

Before our office becomes involved in a complaint, you must try to resolve it with your provider. If you cannot agree, we work with both you and your provider to resolve the complaint.

We can propose a resolution to your complaint in an Ombudsman's Proposed Resolution. Both you and your provider will have the opportunity to respond to it. If you do not agree to our proposed resolution, you can ask us to review your case. If your provider does not agree to our proposed resolution, we can make an Ombudsman's Decision in line with our [complaint handling procedures](#).

This document is an example of an Ombudsman's Proposed Resolution that our office might make about a provider that did not take reasonable steps to check a consumer's ability to pay before selling them a post-paid service.

We expect providers to provide post-paid services responsibly. A "post-paid" service is service you pay for after you use all or some of the service. For example, you might pay an access fee to use a mobile service in advance, but you pay all call and data charges after you use them.

You can read more about how we handle complaints like this in our [Checking your ability to pay before selling you services](#) guidance note.

Telecommunications Industry Ombudsman

Ombudsman's Proposed Resolution: 2 October 2018

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

1 Proposed Resolution

Based on the information given to me, my proposed resolution of this complaint is for the Provider to recall the Consumer's debt for account number xxxxx3 (the new account) from the Debt Collector and to cancel the debt.

This is because:

- the Provider has an obligation to assess the level of credit it should provide to a consumer, but did not do so
- the Provider provided the Consumer with credit for telecommunications services and equipment they could not afford
- It is fair and reasonable that the Consumer should not be liable for any part of the debt, nor should the Consumer have to return the handset

2 Background

This proposed resolution relates to the Consumer's contract with the Provider for:

- a. Mobile plan for service number 04xx xxx xx1
- b. Apple iPhone 6S Plus 128GB device
- c. Data share SIM plan for service number 04xx xxx xx2.

3 The complaint and the Provider's response

The Consumer's complaint is about liability for the debt outstanding on the new account.

On 3 October 2015 the Provider approved the Consumer's application for mobile services and equipment costing a minimum of \$112 a month. At this time the Consumer was unemployed and had existing Provider services costing a minimum of \$776 a month. The existing services included:

- Account number xxxxx1 for the Consumer's personal services costing \$649, which included:
 - \$130 fixed voice service bundle
 - \$150 mobile telephone service 04xx xxx xx3 (plus iPhone device)
 - \$87 mobile broadband service 04xx xxx xx4 (plus iPad device)
 - \$65 mobile broadband service 04xx xxx xx5 (plus iPad device)
 - \$65 mobile broadband service 04xx xxx xx6 (plus iPad device)
 - \$152 mobile telephone service 04xx xxx xx7 (plus iPhone device)
- Account number xxxxx2 for services used by the Consumer's aunt costing \$127, which included:
 - \$95 mobile telephone service 04xx xxx xx8
 - \$17 Apple iPhone 6S 64GB device
 - \$15 device replacement insurance

This means after the application for the new account was approved the Consumer was liable for a minimum amount of \$888 per month.

Before signing the mobile services contract on 3 October 2015, the Consumer told the Provider that the Consumer's sister would be using and paying for the services under the new account.

The Consumer's sister did not make any payments on the new account for the twelve months the account was active. The Provider cancelled the mobile services in September 2016. The unpaid charges totalled \$2,560.86, including an early termination charge.

The Consumer said they cannot afford to pay the debt as they are not employed and reliant on Centrelink payments to pay their living expenses.

The Provider has removed a default listing on the Consumer's credit file, but says the Consumer is still liable for the debt because they agreed to the contract for the services and they are the account holder.

4 Reasons

My proposed resolution is based on the following reasons:

- the Provider had an obligation to undertake a credit assessment, and failed to do so
- even if the Provider had conducted a credit assessment, it should not have approved the services as the Consumer could not afford to pay for them
- the Consumer should not be liable for any part of the debt.

4.1 *The Provider had an obligation to undertake a credit assessment, and failed to do so*

I am satisfied the Provider had an obligation to undertake a credit assessment, and it is more likely than not the Provider did not conduct a credit assessment before approving the Consumer's application for the mobile services.

Clause 6.2.1(a) of the *Telecommunications Consumer Protections Code 2015 (TCP Code)* provides that a telecommunications service provider must undertake a credit assessment before providing a post-paid service to a consumer. The TCP Code defines a credit assessment as the process by which a supplier determines the level of credit to provide to a consumer. The TCP Code does not contain prescriptive rules around how a provider should conduct a credit assessment.

In applying the requirements of the TCP Code, I accept that a service provider is entitled to set its own credit assessment procedures. For instance, a provider may choose to assess an applicant's creditworthiness with reference to any one or a combination of the following: their personal information, credit reporting information, information in its system about a previous account and payment history, or publically available information.

However, I consider that the service provider's obligations are 'scalable'. This means its obligations when undertaking a credit assessment will depend on the circumstances, including the nature of the customer and the type of service offered. A provider may make fewer enquiries of an existing customer with a proven track record of payment, or where the phone contract is relatively low value.

The Provider's record of the Consumer's application for the mobile services indicates the Provider did not undertake a credit assessment.

[Screenshot of the Provider's record stating that no credit assessment was performed.]

Notwithstanding the information in its own report, the Provider said it did conduct an internal credit assessment.

On 13 September 2018 I asked the Provider for information to confirm it had conducted the internal credit assessment, but the Provider refused to provide this information on the basis it is commercially sensitive. The Provider provided general information about what it does when assessing credit, but did not provide any specific information about any credit assessment it conducted for the Consumer.

I am unable to prefer the Provider's unsubstantiated claim it conducted a credit assessment over its own records, which say it did not.

4.2 Even if the Provider had had conducted a credit assessment, it should not have approved the services as the Consumer could not afford them

I am satisfied that even if the Provider had conducted a credit assessment, it should not have approved the services. This is because the Consumer could not afford the new post paid services, and the Provider should have been aware of this. I base this on a number of factors, including the Consumer's employment status, income, and existing financial liability to the Provider.

The Consumer's application says they were not in paid employment. The application does not indicate the Consumer had other income or financial resources to meet the payments for the mobile services.

When the Consumer submitted the application on 3 October 2015, the Consumer owed the Provider \$834.31 for personal services account number xxxxx1. The Consumer's next bill for this account was due on 7 October 2015 and this bill added charges of \$871.32, increasing the amount owing to \$1,705.63.

The Consumer says they were receiving a Centrelink pension at the time they applied for the new account. When the Provider approved the Consumer's application, the Consumer was responsible for paying the Provider a minimum of \$776 a month for personal services and for services used by the Consumer's aunt. The Consumer's personal services cost a minimum of \$649 a month. On 3 October 2015 the Provider granted the Consumer's application for mobile services that were to be used by the Consumer's aunt. These mobile services cost a minimum of \$112 a month, making the Consumer's total monthly liability to the Provider \$888.00.

I believe the Consumer was experiencing financial hardship at the time the Provider approved the services for the new account. With the exception of one month, the Consumer's personal account had been in arrears since January 2015 and the Consumer regularly paid less than their contractual payments. In the 10 months before the Provider approving the new account, the Consumer had entered into a number of payment arrangements to avoid the disconnection of their services.

The TCP Code defines financial hardship to mean a situation where a Customer is unable to discharge their financial obligations but believes they are able to discharge those obligations if a payment arrangement is changed.

Finally, the Consumer had a history of disputes regarding their personal account in relation to charges, replacement of equipment and promises to pay. Although this fact

alone does not demonstrate the Consumer could not afford the additional mobile services, in combination with the other factors it supports this conclusion.

4.3 Fair and reasonable: the Consumer should not be required to pay any part of the debt, nor return the handset

I am satisfied it is fair and reasonable that the Consumer should not be liable for any part of the debt, nor return the handset. This is because in addition to the Provider's failure to conduct a credit assessment and agreed to provide services the Consumer could not afford, the Consumer did not receive a personal benefit from the service, and the Provider was aware of this when it approved the application for the new account.

The Consumer applied for the service for their sister, who currently has control of the device. Given the age of the handset and the difficulty involved in the Consumer regaining possession of it to return it to the Provider, the Consumer should not be required to return the handset.

Judi Jones

Telecommunications Industry Ombudsman