

TIO Determination – 11 December 2017

(De-identified for publication)

This document sets out my Determination on a complaint made by 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 an amount of \$733.40 to the Consumer's nominated bank account.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

TIO Preliminary view

This document sets out my Preliminary view in relation to a complaint made by the Consumer about the Provider.

My Preliminary view

It is my view on the information available the Provider should refund an amount of \$733.40 to the Consumer's nominated bank account.

Background

This complaint is about the Provider direct debiting the Consumer's bank account without his authority after the Provider cancelled the service it was providing to him.

In a letter dated 5 April 2017 the Provider told the Consumer it could no longer provide a service to his area. The letter explains no cancellation fees will be charged after the payment of the final invoice due on 20 April 2017.

On 9 July 2017 the Consumer's account was direct debited \$733.40 by the Provider.

On 24 July 2017 the TIO referred this complaint to the Provider. The TIO has not received any response from the Provider since the referral.

The Consumer has attempted to have the direct debit refunded by his bank but has not been successful.

The available information

In forming my preliminary view I have considered the following information:

- Letter from the Provider to the Consumer dated 5 April 2017
- The Provider invoice dated 9 July 2017
- Letter from the Consumer's bank to the Consumer dated 12 July 2017

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

The Provider has not provided any information or responded to the TIO about this complaint.

Letter from the Consumer's bank dated 12 July 2017

The Consumer's bank claim confirms the Consumer has been direct debited \$733.40 and he disputed this direct debit with his financial institution. The letter confirms the

Consumer's claim has been rejected and the Consumer's bank did not refund the disputed \$733.40 to the Consumer.

Letter dated 5 April 2017 from the Provider

In the letter dated 5 April 2017 the Provider wrote to the Consumer to advise him it intended to disconnect his 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. As part of this letter, the Provider agreed not to charge cancellation fees or further service charges after the invoice due 20 April 2017.

I accept after 20 April 2017 there was no service contract between the Consumer and the Provider.

The Provider invoice dated 9 July 2017

The Provider invoice dated 9 July 2017 showed the \$733.40 was calculated as follows:

- Charge of \$29.95 for Service Plan Access fees for 1 June 2017 to 30 June 2017
- Charge of \$29.95 for Service Plan Access fees for 1 July 2017 to 31 July 2017
- Charge of \$703.45 for Cancellation fee of 1 July 2017
- Credit of \$29.95 for Service refund dated 1 July 2017

This invoice was provided to the Consumer's bank by the direct debit company on behalf of the Provider as an explanation of the direct debit taken from the Consumer's account on 9 July 2017. The direct debit company accepted the invoice as evidence of the validity of the direct debit. The Provider charged the Consumer cancellation fees and service charges after 20 April 2017.

My assessment

As the Provider unilaterally cancelled the Consumer's service, it is not entitled to charge him a cancellation fee. After April 2017 the Provider is not entitled to charge the Consumer service charges as there is no longer a service agreement between him and the Provider. I accept the contract between the Consumer and the Provider ended in April 2017 and the charges after this date are invalid.

After the termination of the Consumer's account with the Provider, the Provider no longer had authority to direct debit the Consumer's account.

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 \$733.40 to the Consumer.