

INTRODUCTION

Complainants often seek compensation from their service providers as part of the resolution of their complaint. The type of compensation they seek can vary, as can their reasons for seeking compensation.

This position statement sets out the types of claims that the Telecommunications Industry Ombudsman (TIO) will consider; the types of claims the TIO will not consider; and the basic processes involved in consideration of a claim for compensation.

COMPENSATION CLAIMS CONSIDERED BY THE TIO

The TIO will generally only consider compensation claims for quantifiable amounts that would put the customer in a material position similar to that which would have existed had the complaint not occurred.

At the TIO, the most frequently investigated claims for compensation are:

SMALL BUSINESS: FAULT/PROVISIONING DELAY

Business/income loss arising from lack of service due to a connection delay and/or fault on a network (minus possible compensation under the Customer Service Guarantee Standard). For more information on claims for business loss, see the TIO's position statement—*Compensation for business loss*.

SMALL BUSINESS: WHITE PAGES DIRECTORY

Costs of alternative advertising and/or business loss arising from an incorrect or omitted White Pages directory listing. For more information on claims for business loss, see the TIO's position statement—*Compensation for business loss*.

DAMAGE TO PROPERTY

Repair of property damaged by a service provider

DISCLOSURE OF UNLISTED NUMBER/ADDRESS

Costs associated with protecting a complainant (from a likely threat from a third party, etc.) where their address was disclosed after they asked for unlisted line status (a silent number), e.g. temporary or permanent rehousing, installation of an alarm system etc.

COMPENSATION ISSUES NOT CONSIDERED BY THE TIO

The TIO does not usually consider quantifiable claims of the following types:

LOSS RELATING TO CREDIT DEFAULT

The TIO refers claims for financial loss subsequent to a credit default being registered incorrectly with a Credit Reporting Agency to the Privacy Commissioner, which handles complaints relating to the Credit Reporting Code of Practice.

COSTS OF PRESENTING A COMPLAINT

As an industry-based dispute resolution scheme that does not charge for its services, the TIO expects complainants to actively participate in the resolution of their complaints. This participation extends to accepting reasonable costs associated with presenting a complaint.

Such costs may include postage, telephone calls, writing paper/envelopes, bills from professionals/experts (bookkeepers, accountants, lawyers) and costs for the time spent handling the complaint equivalent to standard income, e.g. x hours at \$XX per hour.

Exception: Where the circumstances or nature of a complaint justify the use of expert technical, financial or legal assistance, the TIO will consider a claim for such expenses. The TIO asks complainants to consult it in the first instance. Sometimes, the TIO itself obtains legal or expert advice prior to resolving higher-level complaints, and it may include these costs in a binding decision against a service provider.

Note: in accordance with Clause 9.3 of the Telecommunications Consumer Protections Code a company must not impose complaint handling charges or any other related penalty on complainants, except in particular circumstances.

BANK INTEREST/ CHARGES

The TIO generally expects complainants to accept the loss of minimal amounts of bank interest that might have accrued if they had not, in the first place, paid amounts that their service provider subsequently credited to their account.

However, from time to time the TIO does consider complaints involving large amounts of interest or where specific bank penalties are in dispute, e.g. compensation for bank dishonour fees in complaints about direct debit arrangements.

In addition, the TIO will not consider claims for compensation that is not readily quantifiable. Such claims fall into two major types as follows:

COMPENSATION TO PENALISE/SET AN EXAMPLE TO A SERVICE PROVIDER

The TIO does not award punitive/exemplary damages because the TIO's primary function is to resolve disputes informally.

The TIO's capacity to resolve complaints would be compromised if it were also called upon to impose penalties or fines on companies. This regulatory power appropriately rests with the Courts and government agencies such as the Australian Media and Communications Authority (ACMA) and the Australian Competition and Consumer Commission (ACCC).

Exception: A 'goodwill gesture'/'ex gratia credit' is not the same as punitive/exemplary damages. Where the TIO identifies that a complainant has experienced a high degree of frustration and inconvenience during the course of their complaint, the TIO may consider it appropriate for a service provider to offer a goodwill gesture to help resolve the complaint (in addition to resolution of substantive complaint issues).

TIO PROCESS

The TIO will generally only investigate compensation issues if:

- the evidence available after an initial investigation suggests that the service provider caused the event that is the basis of the complaint; and
- the service provider has been given the opportunity to consider the complainant's claim; and
- the service provider and complainant have not been able to reach agreement about the claim.

MITIGATION OF LOSS

The TIO takes the view that, where possible, a complainant should take steps to mitigate loss as soon as it becomes apparent to them that they may be incurring such loss.

When the TIO investigates a complaint about an unresolved claim for compensation, it will consider whether a complainant took reasonable steps to protect their interests or to mitigate their potential losses. For example, where a complainant claims that they lost a job opportunity because they did not have access to a telephone service, the TIO will consider whether the complainant had access to a mobile phone or could have borrowed a friend or neighbour's phone to make a call to a prospective employer.

SUBSTANTIATION OF CLAIMS FOR COMPENSATION

The TIO expects a complainant to substantiate their complaint about an unresolved claim for compensation with appropriate documentation. The TIO will provide guidance about the type of documentation that may be appropriate, depending on the specific circumstances of the complaint. The TIO also has a fact sheet about substantiation of claims for business loss.

Where a complainant is unable to provide information and/or evidence to substantiate their claim for compensation, the TIO would not generally take the matter further.

A NOTE ABOUT THE TELECOMMUNICATIONS CONSUMER PROTECTIONS CODE

When complaint events occurred after 1 October 2012 please refer to the new TCP Code: [TCP C628:2012](#)