COMPENSATION FOR BUSINESS LOSS

Telecommunications Industry Ombudsman

The TIO can investigate complaints by small business users of telephone and internet services about loss of business arising from events that relate to the provision or supply of telephone and internet services.

A claim for compensation must be based on actual monetary losses suffered that are a direct result of the actions or inaction of a telephone company or ISP. The TIO will only consider claims for losses that a reasonable person would anticipate in all the circumstances. Ideally, a claim should be presented as Total Lost Profit; that is, 'lost revenue' plus 'costs incurred in reducing loss' minus 'expenses normally incurred'. As further guidance:

- 'Lost revenue' is calculated by subtracting the actual revenue earned in the claim period from the revenue the customer would have expected to earn if the disputed event had not occurred.
- 'Costs incurred in reducing loss' are costs incurred as a result of measures taken to minimise losses, e.g. extraordinary use of a mobile phone or additional advertising.
- 'Expenses normally incurred' are expenses the customer would normally have incurred in conducting their business, e.g. commission for sales that would have been made, packaging for goods that would otherwise have been sold, cost of labour that would have been needed if business was able to function as normal.

Compensation claims considered by the TIO usually relate to businesses rather than residential customers. This is because any claims for loss must be substantiated. For most residential complaints, any losses as a result of a member's action or inaction are extremely difficult, if not impossible, to substantiate.

The sorts of substantive documentation the TIO might consider when investigating a compensation claim include:

- records such as bank statements (proof of cash payments), monthly income figures, profit & loss statements, sales journals, cashbooks or receipts. (i.e. records for the claim period and for comparable periods in the past);
- figures that show actual income or profit fell short of amounts predicted in forecasts or budgets compiled before the claim period. (i.e. forecasts or budgets in addition to the figures for the claim period);
- any data that shows the number of incoming calls received during the claim period was less than the number received in the preceding and following months, e.g. business bookings taken over the telephone;
- proposals for contracts that were lost as a direct result of the action (or inaction) of the provider;
- statements (preferably statutory declarations) from customers who state they did not spend money with the business as a result of the circumstances in question;
- receipts or invoices for claims for reimbursement of out-of-pocket expenses, where these expenses were costs incurred in reducing or mitigating losses.

Where relevant and appropriate, information provided must be independently verifiable, e.g. in the form of tax returns or audited accounts.

In assessing a claim for compensation, the TIO will consider whether a complainant took reasonable steps to protect their interests or to mitigate their potential losses. In the case of a lost job opportunity, for example, 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.

To assist complainants present their claim for compensation, the TIO has a fact sheet, which it sends to those wishing to submit a claim. In particular, the fact sheet outlines the TIO's expectations regarding any claim, and how complainants may go about substantiating their claim.

In the absence of documentary evidence to support a claim, the TIO may exercise its discretion not to investigate further.

For information on the TIO's general approach to compensation, see Compensation claims and the TIO.