

TIO Determination – 11 December 2017

(De-identified for publication)

This document sets out my Determination on a complaint made by the Representative on behalf of the Consumer about the Provider.

On 18 October 2017, I advised the parties of my preliminary view (reproduced in the **Appendix**). It has been accepted by the Consumer. However, the Provider has not responded or provided any further information.

Final determination

I confirm the preliminary view is my final determination in this matter.

Accordingly, I DIRECT the Provider to refund \$541.57 to the Consumer. If the Consumer requests, the Provider should also reconnect all services it provided under her account and allow her to transfer these services to another provider.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

TIO Preliminary view

This document sets out my preliminary view of a complaint made by the Representative on behalf of the Consumer about the Provider.

Preliminary view

My view, on the information available, is the Provider must refund \$541.57 to the Consumer.

If the Consumer requests, the Provider should also reconnect all services it provided under her account and allow her to transfer these services to another provider.

Background

The Provider provided a landline voice service to the Consumer's household. The Consumer has authorised her husband, the Representative, to represent her for this complaint.

The Consumer's complaint is two fold:

1. The Provider disconnected her landline service on or around 20 April 2017 without sufficient notice. After the disconnection of the landline service the Consumer had difficulty contacting the Provider.
2. The Representative told the TIO the Provider owes the Consumer money, which it has not repaid and she has not been able to contact it.

The Representative said the cancellation of the service caused difficulties as the Consumer suffers from serious health issues and their daughter has epilepsy. The disconnection interrupted contact with family and had the potential for disastrous consequences if the Representative or his daughter experienced health complications.

The Representative explained the credit balance is due to an overpayment made to the Provider in November 2016. The Provider did not refund the over payment to the Consumer. The Consumer has been unable to contact the Provider to discuss the remaining credit balance on her Provider account.

On or around 4 May 2017, the Representative spoke with the Provider and it told him it would resolve his dispute within a week. The Representative has been unable to contact the Provider since then.

The available information

In arriving at the Determination I have considered the following documentation:

- Letter sent from the Provider to the Consumer dated 5 April 2017
- Credit card statement between 20 October 2016 to 22 January 2017
- Invoices issued by the Provider to the Consumer between 5 December 2016 to 5 April 2017 and notes written on these invoices by the Representative or the Consumer

I have also considered information provided by the Representative online and by telephone.

Despite numerous attempts to contact by telephone, email and post, the Provider has not responded to this complaint since acknowledging receipt of the initial complaint referral on 11 April 2017.

Letter dated 5 April 2017

In the letter the Provider informs the Consumer of its intention to disconnect her service by 20 April 2017. The letter notified the Consumer of the Provider's intention to unilaterally terminate the service contract between the two parties. The Provider agreed not to charge cancellation fees or further service charges after the invoice due 20 April 2017. The letter says, in part:

“You will not be charged any cancellation fees for transferring your service, however you will receive a final bill from us (attached) and this will be the call charges that have been made in the month of March including any late landing usage and plan fees. Please ensure this invoice is paid by the due date (20th April 2017) so we can close off your account.”

Credit Card Statements

The Representative provided Credit card statements showing the Provider's direct debit provider processed the following payments by direct debit:

1. \$785.53 processed on 9 November 2016
2. \$31.83 processed on 18 November 2016
3. \$43.23 processed on 19 December 2016
4. \$68.77 processed on 19 December 2016
5. \$16.48 processed on 16 January 2017

The total of payments made is \$945.84.

Invoices issued by the Provider

The Provider invoices show the Provider has charged the Consumer's account the following amounts between billing period of 1 November 2016 to 1 April 2017:

1. Invoice A charges \$67.69 due 20 December 2016
2. Invoice B charges \$152.81 due 20 January 2017
3. Invoice C charges \$64.30 due 20 February 2017
4. Invoice D charges \$45.64 due 20 March 2017
5. Invoice E charges \$73.83 due 20 April 2017

The total amount charged on the account between 1 November 2016 until the account's disconnection in April 2017 is \$404.27.

My assessment

Service agreement and disconnection

The Consumer agreed to a service contract with the Provider by telephone. The Consumer's services were disconnected by the Provider on 20 April 2017, after she received the notice of the disconnection on 9 April 2017.

The Consumer was provided 11 days notice of the disconnection of her service and the termination of her service agreement with the Provider. I am unable to contact the Provider to request a recording of the contract between it and the Consumer. I am also unable to access the Provider's Standard Form of Agreement because its website is no longer active. Without access to this information, I cannot assess whether the Provider is contractually entitled to disconnect the Consumer's service with 11 days notice.

The TIO's view is when a provider makes detrimental, unilateral variation to a service contract, the provider must give the consumer sufficient notice of the variation.

I do not consider 11 days to be sufficient notice of this variation to the Consumer's service contract.

Payment made to the Provider

On 9 November 2016 the Consumer paid \$785.53. I accept this payment was drawn on behalf of the Provider. The Representative said this payment was an error made by the Provider, and the payment was supposed to be approximately \$76.00. The Representative said the Provider eventually agreed to process the overpayment as a credit to the account.

Invoice C processes a credit of \$726.26 under heading 'miscellaneous fees.' I accept the Representative's explanation the payment on 9 November 2016 was an error and the Provider intended to credit it to the Consumer's account.

The Provider invoices

The invoices the Provider sent to the Consumer do not include all processed payments shown on the credit card statement provided by the Representative. The following payments made do not appear on the Provider invoices:

1. \$31.83 processed on 18 November 2016 is not shown on Invoice A or any other invoice
2. \$43.23 processed on 19 December 2016 is not shown on Invoice B or any other invoice

Therefore, it seems to me the invoices provided by the Provider do not accurately reflect the balance of payments, credits and adjustments made on the account and I cannot rely on the account balance provided in the invoices.

I have only relied on the fees charged by the Provider in the invoices provided, as the Representative has not disputed these charges. Further adjustments made in the invoices, including an unexplained credit of \$135.52 on Invoice C will not be included in my determination of the outcome of the Consumer's complaint.

Credit balance of the Consumer's account

Between 1 November 2016 and 1 April 2017 the Consumer paid the Provider \$945.84. The payments were made to the Provider by direct debit. In the same time the Provider has billed the Consumer \$404.27. The Provider terminated the contract with the Consumer on 20 April 2017. Based on the balance of payments and charges made the Consumer (\$945.84 - \$404.27), the account should be in credit \$541.57.

This credit balance does not include credits made by the Provider. The Consumer has provided evidence supporting payment of \$945.84. This balance represents monies paid to the Provider by the Consumer which she has lost the benefit of when her Provider services were disconnected. If the Provider does not intend to continue providing the Consumer a service, it is reasonable it refunds credit remaining on her account.

Preliminary view

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 satisfied a fair and reasonable outcome to this complaint is for the Provider:

- to refund \$541.57 to the Consumer's nominated bank account and

- upon request, reconnect the services under her account to enable the Consumer to transfer her services to a provider of her choice.