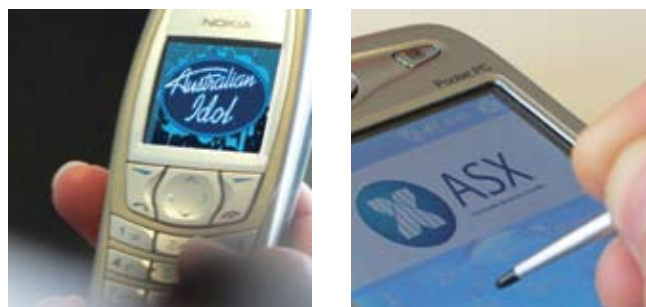


Mobile Premium Services Industry Scheme



Background to MPSI

A mobile premium service offers customers mobile phone access to content such as horoscopes, mobile ring tones, wallpapers, weather information and chat services.

While fees for these services are charged by the customer's mobile provider on their mobile or telephone account, usually at higher rates than normal calls or messages, the premium services themselves are provided by a separate content provider.

The involvement of two separate suppliers for billing and content has led to much confusion for customers. Customers who wish to dispute charges have traditionally approached their mobile supplier, but with mobile premium service charges, mobile suppliers typically have no systems in place to identify what service has been charged or how the service may have been requested.

Mobile premium services operate on number ranges that are different from those used by normal phone calls. Those initiated via a premium rate SMS typically involve sending an SMS to a number starting with 191, 193, 194, 195, 196, 197 or 199. Services that operate on these ranges are regulated under rules devised by ACMA, set out in the *Telecommunications Service Provider (Mobile Premium Services) Determination 2005* (No. 1).

Under the Determination, mobile carriage service providers and content service providers were required to develop a self-regulatory scheme that established clear rules about what information must be provided to users of premium mobile services. These rules include providing users with clear and transparent information about the costs, terms and conditions on which mobile premium services are offered and about handling of complaints regarding mobile premium services.

The scheme, known as the Mobile Premium Services Industry (MPSI) scheme, was approved by ACMA on 28 September 2006 and took effect on 28 October 2006. The TIO, as the nominated escalated complaints handling body under the MPSI scheme, began recording complaints on 1 December 2006. As the TIO's power to investigate MPSI complaints comes from the MPSI scheme rather than the TIO scheme, the TIO records and reports on MPSI complaints separately to other types of complaints.

Before 1 December 2006, the TIO recorded complaints relating to mobile premium services as Mobile Billing complaints. The TIO would also record breaches of ACIF codes in complaints about mobile premium services. The TIO now only records breaches of the MPSI scheme.

Objectives of the scheme

The key objective of the scheme is to establish a framework to implement appropriate community safeguards in relation to the use of mobile premium services. The rules are intended to:

- prohibit and restrict certain mobile premium services in accordance with the National Classification Code and community expectations about the accessibility of those services
- promote the safety of children in relation to mobile premium services that might be used for illegal contact between children and adults
- ensure that customers have sufficient information enabling them to make informed decisions about using mobile premium services
- ensure the availability of an independent complaints handling mechanism.

The MPSI scheme also specifies the conditions of membership of the scheme and the procedures for any amendment of the scheme in the future.

The scheme sets out the rules with which members of the scheme are required to comply, including the procedures applicable to resolving customer complaints, removal of offending content services and other matters. A failure to comply with the rules of the scheme, including failure to implement any remedy determined by the TIO as the independent escalated complaints handling body, may be deemed a breach of the Determination, for which penalties may be enforced by ACMA.

More specifically, the provisions of the MPSI scheme to which the TIO has regard are intended to provide that:

- customers are sufficiently informed of the nature, prices, terms and conditions of premium mobile services at the point of sale, in advertising, and while using the services
- customers can readily access an "unsubscribe" mechanism for each premium mobile service, to discontinue a service and avoid incurring further premium charges
- persons under the age of 18 years do not have access to adult content
- customers have a convenient, fair and efficient means of resolving complaints arising in respect of mobile premium services.

Where a complaint relates to the classification or assessment of content, the TIO will refer that aspect of the complaint to ACMA so that they can assist in resolving the complaint.

Mobile Premium Services Industry Scheme



Complaint statistics

On 1 December 2006, the TIO began recording complaints as the escalated complaint handling body for the MPSI scheme. From 1 December 2006 to 30 June 2007, the TIO recorded 7,086 complaints under the scheme, with a total of 10,083 complaint issues. 181 of these complaints were escalated to Level 2, with 10 being further escalated to Level 3. One complaint is being investigated at Level 4.

The escalation rate for complaints recorded under the MPSI scheme is the lowest for any service type under the TIO's jurisdiction. Internet, mobile and landline complaints received under the TIO scheme have escalation rates between 6.1 per cent and 6.9 per cent. Only 2.6 per cent of complaints received under the MPSI scheme went on to be investigated at Level 2 during 2006/07. This suggests that TIO members are aware of their obligations under the scheme and are willing to resolve complaints at Level 1.

The TIO has some concerns that the MPSI obligations are possibly not being met until after the TIO has referred a customer back to their provider. This view is based on the high number of complaints taken under the scheme, the relatively low escalation rate and the fact that the TIO can record a complaint only when the complainant has been unable to resolve the matter directly with their provider. Given the newness of the scheme, the TIO will be watching MPSI complaints closely over the coming year for evidence that the mobile premium services industry as a whole has embraced the scheme.

About 60 per cent of MPSI complaints related to claims that charges were incurred for services that were not requested. There are a number of possible reasons for this, one being that complainants believe they are requesting a once-off service but are instead entering into an ongoing subscription.

While content providers are obliged to advise that a service is provided on a subscription basis and to provide mechanisms for identifying the charges on the account, the TIO records complaints at Level 1 based on the information provided by the complainant. Given the low escalation rates for complaints, most of these breaches are at Level 1 and would therefore not be investigated formally.

Almost 10 per cent of MPSI complaints related to a supplier either not actioning, or refusing to action, an opt-out request. The TIO is concerned that some suppliers or content providers may still not be aware of their complaint-handling obligations under the scheme, or the TIO's role as the escalated complaint handling body.

In addition to 244 complaints recorded for an alleged failure of the supplier to assist the complainant to address their complaint, over 10 per cent of MPSI complaints related to an alleged failure of a supplier or content provider to pass on information about the role of the TIO in handling complaints.

In investigating MPSI complaints, the TIO has regard to the provisions of the MPSI *Guidelines*. The *Guidelines* require content providers of subscription and non-subscription services to notify customers when their expenditure exceeds \$30 a calendar month; or, where their expenditure on a subscription service is less than \$30 within a 30-day period, remind the customer that they continue to be subscribed. This obligation applies for each premium SMS service and/or short code.

The TIO is concerned at the number of content providers that do not help customers to monitor and manage their usage of premium services by complying with the *Guidelines*. While the TIO does not have the power to enforce the *Guidelines*, it considers them to be a benchmark of good industry practice that it will take into account when making an assessment of what is fair and reasonable in any given complaint.

CASE STUDY

Mobile premium services

The complaint

The complainant contacted the TIO about a \$2,600 bill for premium SMS charges that he did not request.

He said that he first became aware of the charges when his provider contacted him to advise that his bill had reached \$1,000, at which time he was told that the charges were for a dating service. He said that despite him sending a “stop” message, the messages continued.

The provider said it considered the consumer responsible for the charges as he had registered for the service by providing his personal details, and there was no record of his having texted “stop”. In order to resolve the complaint, it offered to waive about \$500 of the disputed charges.

TIO response

The TIO asked the provider for a full copy of all text messages between the consumer’s mobile and the dating service. It was clear that, while the consumer had requested the service, he had also sent a “stop” message. The provider responded to the “stop” message by advising that the session was closed, and that in order to restart the consumer would need to send his name.

At the same time, however, the dating service sent a message to the complainant advising that the person he had been conversing with was “in the office”. In subsequent messages that appeared to relate to the complainant’s request to cancel the service, the dating service gave the impression that the service had been cancelled and that any further contact the complainant may choose to have was not be through the dating service – rather, it would be as a private text conversation between the complainant and the dating service’s operator. This contact appeared to be the starting point for an additional 600 premium messages to the complainant, at a cost of about \$1200, despite the complainant questioning in a return message how the dating service was able to send him messages when the service had been cancelled.

The outcome

The mobile provider offered to reduce the charges to \$800 to reflect the charges that the consumer had used before texting “stop” and the TIO’s position on unlimited credit. The complainant advised that he was satisfied with this resolution.

Mobile Premium Services Industry Scheme *continued*



Breaches of the scheme

Since it began logging complaints under the MPSI scheme, the TIO has recorded 8,036 possible breaches of the MPSI scheme. These breaches were recorded against 47 different providers. Given that this is the first year in which the TIO has recorded complaints under the MPSI scheme, no comparisons are possible yet.

That the TIO has not yet confirmed a breach of the MSPI scheme is not indicative of the performance of industry. Confirmed breaches are recorded only at the completion of a formal investigation. During 2006/07 the TIO completed only three formal investigations under the scheme.

65 per cent of recorded breaches of the scheme related to a complainant's allegations that they had been charged for services that they did not request.

Almost 12 per cent of breaches related to claims that the customer was not able to unsubscribe from a service, either due to: an inability to contact the supplier or content provider to request cancellation of the service; a delay in actioning the opt-out request; or a refusal to accept the opt-out request.

13 per cent of breaches recorded by TIO staff were in response to claims that providers did not adhere to time-frames for resolving complaints or advise complainants of their options in regard to unresolved complaints.

CASE STUDY

Mobile premium services

The complaint

The complainant contacted the TIO claiming to have received premium SMS services that he did not request.

He claimed that, after speaking with his mobile provider, he requested that the services be cancelled, but that he continued to receive messages. He advised that, while the mobile provider had offered to credit any charges incurred after he asked for the service to be cancelled, he wanted all the charges credited as he did not request the services.

TIO response

The TIO asked the provider to consider the complaint and advise the TIO how it believed the matter could be resolved.

In its response, the mobile provider advised that the complainant subscribed to the services and had downloaded the ring tones and games received from the subscription. In order to resolve the complaint, however, in addition to its previous offer to credit charges incurred after he opted out of the service, the provider offered to credit approximately \$40 in late payment and barring fees that it had applied to his account, leaving the complainant to pay approximately \$60 in premium SMS charges.

After receiving this information from the TIO, the complainant restated his claims that he had not requested the premium SMS services, and that the first time he received a message he thought it was from a friend but that when he opened it, he could not access anything. He claimed that, although he had then received one message a day, he deleted them without opening them. He also claimed that no one else had access to his mobile service. In response to this information the TIO requested that the mobile provider supply evidence that the complainant had requested the premium services.

The mobile provider provided detailed evidence that, while the premium SMS services were requested over the internet, a request was received from the complainant's mobile service asking for a PIN number to access premium services. It also provided evidence that a PIN was provided to the complainant's mobile, and that the same PIN was used from the complainant's mobile to confirm acceptance of the subscription. It also re-stated that the information provided to the complainant's mobile was used to download games and ring tones from the internet.

The outcome

Based on this evidence, and the complainant's claims that no one else had access to his mobile service, the TIO formed the view that no further investigation was warranted and that the offer previously made to the complainant was in fact a reasonable offer aimed at resolving the complaint.