanding charges from the Consumer's account upon receipt of evidence that a payment of \$364.93 was made towards the Provider, and
- reimburse the Consumer for the fees he incurred to initiate a cheque trace that substantiated the above.

On 11 December 2013, the TIO received the following information from the Consumer:

- a copy of the cheque made payable to the Provider dated 2 September 2013 for \$364.93
- excerpt copies of the Consumer's bank statements for the period 1 September 2013 to 19 September 2013, and 1 October 2013 to 8 November 2013, and

- a copy of a letter from Bendigo Bank dated 28 October 2013 in respect of the cheque trace. The letter advised that the cheque for \$364.93 was paid to the Provider's account on 9 September 2013. The letter also advised that \$20 was charged to the Consumer to cover the processing fees for the trace.

On 7 January 2014, the TIO provided the above information to the Provider. On 27 January 2014, the Provider advised that it had removed all outstanding charges on the Consumer's account upon receipt of evidence that the Consumer had paid \$364.93.

The complaint

The Consumer says that, despite providing the required information to the Provider, he has not received the \$20 refund for the cost of the cheque trace.

Investigation

In forming my view about how this complaint should be resolved, I have considered the following information from the parties:

- a copy of an email from the Provider to the Consumer dated 21 August 2013
- a copy of a letter from the Provider to the Consumer dated 22 August 2013 which states that the final amount to be paid is \$364.93
- an excerpt of an email from the Consumer to the Provider dated 22 August 2013. The email states that the Consumer agrees to pay the final amount upon receipt of the Provider's final account
- a screenshot from the Provider showing credits and payments made on the Consumer's account from 22 April 2013 to 19 September 2013
- a copy of the cheque addressed to the Provider dated 2 September 2013 for \$364.93
- excerpted copies of the Consumer's bank statements for the period 1 September 2013 to 19 September 2013, and 1 October 2013 to 8 November 2013
- a copy of a letter from Bendigo Bank dated 28 October 2013 in respect of the cheque trace, and
- a screenshot from the Provider showing that \$0 outstanding on the Consumer's account.

I have also considered the Provider's obligations under the *Telecommunications Consumer Protections Code 2012* (the "TCP Code") as a company that trades as a carriage service provider.

The issue that requires investigation is whether the Provider is required to refund the cost of the cheque trace to the Consumer.

My assessment

It is not in dispute that the Consumer's bank account was debited of \$364.93 on 9 September 2013 in respect of the cheque issued to the Provider, and that he was charged \$20 by his bank to cover the processing costs of tracing the cheque. The Consumer has provided excerpts of his bank statements that show:

- a withdrawal of \$364.93 dated 9 September 2013 under the transaction name "*Withdrawal - Cheque 094069*", and
- a debit of \$20 dated 28 October 2013 under the transaction name "*CSF & Trace*".

The cheque was deposited to the Provider as evidenced by a copy of the letter from Bendigo Bank dated 28 October 2013. In that letter, the Consumer was advised that his cheque was deposited to the following:

Account Deposited To:	the Provider
Bank & Branch:	
Date Deposited:	9 September 2013
Amount:	\$364.93

The Provider informed the TIO on 25 October 2013 by email that it would reimburse the Consumer for the costs of the cheque trace upon proof that the Consumer had paid towards the Provider, and that the Consumer was charged for the cheque trace.

Having regard to the above and the information before me, I am satisfied that the Consumer paid \$364.93 to the Provider on 9 September 2013 and that, as a result of the Provider's advice that it had not received the said payment, incurred \$20 to trace the details of the cheque.

Has the Provider complied with its obligations under the TCP Code?

Section 8.2.1(a)(xiii) of the TCP Code requires service providers to have complaint management systems that demonstrate fairness, courtesy, objectivity and efficiency by completing all necessary actions to deliver the resolution within 10 working days of the consumer's or former customer's acceptance of the offer, unless the consumer or former customer agrees to a longer timeframe or if the implementation of the

resolution is contingent on actions by the consumer or former customer that have not been completed.

I am satisfied that the Provider has not complied with section 8.2.1(a)(xiii) of the TCP Code as it has not reimbursed the \$20 fee to the Consumer despite receiving the information required to complete the reimbursement on 7 January 2014, despite agreeing to do so.

Even without the requirement under the TCP Code, it is only fair and reasonable for the Provider to reimburse the Consumer for a fee he would not have incurred had the Provider maintained accurate records of his account to finalise the resolution of the Consumer's complaint.

My preliminary view

On 10 April 2014, I provided the parties with my preliminary view in relation to the dispute. My view was that a fair and reasonable outcome would be that the Provider refund \$20 directly to the Consumer's bank account. The parties were asked to:

- respond to my view
- provide any new and relevant information which might change the conclusions reached, and
- identify any misunderstanding or misinterpretation of the facts.

The Consumer's response agreed with my preliminary view. The Provider did not respond.

Determination

For the reasons set out above, and having regard to the law, 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 Provider to refund \$20 to the Consumer.

Accordingly, I DIRECT the Provider to complete the following actions within 14 days of the TIO providing to the Provider a Confirmation of Resolution signed by the Consumer:

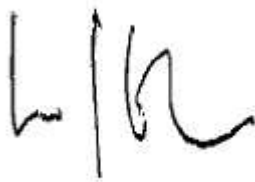
- Refund \$20 directly to the Consumer's bank account. The account to which the refund should be processed is:

Bank:

Account Name:

BSB:

Account Number:

A handwritten signature in black ink, appearing to read 'S. Cohen', written in a cursive style.

Simon Cohen
Ombudsman

Date: 29 May 2014