

TIO Decision – 15 February 2019

(De-identified for publication)

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

On 21 January 2019 I advised the parties of my proposed resolution (reproduced in the Appendix). The Representative has accepted the proposed resolution, but the Provider did not respond.

Decision

The proposed resolution is my final decision in this matter.

Accordingly, I direct the Provider to pay the Company \$10,750.86 within five business days of this decision.

Judi Jones

Telecommunications Industry Ombudsman

Appendix: Ombudsman's Proposed Resolution

This document sets out my proposed resolution of a complaint from the Representative on behalf of the Company about the Provider.

Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is the Provider should pay the Company \$10,750.86 within five business days of the Company's acceptance of this proposed resolution.

Background

The Company entered into a contract with the Provider on 4 August 2018 for the Provider to provide a phone system and network services. The services were set up on 26 January 2018 and included:

- Two phone lines
- One fax line
- Internet (100GB NBN broadband)
- Phones and mobiles

The Company was previously another Provider's customer and its phone equipment was financed through a third party finance provider.

The complaint and the Provider's response

The Representative's complaint is that:

- the Provider has not paid the Company \$9,570.00 as agreed in the contract, and
- there is a fault with the second phone line.

Payout

The Representative said the contract with the Provider included a term that the Provider would pay out the Company's previous equipment contract. At the time the contract was made, the Company owed the third party finance provider \$9,570.00.

The Representative said until June 2018, the Company continued to pay the monthly charges to the third party finance provider but stopped after that because it could not afford the payments. They say the Company now continues to receive debt collection notices from the third party finance provider.

The Representative said they sent the Provider copies of the correspondence from the third party finance provider and the Provider told them it would arrange payment but this never happened.

The Representative said on 19 October 2018, they emailed the Provider to follow up on the payment. The Representative said the Provider responded saying it would follow up with the payments team. The Representative said the Company still has not received the payment or any explanation for the delay.

The Representative has provided emails to show they sent the Provider evidence of the debt and an invoice for the payout.

Faulty phone line

The Representative also complained about the second phone line not working.

The Representative said everything was working fine when the Provider set up the services in January 2018.

The Representative said they noticed the second phone line was not working on 12 April 2018. Calls on the second line were supposed to come through to the Representative's mobile. However, the Representative realised they were not receiving calls on their mobile and everything was going through to the main line. The Representative said they called the Provider the same morning to report the fault. They say the Provider told them it would arrange a technician for the following day, Friday 13 April, but no one arrived.

The Representative says they called the Provider back on Monday 16 April to follow up on the technician not arriving. The Provider assured them it had arranged another technician for Friday 20 April. When the technician came to the Company's premises on Friday, the technician told the Representative there was nothing wrong at the property and the problem was at the exchange. The Representative said they stayed in contact with the Provider about this issue and the Provider told them it would look into it and keep them informed.

The Representative said the fault was not fixed until 15 August 2018.

The Provider's response

On 14 September 2018 and 26 September 2018, the Provider confirmed during phone conversations with my office that the payout was escalated to the payments team. However, it has not provided evidence of the payment or responded to information requests since.

The Provider has not responded to requests from my office for information about this complaint, apart from engaging in two phone conversations.

Reasons

I am satisfied the Provider should pay the Company \$10,750.86. This is because:

- I have drawn an adverse inference from the Provider not responding to information requests,
- the Provider has a contractual obligation to pay the Company \$6,756.86, and
- the Company is entitled to a Customer Service Guarantee (CSG) payment of \$3,994.00.

I have drawn an adverse inference from the Provider not responding to information requests

I have drawn an adverse inference from the Provider not responding to requests from my office for information. I am satisfied it is more likely than not:

1. either the Provider does not hold evidence to support its position, or
2. the Provider holds evidence supporting the Company's position.

I am satisfied the Provider has had reasonable opportunity to provide the information requested. Table 1 below outlines the interactions between my office and the Provider about this complaint.

Section 5.5 of the Telecommunications Industry Ombudsman's Complaint Handling Procedures says if a party does not provide information requested, the Telecommunications Industry Ombudsman can draw inferences from this. This includes:

- *"That the party does not have information or evidence to support their position, or*
- *That the information the party holds supports the other party's position."*

Table 1 Outline of interactions between my office and the Provider

Date	Activity
16 July 2018	Request to the Provider for information about the complaint
7 August 2018	Reminder to the Provider to provide the information requested
14 August 2018	Further reminder to the Provider to provide the information requested
17 August 2018	The Provider requested an extension for time to respond until 20 August
21 August 2018	Granted extension for further information by close of business 21 August
14 September	Phone discussion between my office and the Provider about the complaint. The Provider advised it was in discussion with the Representative and working to resolve the fault, and the payout had been escalated to the payments team for processing
26 September	Phone discussion between my office and the Provider about the complaint. The Provider advised it was in discussion with the Representative and working to resolve the fault, and the payout had been escalated to the payments team for processing
27 September	Reminder sent to the Provider to provide the information requested
23 October	Further reminder sent to the Provider to provide the information requested

The Provider has a contractual obligation to pay the Company \$6,756.86

I am satisfied the Provider has a contractual obligation to pay the Company \$6,756.86. This is because:

- the contract provides for a network payout; and
- the Representative provided the Provider with an invoice confirming \$6,756.86 is the amount to be paid as the network payout.

The contract provides for a network payout

I am satisfied the contract between the Provider and the Company includes a term providing for a network payout.

The order form contains a section headed “NETWORK PAYOUT”¹ which says the Provider will payout settlement of a previous rental agreement upon receipt of a tax invoice from the finance company. The payout amount listed under this heading is \$9,570.00.

The section also says that if the proof of debt from the third party finance provider is a lesser amount, the Provider will pay the lesser amount and shall have no further liability in this regard.

The Representative provided the Provider with an invoice confirming \$6,756.86 is the amount to be paid as the network payout. I have reviewed a copy of the tax invoice² the Representative provided dated 17 September 2018, which shows the total payout to return all the equipment was \$6,756.86.

The Representative has provided copies of emails they sent to the Provider outlining details of the payout figures from the third party finance provider between April and October 2018. On 19 October, the Representative emailed the Provider forwarding details from the third party finance provider about the payout. The email from the third party finance provider says:

“The current payout figures for this contract are as follows:

Payout to return equipment is \$6809.78 (Inc. GST)

Payout to purchase equipment is \$8156.02 (Inc. GST)

Valid until the 29/10/2018”

On the same day, the Provider responded to this email apologising for the delay in processing the payout and confirming it would follow up with the payments team.

The Representative also emailed the Provider on 30 October 2018 attaching a notice of termination and demand from the third party finance provider³. The outstanding balance on this notice is \$8,156.02.

The Company is entitled to a Customer Service Guarantee (CSG) payment of \$3,994.00

I am satisfied the Company is entitled to a CSG payment of \$3,994.00 because:

- The CSG Standard applies to the faulty phone line
- The timeframe under the CSG standard started on 16 April 2018 and ended on

¹ See Appendix One – Order Form

² See Appendix Two – third party finance provider Tax Invoice

³ See Appendix Three – third party finance provider Notice of Termination and Demand

15 August 2018

- The CSG compensation payable is \$3,994.00

The CSG Standard applies to the faulty phone line

On the information available, I am satisfied Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard) applies to the faulty phone line.

The CSG Standard applies to a standard telephone service.⁴ The second phone line was used for the purpose of voice telephony. I am therefore satisfied it was a standard telephone service and is eligible under the CSG Standard.

The CSG Standard sets mandatory rectification timeframes for landline services. If a provider does not connect a service or repair a fault within the maximum period set out in the CSG Standard, the provider must pay compensation for the period of the delay, subject to any exemption in the Standard.

The timeframe under the CSG Standard started on 16 April 2018 and ended on 15 August 2018

I am satisfied the CSG timeframe started on Monday 16 April 2018, and ended on 15 August 2018.

The Representative reported the fault with the service on Thursday 12 April 2018, during business hours. Faults are considered to have been reported the same day if they are reported before 5pm on a working day. When a fault is reported after 5pm, it is treated as being received on the next working day.

The CSG standard sets out mandatory timeframes depending on the community size where the fault is reported. The service address in this case has a community size of more than 10,000 people. This means the mandatory fault rectification period under the CSG Standard is the end of the next working day after the fault is reported. No compensation is payable for the next working day. Therefore, the CSG timeframe begins on Monday 16 April 2018.

I am satisfied the Company CSG eligibility ended on Wednesday 15 August 2018.

The Representative said they continued to report to the Provider the issues with the second phone line. The fault was not fixed until 15 August 2018.

The Provider has not provided information my office requested about the date the fault was fixed. In the circumstances, I consider it more likely than not that the Provider does not have information to show the fault was fixed before 15 August 2018 or that the information it holds supports the Representative's version of events.

⁴ Part 1 Section 6 of [Telecommunications \(Consumer Protection and Service Standards\) Act 1999](#)

The total CSG compensation payable is \$3,994.00

I have calculated the appropriate CSG compensation in this case to be \$3,994.00.

There are 85 business days between 16 April 2018 and 15 August 2018 (inclusive).

The first 5 business days are calculated at \$24.20 per business day for a business customer. This amounts to \$122.00.

The remaining 80 business days are calculated at \$48.40 per business day. This amounts to \$3,872.00.

The total CSG compensation payable is therefore \$3,994.00.

Judi Jones

Telecommunications Industry Ombudsman

Appendix One – Order Form

[Order form from the Provider]

Appendix Two – Third party finance provider Tax Invoice

[Tax Invoice from the third party finance provider]

Appendix Three – Third party finance provider Notice of Termination and Demand

[Notice of Termination and Demand from the third party finance provider]