

## TIO Decision – 15 February 2019

### (De-identified for publication)

This document sets out my Decision for a complaint from the Consumer about the Provider.

On 18 December 2018, I issued my proposed resolution of this complaint (reproduced in the appendix). The Consumer has accepted the proposed resolution but the Provider did not.

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### Directions

The proposed resolution is my final Decision in this matter.

I DIRECT the Provider to confirm by the close of business on 8 March 2019 it will remove the credit default on the Consumer's credit file.

Judi Jones

**Telecommunications Industry Ombudsman**

## Appendix: Ombudsman's Proposed Resolution

This document sets out my proposed resolution of a complaint from the Consumer about the Provider.

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### 1. Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is that the Provider should remove the credit default from the Consumer's credit file. This is because:

- the Provider has obligations to help customers in financial hardship
  - the Provider has not met its financial hardship obligations
  - the Consumer could have repaid the debt if the Provider had agreed to a payment arrangement
  - the Provider did not provide appropriate information about its hardship policy
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### 2. Background

The Consumer's credit file shows a credit default for \$1,262 listed by the Provider on 6 June 2014.

The default is shown as paid on 11 December 2015.

### 3. The complaint and the Provider's response

#### The Consumer's complaint

The complaint is about financial hardship and a disputed credit default.

The Consumer was in a fixed term post-paid mobile contract with the Provider. The Consumer fell into arrears on the account. The Consumer said they informed the Provider of their circumstances and asked for a reasonable payment arrangement they could afford. The Consumer says the Provider would not consider this and set up an unaffordable payment arrangement.

The Consumer could not meet this arrangement but continued to make payments on a regular basis. The Provider listed the credit default while the Consumer was making the payments.

After the Provider cancelled the service on 21 February 2014 the Consumer continued to make regular payments to the account until the debt was cleared.

## The Provider's response

The Provider says the Consumer never informed it they were experiencing financial hardship. The Provider sent SMS notifications and credit management letters informing the Consumer of its hardship policy but the Consumer did not tell it of their financial situation.

The Provider said the Consumer had requested two 'promises to pay' in August 2013 and two payment arrangements in December 2013 and January 2014. The first payment arrangement was for \$223.00 per fortnight and the second one was for \$200.00 per fortnight. The Provider's notes say the Consumer agreed to these arrangements, but the Consumer disputes this. The Consumer said the Provider had asked them to make payments of approximately \$200.00 per fortnight but they could not afford this. The Consumer told the Provider's representative that they could not afford this arrangement, but the Provider's representative ignored them.

The Provider said it complied with its obligations by informing the Consumer of its financial hardship policy. The Provider said it sent the Consumer SMS notifications and credit management letters, which tell a consumer how to access the Provider's financial hardship policy. The Provider said throughout this time, the Consumer did not tell the Provider that they were experiencing financial hardship.

The Provider said as it sent credit management letters according to the Privacy (Credit Reporting) Code 2014, it considers the credit default is valid and will not remove the listing.

## 4. Reasons

My proposed resolution is based on the following reasons:

- the Provider has obligations to help customers in financial hardship
- the Provider has not met its financial hardship obligations
- the Consumer could have repaid the debt if the Provider had agreed to a payment arrangement
- the Provider did not provide appropriate information about its hardship policy

### 4.1. The Provider has obligations to help customers in financial hardship

Under the Telecommunications Consumer Protection (TCP) Code, the Provider owes various obligations to consumers in financial hardship. These obligations include:

- Having accessible financial hardship policy available on its website
- Assessing the Customer's eligibility for assistance under the hardship policy in a fair and timely manner
- Offering flexible repayment options to meet the Customer's individual circumstances where possible.

I can consider a complaint about whether a provider has met its obligations under the TCP Code.

#### 4.2. The Provider has not met its financial hardship obligations

I am not satisfied the Provider met its financial hardship obligations. This is because it neither assessed the Consumer’s eligibility for assistance under its hardship policy, nor offered repayment options to suit the Consumer’s needs. The available information supports this conclusion because:

- the Consumer asked for a payment arrangement
- the Provider has an obligation to consider a consumer’s financial circumstances, even when the consumer does not use the term ‘financial hardship’
- the Provider has not applied the TCP’s ‘Financial Hardship’ code to the circumstances of this complaint.

##### 4.2.1. The Consumer asked for a payment arrangement

I am satisfied the Consumer asked the Provider for a payment arrangement.

Table 1 below sets out the information from the Provider’s customer notes showing the Consumer asked for a payment arrangement on four separate occasions.

**Table 1 Customer notes showing requests for payment arrangement**

Date	Notes
2 August 2013	Consumer requested lifting of bar & payment plan booked. Transferred call to collections
12 August 2013	Payment arrangement broken
3 December 2013	Consumer requested payment arrangement. “Tenure 19 months... Reason for delay: previous broken PTP: yes; pitched for credit card payment: yes. Final arrangement provided to the consumer: will pay \$223 fortnightly, book ptp, unbarred services”
23 January 2014	Consumer requested payment arrangement. Provider said to remove bar “total amt needs to ref on ac as paid. Customer wants to get active today. The Provider referred consumer to manager.  Escalating call spoke to consumer agreed to pay \$200.00 fortnightly starting 23/1 unbarring once \$500.00 reflects on a/c

##### 4.2.2.A consumer is not required to use the term ‘financial hardship’

The TCP code does not say a consumer is required to use the term ‘financial hardship’ in order to trigger a provider’s obligation to consider financial hardship. The Code says the provider can infer that the policy applies by analysis of the consumer’s payment history, such as broken promises to pay and payment methods.

I agree with the Provider there is no mention of financial hardship in the customer notes. However, when the Consumer was unable to maintain the assigned payment arrangements, this should have triggered the Provider to treat the Consumer as a customer in financial hardship.

#### *4.2.3. The Consumer was in financial hardship*

I am satisfied the Consumer was in financial hardship.

The Provider provided the Consumer's payment history, which shows that from January 2013 onwards the Consumer was making part payments each month to the account to finalise the monthly account. The payment history shows that, apart from the payment of July 2013, the Consumer could not finalise their account with one payment per month. These part payments started well before the Consumer requested an official payment arrangement in December 2013.

The Provider provided notes from the debt agency which show it was receiving part payments from the Consumer before the Provider listed the credit default. The payment schedule also shows the Consumer made regular payments to the debt agency after the default listing.

From this evidence I can infer two things:

- the Consumer was not trying to avoid their financial obligations
- the Consumer could not afford a payment arrangement of either \$200.00 or \$223.00 per fortnight.

On this basis, it is more likely than not, the Consumer would have informed the Provider representative that they could not afford the recommended payment arrangement of \$200.00 and \$223.00 per fortnight. Therefore, although the Provider's notes of December 2013 say the Consumer agreed to a payment arrangement, it's unlikely that the consumer would have agreed to this payment arrangement.

Even if that is not the case, the Consumer showed a consistent payment history (of small amounts) before and after the listing of the credit default. I believe that this should have alerted the Provider to the Consumer's inability to afford the arrangement of \$220.00 per fortnight recorded in the notes.

The TCP Code defines financial hardship to mean a situation where:

- a consumer is unable to discharge their financial obligations to a supplier due to illness, unemployment, or other reasonable cause; and
- the customer believes they are able to discharge those obligations if the relevant payment arrangements are changed.

#### *4.3. The Consumer could have repaid the debt if the Provider had agreed to a payment arrangement*

I am satisfied it is likely the Consumer could have repaid the debt if the Provider had agreed to an appropriate payment arrangement.

I have reviewed the account payment records which show the Consumer was making regular payments to the Provider. The Consumer made regular payments of \$40.00 per fortnight from January 2013 to March 2014, \$50 per month from May 2014 until February 2016 (during this period the Consumer occasionally made payments of \$50 per fortnight). The Consumer continued to make payments until the debt was repaid.

Had the Provider applied its financial hardship policy to the consumer in a timely manner, and engaged with the consumer in a meaningful way, the consumer would have been protected from further credit management activity, including a credit default.

#### 4.4. The Provider did not provide appropriate information about its hardship policy

I am not satisfied the Provider provided the Consumer appropriate information about its hardship policy.

The Provider said it had advised the Consumer of its financial hardship in its SMS notifications and credit management letters.

I have read the SMS notifications. These say that if the consumer is experiencing financial hardship they are to contact the Provider to pay by credit card or to discuss payment arrangements as per its financial hardship policy.

I am not satisfied the notifications comply with clause 6.11.1(e)(i) to (iv) of the TCP Code **C628:2012**, which sets out the type of information a provider is required to supply as part of its summary of its financial hardship policy. The TCP Code requires the provider to provide information to tell the consumer:

- (i) *options available to the Customer, or former Customer, to assist with their management of Financial Hardship as it relates to their use of Telecommunications Services (e.g. spend controls, Restriction of service);*
- (ii) *available times for contact with the Supplier regarding the Financial Hardship policy;*
- (iii) *information that the Supplier might require a Customer, or former Customer, to provide to make an assessment of Financial Hardship under the Financial Hardship policy, e.g. income details, details of the Telecommunications Service (telephone number, broadband) and most recent contact details; and*
- (iv) *generally how the Supplier makes an assessment of Financial Hardship under the Financial Hardship policy;*

The Provider said it had notified the Consumer of its hardship policy in its credit management letters. The credit management letters include a sentence referring customers to a page on the Provider website that explains the Provider's financial hardship policy.

However, the Provider sent the Consumer the credit management letters on 4 February 2014 and 17 March 2014. The Consumer was discussing payment arrangements with the Provider in December 2013 and January 2014. This is some time before the Provider sent the Consumer the credit management letters.

Judi Jones

**Telecommunications Industry Ombudsman**