

TIO Decision – 10 January 2019

(De-identified for publication)

This document sets out my decision on a complaint from the Consumer about the Provider.

On 19 December 2018 I advised the parties of my proposed resolution (reproduced in the Appendix). The Consumer 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 reimburse the Consumer \$448.50 by **31 January 2019** for charges direct debited over a fourteen month period from September 2017 to October 2018.

Judi Jones

Telecommunications Industry Ombudsman

Appendix

Ombudsman's Proposed Resolution

Date 19 December 2018

This document sets out my proposed resolution of a complaint from the Consumer about the Provider.

Proposed resolution

Based on the information given to me, my proposed resolution of this complaint is that the Provider should reimburse the Consumer \$448.50 for charges direct debited over a fourteen month period from September 2017 to October 2018.

Background

The Consumer says in January 2017 they purchased a pre-paid mobile SIM card through the Provider's website, the cost being \$29.90 for 29 days. The Consumer says the deal offered on the website did not make it clear they would be charged ongoing payments.

The Consumer says the Consumer lost the SIM card after approximately three weeks of use. The Consumer first noticed they were still being charged for the service in approximately August 2017.

The complaint and the Provider's response

The Consumer's complaint

The Consumer says they notified the Provider by email after becoming aware of the charges. The Consumer says they asked the Provider to stop charging them and says the Provider told them it would cancel the account if the Consumer could supply:

- The 19 digit SIM card number;
- The Consumer's date of birth; and
- The first six and last four digits of the Consumer's bank card.

The Consumer says they could not provide the SIM number because they had lost the SIM.

The Consumer wanted the Provider to resolve the complaint by reimbursing all of the Consumer's auto-renewal service charges of approximately \$657.80 from February 2017 when the Consumer stopped using the service.

The Provider's response

The Provider says that the Consumer never requested the cancellation of the auto-renewal for the mobile service.

The Provider says it asked the Consumer for information which the Consumer could not provide and as a result it was unable to cancel the auto-renewal. The Provider also maintains that the Consumer could have cancelled the charges by contacting the Consumer's bank.

The Consumer's response

The Consumer says they requested cancellation of the auto-renewal on 29 August 2017 by email.

The Consumer says they told the Provider multiple times they no longer had access to the SIM card. However, the Consumer says they asked the Provider for other information that could be used to cancel the service. The Consumer says they provided the Provider with:

- Details of the Consumer's bank account from which charges were being direct debited;
- Four potential mobile service numbers;
- Copies of bank statements showing direct debit charges; and
- Screenshots of direct debit fees charged by the Provider.

The Consumer says the Provider ignored what the Consumer told it in various emails and continuously asked for the same information after the Consumer had told the Provider they were not able to get it.

The Consumer says during a phone call with the Provider they were told the mobile service number attached to the Consumer's bank account was not in use, showing that the Provider could locate the Consumer's mobile service with the information the Consumer provided.

The Consumer said they contacted their bank to discuss stopping future payments and the Consumer's bank said this was not possible. The Consumer says they continued to be direct debited auto-renewal charges with the latest payment on 10 October 2018. The Consumer says they have now cancelled the credit card attached to the account to avoid incurring future charges.

The Provider's response to an initial assessment of the complaint

On 4 December 2018 the Provider replied to the initial assessment of the complaint from my office. The Provider said the ruling was unjust and unfair as the Consumer did not provide sufficient information to enable it to retrace the transaction until January 2018.

The Provider says therefore it should only be liable for six charges accrued from January 2018 to June 2018, totalling \$179.00.

Information considered

I have considered the following information:

- Correspondence between the Consumer and the Provider;
- Correspondence between the Consumer and my office;
- Correspondence between my office and the Provider
- Screenshots of the Consumer's direct debit charges from their bank account; and
- Bank statements provided by the Consumer.

The Provider did not supply the following information that was requested with two reminders, namely:

- The Provider's customer interaction notes for the Consumer's account from January 2017 to current,
- A copy of the Consumer's service usage report, and
- An account reconciliation for the Consumer's account with the Provider.

Reasons

I have based my proposed resolution on the following reasons:

- The Provider did not have a simple mechanism to allow the Consumer to cancel the direct debit
- The Provider should have cancelled the direct debit within three working days of the Consumer's request
- It is fair and reasonable for the Provider to refund the Consumer \$448.50

The Provider did not have a simple mechanism to allow the Consumer to cancel the direct debit

I am satisfied the Provider did not have a simple mechanism for the Consumer to

cancel the direct debit when the Consumer requested this on 29 August 2017.

The Telecommunications Consumer Protections (TCP) Code¹ requires a provider to ensure a customer can readily cancel a direct debit authorisation by providing a simple mechanism (such as email or faxed request to do so).

Appendix 1 sets out a chronology of the Consumer's attempts to cancel the direct debit with the Provider. The correspondence shows the Provider did not have a simple mechanism for the Consumer to cancel the direct debit.

The Provider should have responded more promptly to the Consumer's 27 August 2017 email to cancel the direct debit. Also, the Provider should have provided the Consumer with all information it needed in the initial email to cancel the direct debit.

The Provider should have cancelled the direct debit within three working days of the Consumer's request

I am satisfied the Provider should have cancelled the Consumer's direct debit within three working days of the Consumer's request to cancel the direct debit.

The TCP Code² requires a provider to cancel a direct debit authorisation within three working days of receipt of the request. The Provider responded five days after the Consumer's request to cancel the direct debit. While the Consumer could not provide all the information the Provider ideally wanted, I am satisfied the Consumer gave enough information for the Provider to identify their service and the direct debit authority on which the Provider was relying.

It is fair and reasonable for the Provider to refund the Consumer \$448.50

I am satisfied it is fair and reasonable for the Provider to refund the Consumer \$448.50. This is because the Provider's failure to comply with the requirements of the TCP Code meant the Consumer continued to incur monthly charges they should not have had to pay.

I have calculated additional charges that could have been avoided for the period from 13 September 2017 to 10 October 2018, which is when the Provider should have cancelled the Consumer's direct debit.

Judi Jones
Telecommunications Industry Ombudsman

¹ section 5.7.1(e)

² section 5.7.1(f)

Appendix 1 – Chronology of correspondence after the Consumer attempted to cancel the direct debit – based on emails between the Provider and the Consumer

Date	Event
29 August 2017	The Consumer sent the Provider an email requesting cancellation of their pre-paid mobile service auto-renewal. The Consumer also told the Provider they no longer knew the mobile number attached to the account.
4 September 2017	<p>The Provider replied to the Consumer requesting a specific set of information to cancel the auto-renewal, namely:</p> <ul style="list-style-type: none"> • The 19 digit SIM card number; • The Consumer’s date of birth; and • The first six and last four digits of the Consumer’s bank card. <p>The Provider also told the Consumer the Consumer could cancel it themselves by dialing *190# from the mobile service or by contacting the Provider’s Customer Care team.</p>
5 September 2017	The Consumer replied to the Provider saying the Consumer no longer had access to the SIM card, so could not call from the mobile service, but gave the Provider the first six and last four digits of their bank card as well as their date of birth.
11 September 2017	The Provider replied saying it was unable to retrieve the Consumer’s mobile number using the card details the Consumer shared. It advised the Consumer to check with friends or family members to determine the mobile number.
12 September 2017	The Consumer replied saying again the Consumer did not have the SIM card and was therefore unable to provide the mobile number. The Consumer also asked for an alternative to cancel the direct debit authorisation.
14 September 2017	The Provider replied requesting the Consumer’s full credit card number along with a bank statement showing the Provider transactions on it.
19 September 2017	The Consumer sent through a bank statement with the Provider direct debit charges highlighted. The Consumer did not send through their credit card number due to privacy concerns and told the Provider it should be able to trace the Consumer’s account through the bank number and screenshots previously provided in the assessment.