

### CAN THE TIO HELP ME TO CLAIM COMPENSATION FOR LOSS OF BUSINESS?

The Telecommunications Industry Ombudsman (TIO) can investigate complaints by small business users of telephone and Internet services about loss of business arising from events that relate to the provision or supply of those services. As an office of last resort, the TIO can only become involved after your Telephone Company or Internet Service Provider (ISP) has had a chance to resolve the matter with you directly, i.e. after it has had a reasonable opportunity to assess a formal compensation claim lodged by you.

### WHAT SHOULD MY COMPENSATION CLAIM BE BASED ON?

The TIO will only consider claims based on actual monetary losses suffered that are a direct result of the actions or inaction of your Telephone Company or ISP. Claims for pain and suffering, loss of business reputation, inconvenience and mental distress will not be considered. Moreover, the TIO will only consider claims for losses that a reasonable person would anticipate in all the circumstances.

Ideally, your claim should be presented as:

*total lost profit = lost revenue + costs incurred in reducing your loss - expenses normally incurred*

*Lost revenue* is calculated by subtracting the actual revenue earned in the claim period from the revenue you would have expected to earn if the disputed event had not occurred.

*Costs incurred in reducing your loss* are costs incurred as a result of measures you took to minimise your losses, e.g. extraordinary use of your mobile phone or additional advertising.

*Expenses normally incurred* are expenses that you would normally have incurred in conducting your business, e.g. commission for sales that would have been made, packaging for goods that would otherwise have been sold, cost of labour that would have been needed if business was able to function as normal.

### CAN I GET COMPENSATION FOR THE COSTS INVOLVED IN PURSUING MY COMPLAINT?

As an alternative dispute resolution body, the TIO expects that individuals will actively participate in the resolution of their own complaints and, generally, meet any costs to themselves -administrative or otherwise - that may arise in this process. Accordingly, the TIO will not, as a general rule, take up claims for reimbursement of the costs involved in pursuing a complaint, such as telephone calls, writing paper, postage, or time spent by the complainant. For example, the TIO would not make an award for the cost of a complainant's working time on the basis that they spent x hours compiling their claim and usually charge \$XX/hour on a time basis for their services.

However, in making an award the TIO may include an allowance for the cost of obtaining legal or expert advice.

### WHAT DOES THE TIO NEED BEFORE IT WILL INVESTIGATE MY COMPLAINT?

The TIO needs to understand the circumstances that have led to your complaint. Describe to us what action or inaction by your Telephone Company or ISP has caused you to complain. Tell us when this occurred and how long a period your business was affected. We also need to understand the nature of your business and how

the affected service is normally used in the conduct of your daily activities. Tell us what sort of business you operate, how you typically use the affected service, and to what extent you rely upon the affected service to earn revenue.

Finally, the TIO needs to see substantiation of your claim; that is, we need to see documentation that clearly shows you experienced losses. In addition, we need to see evidence that these losses were a direct result of the actions or inaction of the Telephone Company or ISP – and not the result of some other intervening event. A useful test is the 'but for' test. In determining whether the actions or inaction of your Telephone Company or ISP caused your losses, ask whether you would have suffered those losses but for the action or inactions of your Telephone Company or ISP.

## WHAT SORTS OF DOCUMENTATION CAN SUBSTANTIATE MY CLAIM?

You may find that some or all of the following items can help you to substantiate your claim:

1. Records such as bank statements (proof of cash payments), monthly income figures, profit & loss statements, sales journals, cashbooks or receipts. (Provide us with copies of your records for the claim period and for comparable periods in the past);
2. Figures that show your actual income or profit fell short of amounts predicted in forecasts or budgets compiled before the claim period. (Provide us with copies of your forecasts or budgets in addition to the figures for the claim period);
3. Any data that shows the number of incoming calls received during the claim period was less than the number received in the preceding and following months, e.g. business bookings taken over the telephone;
4. Proposals for contracts that were lost as a direct result of the action (or inaction) of your Telephone Company or ISP;
5. Statements (preferably statutory declarations) from customers who state they did not spend money with your company as a result of the circumstances in question;
6. Receipts or invoices if you are claiming reimbursement of out-of-pocket expenses, where these expenses were costs incurred in reducing or mitigating your loss.
7. Where relevant and appropriate, information provided must be independently verifiable, e.g. in the form of tax returns or audited accounts.

The TIO will also need to see copies of all documentation and correspondence that has passed between you and your Telephone Company or ISP. Please send copies of any original documentation.

In the absence of documentary evidence to support your claim, the TIO may exercise its discretion not to investigate your claim further.

## SHOULD I GET PROFESSIONAL HELP TO PREPARE MY CLAIM?

You may wish to seek professional advice in order to prepare a thorough and substantiated claim. Be aware, however, that the TIO does not as a general rule make any awards for the costs involved in compiling or pursuing a compensation claim.

## WHAT ARE THE TIO'S POWERS TO MAKE A BINDING DECISION?

If we agree to investigate your complaint, the TIO will first conciliate between you and your Telephone Company or ISP to try and reach an outcome that is fair and reasonable in the circumstances. In the absence of a conciliated settlement, the TIO has the power to make a binding decision against a member up to a value of \$30,000, or a recommendation up to \$85,000. For complaints received by the TIO before 1 May 2010 the TIO can make a binding decision up to a value of \$10,000, or a recommendation up to \$50,000.

If the total amount involved in a claim is more than the limits mentioned above, the TIO may make a 'finding of fact' but cannot make a direction or recommendation about compensation or other remedial action. If your claim is over our limit and is well substantiated, you may wish to consider forms of dispute resolution other than the TIO.

## TIME LIMIT TO TIO'S JURISDICTION

Note that the TIO has a time limit to its jurisdiction. The TIO can only investigate a complaint if the circumstances causing the complaint became known in the 12 months prior to the complaint being made. However, the TIO has discretion to extend the time limit a further 12 months in certain cases.