

Systemic issues investigations

During 2006/07, the following systemic issues were completed.

Optus Mobile

Billing of "\$79 Cap" plan

Complaint

The TIO received several complaints from customers who had subscribed to Optus Mobile's "\$79 Calls" plan. The plan offered \$500 worth of voice and text calls each month for \$79. However, customers said Optus's invoices were confusing and it was not clear whether the requisite credits under the plan had been applied. They could not monitor their usage; hence some customers exceeded the cap and faced substantial charges.

The TIO was concerned that the bills themselves were confusing. In the course of the investigation, the TIO considered several potential breaches of the industry *Billing Code*. The TIO also expressed concern that the promotional material for the \$79 cap was difficult to reconcile with the fees and charges that customers were subsequently billed.

Resolution

Optus resolved the complaints by cancelling the mobile contracts without penalty, on condition that complainants return their handsets. Optus advised that the billing concerns highlighted by the TIO largely referred to customers who had contracted to capped plans before December 2005. Those who had signed up after that date received invoices that were clearer. Optus also said that from April 2007 a new billing platform, which would produce much clearer invoices, would service all capped plan customers.

The TIO expressed concern that Optus's billing system did not allow customers to monitor their unbilled call spend and Optus verified that this, too, would be remedied by the new billing platform. Notwithstanding the improvements that the new platform was scheduled to introduce, the TIO advised Optus that it would investigate any future complaints from mobile users about the same issues and it recorded breaches of Clauses 6.3.1(c) and 7.3.1(b) of the *Billing Code*.

West Australian Networks

Billing of complaint-handling fees

Complaint

A consumer complained that West Australian Networks (WAN) was charging him more than the agreed rate for his broadband service. The TIO commenced an investigation and in response WAN billed the complainant more than \$200 for lodging a "frivolous" complaint with the TIO.

It was revealed that WAN had provided for the passing on of complaint handling fees in its acceptable use policy (AUP). The TIO was concerned that the inclusion of the term may be a breach of several industry codes and may also breach Commonwealth telecommunications and trade practices legislation. The TIO therefore considered potential breaches of the industry *Complaint Handling Code* and *Consumer Contracts Code* as part of its investigation.

Resolution

WAN agreed to remove from its AUP the clause providing for the passing-on of complaint handling fees. WAN also agreed to remove the charge from the complainant's account to resolve this aspect of his dispute. The TIO concluded that the term of the AUP which permitted the charging of complaint handling fees would constitute an unfair contractual term. Breaches of Clause 7.4.1 of the *Complaint Handling Code* and Clause 6.1.1 of the *Consumer Contracts Code* were therefore recorded.

CyberOne

Shaping of unlimited broadband services

Complaint

Several customers contacted the TIO about CyberOne's "No Limits" ADSL plans. They said that CyberOne had unilaterally varied their conditions of service by introducing an acceptable use policy. The AUP caused the "shaping" (restriction) of their service speed once their usage reached 30 gigabytes in a given month. The TIO was concerned that the implementation of the AUP had significantly altered the "unlimited" nature of CyberOne's plans.

CyberOne said the AUP was always a part of its general terms and conditions but it had never been enforced before. Based on an analysis of CyberOne's online sign-up procedures, the TIO formed the view that customers would not have been given an opportunity to consider the AUP before signing up and therefore CyberOne may be in breach of its agreement with its customers. The TIO was also concerned that the nature of the AUP and its implementation may be contrary to the industry's *Consumer Contracts Code* and *Customer Information on Prices, Terms and Conditions*.

Resolution

Complainants were offered release from their contracts without penalty and CyberOne reworded its AUP to clarify to new customers that, if their monthly usage exceeded 30 gigabytes, CyberOne had the discretion to shape their service.

The TIO concluded that the wording of the original AUP was unduly broad and that the shaping of plans that were sold as "no limits" products was inconsistent with industry guidelines. The TIO therefore recorded breaches of Clause 6.1.1 of the *Consumer Contracts Code* and Clauses 7.2 and 7.12 of the *Customer Information on Prices, Terms and Conditions Code*.

Veridas Communications

Unauthorised transfer of NetXP customers

Complaint

Customers of NetXP, an internet service provider, claimed that their service had either been disconnected by Veridas or had been transferred to Veridas without notice. Some also claimed that they had been approached by Veridas and had been asked for personal information, including credit card details.

Veridas confirmed to the TIO that it had cancelled its supply contract with NetXP for an alleged breach of conditions of the wholesale arrangement between the two companies. The TIO was concerned with the alleged approaches being made by Veridas to NetXP customers and it notified Veridas that the unsolicited transfer of customers from NetXP may contravene a number of provisions of the industry *Customer Transfer Code*.

Resolution

Shortly after the TIO had begun its investigation, Veridas announced that it intended to cease trading. The TIO contacted all those customers who had lodged complaints in advance of the closure of the Veridas network, and all of them advised that NetXP had successfully restored their services with a new supplier. The TIO discontinued its investigation.

Systemic issues investigations continued

Ace Communications

Failure to issue invoice prior to direct debit

Complaint

The TIO received a complaint from a consumer who had subscribed to Ace Communications' VoIP service and paid by direct debit using a credit card. The complainant said that Ace Communications had routinely debited her credit card before issuing her with a monthly invoice. The complainant claimed that she had been overcharged several times and that she was not able to verify whether the charges were correct because invoices were not issued before the direct debit transaction.

The TIO advised Ace Communications that it was concerned that customers paying by credit card may have no way of verifying their charges before monthly debits occur. The TIO also expressed concern that, by failing to supply invoices in advance of the debits, Ace Communications may not be complying with the industry's *Billing Code*.

Resolution

The complainant received credits for all disputed call charges and decided to transfer her services to an alternative supplier. Ace Communications acknowledged that it is currently unable to issue customers who choose to pay by credit card with an invoice before direct debits occur and explained that this is caused by a limitation of its billing system. However, Ace also said its merchant facility through its financial institution did not allow it to overdraw a credit card, so it did not foresee that any customers would incur dishonour fees. Ace said it provided an alternative payment method, which enabled customers to receive a tax invoice before their account was debited. This method is a direct debit from the customer's bank account.

While the TIO acknowledged that Ace Communications was constrained by a system limitation, the TIO formed the view that the company was not compliant with the *Billing Code* and it therefore recorded a breach of Clause 9.2.3 of the code.

Axis Telecoms

Contractual advice at point of sale

Complaint

Axis Telecoms is a telephone service provider that bundles carriage service agreements with telephone equipment leases, billed by separate finance companies. Axis offers customers call credits against their telephone account to offset the cost of the equipment lease. Both the contract for carriage service and the leasing agreement for the hardware are generally sold by the same representative. The TIO received complaints from a number of Axis customers who raised the following concerns.

- Customers believed that both contracts were administered by Axis and claimed not to have been advised about a separate agreement with a finance company.
- Point-of-sale advice regarding the length of the agreement and the amount of call credits offered by Axis was inaccurate.
- Inaccurate advice pertinent to the carriage service agreement had caused customers to commit to equipment lease contracts, which featured substantial pay-out figures.

The TIO was concerned that the sales agents representing Axis may not have provided accurate advice to customers and that the relationship between Axis, the sales agent and the finance company supplying the equipment lease might not have been adequately explained to customers. In this respect, the TIO was concerned that the oral advice of the sales representatives and the written format of the bundled contracts might not have complied with the industry's *Customer Transfer Code* and *Customer Information on Prices, Terms and Conditions Code*.

Resolution

Axis maintained throughout the investigation that the complaints received by the TIO arose for different reasons and that they were not sufficiently similar to be indicative of a systemic problem. The TIO disagreed with Axis's assessment and said that, in its view, all of the complaints stemmed from the alleged inaccuracy of the advice provided at point of sale. Further, in all cases, the customers claimed to have suffered significant financial detriment as a result of the advice.

Axis subsequently resolved each of the individual complaints to the satisfaction of the TIO and agreed to engage with the sales companies to propose some improvements to the quality assurance process associated with the sale of the bundled services. These included:

- sales companies being instructed to ensure that customers were made aware of the identity of the finance company and the cost of the equipment lease
- Axis developing compliance guides for sales staff informing them of their obligations under telecommunications industry codes and fair trading legislation.

The TIO formed the view that, if all of Axis's proposals were successfully implemented and adhered to by the sales companies, the volume of complaints regarding point-of-sale advice would likely be reduced. However, the TIO also commented that it remained concerned with the complexities associated with the bundled products, particularly in respect of the number of companies involved in the sale and supply of the services. In this regard, one of the complainants had reported that, following his termination of the bundled agreements, he was invoiced a substantial amount of money by a company he had not been informed of and whose name did not feature in the contract documents. On the basis of his complaint, the TIO recorded breaches of Clauses 6.4.1 and 6.8.2 of the industry's *Customer Information on Prices, Terms and Conditions code*.

Axis Telecoms

Unauthorised transfers

Complaint

The TIO received a complaint from a customer who was billed by Axis Telecoms for long-distance and mobile calls. He had received a notice from Axis advising that the local line rental portion of his service would be transferred to Axis unless he opted out of the transfer in writing within 30 days. The complainant exercised his right to opt out but was concerned that the company had proposed the transfer without proper authority.

During preliminary enquiries, Axis confirmed to the TIO that it had sent similar notices to a large number of customers because it had recently become capable of supplying the local service and equipment portion of their services. It advised that it was seeking to rely on a term of the original contract to effect the transfers. The TIO was concerned that, by proceeding with a transfer initiative on an opt-out basis, Axis may not be complying with the industry's *Customer Transfer Code* because it would not be obtaining the "informed consent" of its customers. Further, the TIO was concerned that appropriate warnings may not have been given to customers regarding the impact that the proposed transfers would have on supplementary services such as ADSL.

Resolution

Following the notification of the systemic investigation, Axis agreed that it would not proceed with any transfers until the issue of informed consent and its obligations under the industry codes were resolved. The TIO was concerned that the *Customer Transfer Code* implied that informed consent needed to be obtained from the customer close to the actual transfer.

The TIO was also concerned about the broad discretion that the original contract terms appeared to confer on Axis and it indicated that the provision allowing for transfers at any stage of the agreement may have been considered an unfair term. The TIO concluded that, if Axis still intended to transfer the service and equipment portion of its customers' telephone accounts, the transfers would need to take place under new agreements. Axis subsequently advised the TIO that it would not proceed with the transfer of any customers' services without a recent, signed consent in accordance with the *Customer Transfer Code*. Accordingly, no code breaches were recorded.

iiNet

Equipment payout following variation of contract

Complaint

The TIO received complaints that iiNet had advised some customers that the speed of their ADSL plan would be reduced from 1,500 Kbps to 512 Kbps. To maintain their preferred speed, they would be required to pay an extra \$20 a month. iiNet advised customers that, if they did not wish to pay the additional fee, they could either accept the reduction in speed or cancel their contract without paying any exit fees. However, customers who wished to leave and who had received a free modem as part of a sign-up deal were told that they would need to pay for the equipment.

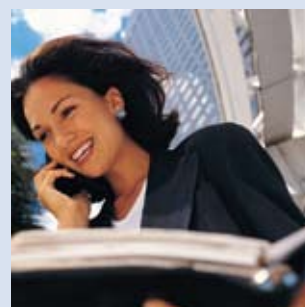
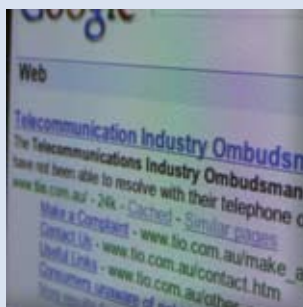
The TIO was concerned that iiNet was breaching its contract with customers by enforcing the charge, because the company's customer relationship agreement did not provide for the passing on of equipment charges where it had varied the terms of its agreement. The TIO was also concerned that the recovery of funds for equipment that had been issued "free", in circumstances where the service provider had varied the contract, might be unfair.

Resolution

The TIO recommended to iiNet that it develop a notification to be sent to all customers affected by the speed downgrade, correcting the initial advice they had been given. iiNet agreed to implement the TIO's recommended resolution in its entirety and customers who wished to cancel were allowed to do so without penalty on condition that they return their modems. Customers who had already chosen to leave and who had paid for their equipment received a rebate.

In response to the TIO's concerns about the possible breach of its contract with its customers iiNet agreed to amend the wording of its customer relationship agreement so that, in future, if it was required to vary the terms of customers' services it would not be entitled to recover the value of equipment that had been issued without cost.

Overview



The TIO currently has regard to 14 ACIF codes, 10 comprising 7 operational and 7 consumer codes.

The 2006/07 year was notable for substantial increases in the recording of possible breaches of the *Billing Code*, *Prices Terms and Conditions Code* and the *Complaint Handling Code*. The *Billing Code* alone accounted for 38 per cent of possible code breaches, up from 26 per cent in 2005/06. 35 per cent of all confirmed code breaches were recorded against Level 2 complaints, the majority of which were escalated in the 2005/06 financial year. Confirmed code breaches were recorded in 21 per cent of formal Level 3 investigations.

It is important to note that, as of 1 July 2006, the TIO changed its procedures for recording both possible and confirmed code breaches. It is likely that many of the variations in code breach numbers can be attributed to these changes.

The *Telecommunications Act 1997* (Cwlth) allows for the Australian Communications and Media Authority (ACMA) to direct industry members to comply with a registered code. A code may only be registered where, among other things, ACMA is satisfied that the TIO has been consulted in the development of the code. Under Section 114 of the *Telecommunications Act 1997* (Cwlth), subject to the TIO's consent, a code may confer powers and functions on the TIO.

Code development and review



The TIO has been observing with interest the amalgamation of all consumer codes in the *Telecommunications Consumer Protections Code* (often referred to as the *Single Consumer Code*) through its participation in the Consumer Issues Reference Panel. In June 2007, in response to the draft code, the TIO forwarded the Communications Alliance a number of comments for consideration and looks forward to viewing the code in its final form.

Code complaints

TIO procedures

From 1 July 2006, to assist with capturing all possible code breaches at Level 1, the TIO amended its procedures for identifying and recording breaches by aligning complaint keywords with ACIF codes. When particular keyword sequences are recorded, staff are prompted to ask specific questions aimed at identifying whether a possible breach has occurred. The result is that the number of possible code breaches recorded by the TIO has increased, as the TIO is more consistently capturing code breaches.

From 1 July 2006, the TIO also stopped investigating code breaches at Level 2. While the TIO still has regard to industry codes in resolving all complaints, investigations to confirm whether a breach has occurred are now conducted only in formal investigation at Level 3 or above. The result is that the number of confirmed code breaches recorded by the TIO has decreased.

During a Level 3 investigation, TIO members are given the opportunity to respond to the complainant's allegations and

provide evidence in support of their position. During the investigation, the TIO will only raise code breaches that relate to outstanding, unresolved issues. This results in complaints that are of a secondary nature, such as some complaint handling and customer services issues, being less likely to be addressed in a formal investigation. If a code breach allegation is sustained, a confirmed breach is recorded. If the evidence does not support that a code breach occurred, no code breach is recorded. No "possible" breaches are recorded at Level 3 or above.

Code breaches at both Levels 1 and 2 are recorded primarily as "possible", and the allegation is not directly pursued with the member. A number of Level 2 complaints have recorded confirmed code breaches this year. This is due in part to Level 2 complaints being escalated in 2005/06 and closed in 2006/07 and to a small number of complaints investigated at Level 3 being downgraded to Level 2 at closure.

The TIO continues to send code breach statistics to ACMA and the Communications Alliance on a quarterly basis. In addition, the TIO provides complaint statistics and analysis to ACMA to assist it in identifying any members that appear to be consistently breaching registered codes.

The TIO also has the power to refer any member that demonstrates systemic failure to comply with a code to ACMA. ACMA is empowered to direct referred members to comply with the codes. Failure to comply with an ACMA direction may result in legal action being taken against those members. In 2006/07, the TIO referred one member to ACMA for non-compliance with industry codes.

Code statistics

The TIO recorded 54,157 code breaches in 2006/07, comprising 53,809 possible breaches and 348 confirmed breaches.

This represents a significant 162 per cent increase from 2005/06, which was largely due to the TIO's new procedures to capture and record breaches more consistently at Level 1.

The increase was primarily driven by a 170 per cent increase in the number of possible breaches recorded, which equates to 33,587 additional possible breaches.

The TIO also noted a 50 per cent decrease in the number of confirmed breaches, which fell from 688 to 348. This decrease was driven by the TIO ceasing to investigate code breaches at Level 2 for complaints escalated after 1 July 2006.

Breaches of the *Billing Code* were the prime cause of the substantial increase. To a lesser extent, possible breaches of the *Complaint Handling Code* and the *Prices, Terms and Conditions Code* contributed to the significant increases.

Complaints relating to operational codes did not feature prominently, accounting for 0.6 per cent of all breaches recorded and 1.4 per cent of all confirmed breaches.

Billing

The single largest increase in code breaches was recorded in relation to the *Billing Code*.

Given the high number of code breaches associated with premium SMS services in 2005/06, the TIO anticipated that the introduction of the Mobile Premium Services Industry (MPSI) scheme in November 2006 would reduce the number of code breaches recorded. This is because ACIF code breaches would not be recorded for MPSI complaints at Level 1 or 2. This has not been the case. Instead, the total number of breaches increased by over 15,000.

Twice as many providers as in 2005/06 recorded possible breaches, with 320 individual providers (compared with 166 providers last year) recording breaches of this code. Recorded breaches increased by 281 per cent and account for nearly 38 per cent of all code breaches. Confirmed breaches of this code fell by 21 per cent during the year. 31 individual suppliers were responsible for the confirmed breaches.

Nearly 90 per cent of code breaches relate to charges that the complainant alleges they did not request or use and were not contracted to receive (as per Clause 7.3.1).

While internet providers recorded fewer breaches than landline or mobile providers, breaches by internet providers increased by almost 600 per cent. One internet provider alone accounted for almost 40 per cent of all breaches of the *Billing Code* recorded by internet providers.

Code breaches relating to the direct debit of payments are also emerging as a source of concern. While it is an issue for all suppliers, two-thirds of direct debit code breaches were recorded by internet suppliers. Approximately 70 per cent of these breaches relate to bills not being issued in a timeframe that allows the customer to check the charges before the direct debit takes place. The TIO will be monitoring direct debit complaints closely in 2007/08.

Complaint Handling

Complaint Handling is another code that recorded substantial increases during 2006/07. Possible breaches increased by 85 per cent and account for 32 per cent of all recorded breaches. TIO staff recorded *Complaint Handling Code* breaches against 288 individual providers, compared with 219 last year. Confirmed breaches decreased by almost two-thirds.

Almost 82 per cent of code breaches relate to the alleged failure of suppliers to refer dissatisfied customers with unresolved complaints to the TIO (Clause 7.6.1). There were 12 confirmed breaches of this clause recorded, accounting for 12 per cent of all confirmed *Complaint Handling Code* breaches. The new investigations processes that began on 1 July 2006 have resulted in the low ratio of confirmed breaches of this clause to the number of possible breaches recorded. Unless a complainant has experienced additional disadvantage as a result of a failure of a supplier to refer them to the TIO, the TIO would be unlikely to pursue a breach of this clause at Level 3.

This year the TIO received almost 4,000 complaints relating to claims that a supplier failed to action an undertaking made to a customer in the course of resolving a complaint. Clause 7.3.5 of the *Complaint Handling Code* requires suppliers to have appropriate methods and/or mechanisms in place in order to take action and monitor undertakings made to customers in the resolution of complaints. The TIO has been reluctant to record isolated instances of human error as breaches of the code because this does not demonstrate that a mechanism is not in place. The TIO is of the view, however, that a mechanism cannot be considered to be appropriate or effective if a supplier repeatedly fails to action undertakings despite the existence of that mechanism.

For this reason the TIO would investigate breaches of this clause in the event that a supplier demonstrated an ongoing pattern of failing to action undertakings made to customers.

Prices, Terms and Conditions

Possible breaches of the *Prices, Terms and Conditions Code* increased by a significant 489 per cent. Confirmed breaches increased by 56 per cent, up from 30 to 47. The TIO recorded breaches against 196 members, up from 88 in 2005/06. Confirmed breaches were recorded against 17 members.

Approximately 80 per cent of all code breaches related to Clause 6.5.1 or 6.1.1. These clauses are primarily concerned with providing information to customers to assist them in giving informed consent to enter a contract. Clause 6.5.1 requires providers to sell their customers products that meet their stated requirements or provide information regarding technical or geographical limitations to the service. Clause 6.1.1 requires providers to ensure that they offer customers accurate and up-to-date information that is relevant to the customer's requirements. Recorded breaches against these clauses totalled in excess of 6,000 this year (700 in 2005/06).

Credit Management

Breaches of the *Credit Management Code* increased by 147 per cent in 2006/07. As the 2005/06 and 2006/07 years contains code breach statistics that relate to different versions of the code, it is difficult to offer any direct comparison. However, the TIO does believe that this increase is all the more significant given that the code was registered on 13 April 2006. The TIO's policy in relation to new codes is to register breaches of the old code only up to the date of the registration. Once a new code is registered, only complaints that may involve breaches that occurred after the registration date will be recorded. This normally results in a decline in code breaches recorded immediately after the registration date.

A number of provisions of the revised code relating to financial hardship, and requirements for suppliers to have hardship policies and processes in place, came into effect on 13 October 2006. Since this date, almost 1,000 breaches relating to financial hardship were recorded against these provisions. Almost 70 per cent of the breaches related to a complainant's inability to obtain a payment arrangement that took into account their individual needs (Clauses 6.1.2 and 6.1.3). The TIO considers that suppliers need to take further steps to ensure that they have compliant hardship policies in place, as well as appropriate methods to identify customers to whom these policies should apply.

Almost 12 per cent of code breaches by mobile phone suppliers related to over-commitment and the lack of adequate supplier measures in relation to credit assessment, the supply of services to limit expenditure, and supplier tools to assist customers to manage expenditure. This is disappointing, particularly given that these figures do not relate to a full year.

The largest source of code breaches related to providers' alleged failure to notify customers of outstanding debts and the likelihood and outcome of credit management action. Approximately 24 per cent of code breaches related to this issue.

During the year the TIO recorded 18 confirmed breaches of Clause 5.7.1, which requires suppliers to suspend credit management on disputed charges while the amount is being investigated by the supplier or the TIO. The TIO therefore remains concerned at the alleged failure of providers to halt debt recovery of genuinely disputed amounts.

Customer Transfer

Recorded breaches of the *Customer Transfer Code* increased by 791 this year. As a percentage of all code breaches, *Customer Transfer Code* breaches accounted for 4.4 per cent, down from 7.7 per cent in 2005/06. This reduction in the overall percentage should not be seen as evidence of improved industry performance, particularly given that the TIO confirmed 42 breaches of the code after investigation at Level 3, versus 78 in 2005/06 after investigation of complaints at Level 2 and Level 3. The TIO recorded breaches of the code against 124 providers, compared with 93 in 2005/06. This is the last year in which direct comparisons with previous statistics will be possible as ACMA registered a revised version of the *Customer Transfer Code* on 5 July 2007.

The TIO is concerned at the large number of internet and landline breaches – almost 90 per cent of all breaches of the code relating to the absence of, or problems with, the authority (including informed consent) for a transfer. The TIO is of the view that only the person who has the existing contract with the provider, or their legally authorised representative, can provide consent to transfer a service.

When investigating complaints that relate to unauthorised transfers, a frequent finding is that the authorised representative requesting the transfer is not "legally authorised" as per the code definition. In these cases, suppliers often argue, and provide supporting evidence by way of voice recordings, that the person advised that they were authorised to request the transfer.

The TIO considers that, in order to accept a person's statement that they are authorised to consent to the transfer, the supplier must take steps to inform the person as to what constitutes a legal authority and that by not doing this, the supplier runs the risk of processing an invalid transfer.

Also of concern is the increasing number of Customer Transfer breaches related to internet services. Although internet suppliers recorded a relatively small percentage of breaches of the code, these increased as a proportion from 2.5 per cent to 8 per cent, rising from 39 in 2005/06 to 199 in 2006/07. While the majority of these related to authorised consent, an increasing number of breaches related to confirmation of the transfer, both before and after the transfer is implemented.

In the 2005/06 *Annual Report*, the TIO commented on a secondary issue arising from an unauthorised transfer whereby a customer cannot access their account after the service has been transferred. Upon investigation it appeared that, after relying on an authorised representative's consent to transfer a service, the account was transferred into the name of the authorised representative, effectively resulting in the authorised representative taking over the contract. The TIO is pleased that it is a requirement of the revised *Customer Transfer Code* that the gaining supplier must ensure that the transferred service remains in the name of the customer, even when dealing with an authorised representative.

Consumer Contracts Code

2006/07 is the first full year in which the TIO has recorded breaches against the *Consumer Contracts Code*. Given that the TIO did not have regard to the code until November 2005, it is not possible to compare this year's numbers with those of 2005/06.

This year, the TIO recorded 269 breaches of the *Consumer Contracts Code*, including 17 confirmed breaches. This is the highest ratio of confirmed to possible breaches of all consumer codes to which the TIO has regard. The majority of breaches related to a unilateral variation of a contract by a supplier, either by failing to give advance notice to the customer or by failing to offer the customer the option of terminating the contract without applying termination charges.

The majority of confirmed breaches were recorded against complaints in which, after investigation, it was decided that the contract terms were unfair, as defined under Clauses 6.1.1, 6.1.2 and 6.1.3 of the code.

Operational codes

Mobile Number Portability

The TIO was pleased to note, for the second consecutive year, a significant reduction in *Mobile Number Portability Code* breaches in 2006/07. Possible breaches fell by 78 per cent, while only two confirmed breaches were recorded.

Handling of Life-threatening and Unwelcome Calls

In 2006/07 the TIO recorded 244 breaches of this code. More than 70 per cent of these breaches related to the adequacy of processes that suppliers have in place for dealing with unwelcome calls, including advising complainants of their options.

While the overall number of breaches of this code are small, life-threatening and unwelcome calls can have serious implications for customers. The TIO is concerned that, with the increasing take-up of mobile telephones as the primary service, mobile providers accounted for 60 per cent of process-related breaches.

Commercial Churn

The TIO recorded significantly fewer breaches of the *Commercial Churn Code* in 2006/07 than in previous years, recording 77 possible and one confirmed breach. This reduction was primarily the result of a change in the manner in which TIO staff capture breaches of this code. From 1 July 2006 TIO staff were not encouraged to record breaches of operational codes such as the *Commercial Churn Code* as, in order to record a possible breach, they were reliant primarily on the information provided by the complainant regarding their dealings with suppliers.

The TIO has taken the view that it is unlikely a complainant would be able to provide sufficient information regarding their network at Level 1 in order for the TIO to make an assessment as to which code, be it the *Commercial Churn Code* or the *Local Number Portability Code*, may apply and that this information is better sourced from the supplier during the course of a Level 2 or above investigation.

The TIO is concerned, however, at the large number of landline complaints regarding the absence of, or problems with, the authority of a transfer, particularly given the obligations on both the gaining and releasing service providers to verify the transfer authority.

The TIO is also concerned at the number of complaints regarding the failure of gaining service providers to reverse transfers that have been identified as potentially unauthorised. The TIO has continued to receive complaints where, on contacting the gaining service provider to dispute that consent was given for the transfer, the customer claims to have been advised to contact their previous provider to transfer their service back.

Other Codes

The remaining operational and consumer codes to which the TIO has regard recorded very few complaints over the year.

TIO staff recorded five possible and one confirmed breach of the *Connect Outstanding Code*. Only two suppliers recorded breaches.

During the year, there was only one breach of the *Calling Number Display Code*, which was confirmed at Level 3. One possible breach of the *Local Number Portability Code* was recorded, as well as one possible, and one confirmed, breach of the *Priority Assistance Code*.

Summary of code breaches 2006/07

Code name	Possible*	Confirmed**	Total	% of total
Billing	20,256	97	20,353	37.6
Calling Number Display	-	-	-	0.0
Commercial Churn	77	1	78	0.1
Complaint Handling	17,415	100	17,515	32.3
Connect Outstanding	5	1	6	0.0
Consumer Contracts Code	252	17	269	0.5
Credit Management	5,395	40	5,435	10.0
Customer Transfer	2,331	42	2,373	4.4
Handling of Life-Threatening or Unwelcome Calls	244	-	244	0.5
Local Number Portability	1	-	1	0.0
Mobile Number Portability	16	2	18	0.0
Priority Assistance	1	1	2	0.0
Prices Terms and Conditions	7,816	47	7,863	14.5
Total	53,809	348	54,157	100.0

* Code Breaches logged as **Possible** as no formal investigation was undertaken into complaints

** Confirmed after investigation at Level 3 and above