

TIO Determination – 29 May 2014

(De-identified for publication)

This document sets out my Determination in relation to a dispute between the Consumer, Mr G, and the Provider.

Background

This complaint concerns the claim that Mr G's telecommunication service was transferred to the Provider without his authority on or about 28 August 2013 and that amounts were direct debited from a bank account which he holds jointly with his wife.

In resolution of the complaint, the Provider agreed to refund all amounts debited from Mr G's bank account and to waive all other amounts that it had charged (approximately \$1,421.94), but not debited.

The only issue that remains unresolved is whether all amounts debited from Mr G's bank account have been refunded.

Investigation

In forming my view about how this complaint should be resolved, I have considered the following:

- a copy of a letter from the Provider to Mrs G dated 14 August 2013 that includes a receipt of payment dated 15 August 2013
- an unsigned acknowledgement of agreement to services in the name of Mrs G
- an unsigned Direct Debit Request form in the name of Mrs G
- copies of Commonwealth Bank statements for the period 31 July 2013 to 31 December 2013. The bank statements are in the name of Mr G and Mrs G
- a screen shot of a Direct Debit Request Claim from Westpac dated 11 September 2013 in relation to debit dated 22 August 2013
- a screenshot from the Provider showing debits and adjustments in relation to the account created for Mrs G, and

- the Provider's written advice that it agrees to refund the disputed \$79 to the consumer.

I have also considered the "chargeback process" which the Provider refers to in respect of its claimed refunds towards the Mr G's bank account.

I note that the chargeback process applies to transactions conducted using credit or debit card details under schemes such as Visa or MasterCard. Chargebacks are processed by the merchant's bank and do not apply to disputed direct debit charges from transaction accounts. The charges that Mr G disputes are direct debit charges from a transaction account and, consequently, do not come within the chargeback process.

Having regard to the above, the circumstances of the complaint, and the information provided by Mr G and the Provider to date, the issue that requires investigation is whether or not all amounts debited from the Mr G's bank account have been refunded.

Has the Provider refunded all amounts debited from Mr G's account?

It is not in dispute that the Provider debited two amounts of \$79 from Mr G's bank account. The first debit was processed on 15 August 2013 and the second debit on 22 August 2013.

Mr G has informed the TIO that one amount was refunded on 17 September 2013, but that he has not been refunded the second amount of \$79.

The Provider has said that both amounts have been refunded to Mr G as a result of the "chargeback process" and provided screenshots of the following:

- a Direct Debit Request claim from Westpac Bank dated 11 September 2013 relating to a transaction identified as unauthorised and asking for a copy of authorisation or refund
- a copy of a screen shot showing two direct debits, each for \$79 on 15 and 22 August 2013 and two adjustments, each of \$79 on 12 September and 30 October 2013.

Mr G has provided a copy of his Commonwealth Bank account statements for the period 31 July 2013 to 31 December 2013. Those statements show:

- a debit of \$79 dated 15 August 2013
- a debit of \$79 dated 22 August 2013, and
- a credit of \$79 dated 17 September 2013.

My assessment

The information provided by the Provider to date is not evidence that its bank reversed the disputed direct debit charge from the Provider, nor is it evidence that the Provider has repaid the disputed amount to Mr G. The evidence the Provider has provided refers simply to a disputed direct debit brought to its attention by Westpac bank.

Mr G's bank statements show that – up to 31 December 2013 - only one direct debit of \$79 was reversed. It is not clear whether that credit relates to the debit made on 15 August 2013, or the one made on 22 August 2013. However it is not necessary for me to look into which debit the credit was applied against as doing so is immaterial to the outcome of the complaint.

It remains, having regard to the circumstances of the complaint, the documentation provided, and the balance of probabilities, that only one refund of \$79 has been made to Mr G.

Accordingly, I am of the view that the Provider is required to process a second refund of \$79 directly to Mr G's bank account within five business days.

Other matter

The evidence in this matter demonstrates a very substantial impact on the health and wellbeing of Mr G and his wife as a result of a transfer that was not authorised, and debt collection activities while the matter was being dealt with by the TIO, for an amount the Provider agrees will be waived. While it is not a matter which I can make an award of compensation, at the very least the Provider should consider making an apology for the distress its actions have caused Mr G and his wife.

My preliminary view

On 10 April 2014, I advised the parties of my preliminary view that the Provider should:

- refund the amount of \$79 to Mr G, and
- consider making an apology to Mr G and his wife for the impact of its actions upon them.

The parties were asked to:

- respond to my view
- provide any new and relevant information which might change the conclusions reached, and

- identify any misunderstanding or misinterpretation of the facts of the dispute.

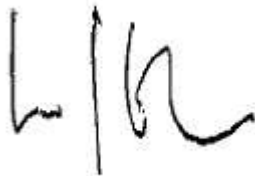
Mr G's response agreed with my preliminary view. The Provider did not respond.

Determination

For an apology to be of any value, it should be prompt and sincere. It is unfortunate that the Provider has not considered my view that it apologise to Mr G and his wife. While I remain of the view that making an apology is the very least the Provider might do for the distress it has caused, it is not a matter about which I will make a direction.

For the reasons set out above though, and having regard to the law, good industry practice, and what is fair and reasonable in all the circumstances, I am of the view that a fair and reasonable outcome to this complaint is for the Provider to refund \$79 to Mr G.

Accordingly, I DIRECT the Provider to refund the amount of \$79 to Mr G's nominated bank account within 14 days of the TIO providing to the Provider a Confirmation of Resolution signed by Mr G.



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Simon Cohen
Ombudsman

Date: 29 May 2014