

Decision – 16 September 2019 (De-identified for publication)

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

My decision is what I believe to be a fair and reasonable outcome, having regard to:

- relevant laws and codes (based on my view of what a Court would be likely to find in all the circumstances), and
 - good practice, including industry guidelines.
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1 Decision

My decision is the Provider must pay the Consumer \$2,095.10 in compensation under the *Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard)* within 10 business days of the Provider receiving the Consumer's written acceptance of this decision.

2 Background

The Consumer has a landline and internet service under account number xxxxxxxxxxxx which the Provider delivered to [address].

Since 13 December 2017, the service has been connected to the national broadband network (NBN).

3 The Consumer's complaint

The Consumer complained about faults with their landline and internet service between approximately 29 December 2017 and 11 April 2018.

The Consumer said they had periods of no connection and recurring dropouts during that time. The Consumer said at the end of the period, their services were fully disconnected.

4 My proposed resolution

On 20 May 2019, I sent the Consumer and the Provider my proposed resolution to this complaint.

I proposed that the complaint be resolved by the Provider paying the Consumer \$2,167.60 in compensation under the CSG Standard. This was because I was satisfied that:

- the Provider provided the Consumer with a CSG eligible service,
- the Provider did not repair the service within the guaranteed repair timeframe,
- the Provider did not offer the Consumer an interim or alternative service during the fault period,
- the Provider advised mass service disruptions in the area were not relevant to the Consumer's service, and
- therefore, the Provider was liable to pay the Consumer \$2,167.60 for the landline fault.

5 Parties' responses to my proposed resolution

On 14 June 2019, the Consumer told me they accepted my proposed resolution.

On 4 July 2019, the Provider responded to my proposed resolution. Specifically, the Provider said:

- the Consumer was entitled to \$174.24 in CSG compensation for the periods between:
 - 5 January and 11 January 2018 (five working days)
 - 31 January and 1 February 2018 (two working days), and
 - 10 and 17 April 2018 (five working days)

- the amount of \$174.24 should be reduced by \$72.60 because the Provider had already paid a credit to the Consumer's June 2018 account
- the information did not support a finding there was an ongoing fault. While the Provider accepted the Consumer regularly complained about faults, it said the investigating technicians were either unable to find a fault, or if they did find a fault, the technicians fixed the fault (and so the faults reported were not related), and
- the information did not support a finding that the wholesaler's technician worked on the pit on 21 March 2018.

I take this to mean the Provider objected to my second finding, that is, that *'the Provider did not repair the service within the guaranteed repair timeframe'*.

The Provider did not dispute my conclusions that:

- the service supplied was eligible for CSG
- the Provider did not offer an interim or alternative service, and
- the Provider did not rely upon any mass service disruption.

6 Preliminary comments

The Consumer's complaint is about a recurring or ongoing fault with their service.

The CSG Standard defines *'fault or service difficulty'*¹ to include:

- absence of dial or ring tone,
- inability to make or receive calls, or
- another condition that makes the service wholly or partly unusable.

Whether I consider a fault to be ongoing or recurring will depend on the unique facts of the case. The CSG Standard does not refer to or define 'ongoing' or 'recurring' faults.

As set out in my *Guidance Note for Faulty Services or Equipment*, in determining whether a fault is ongoing or recurring, I will consider:

- the frequency and nature of the fault
- when and how often the fault was reported

¹ Section 4 of the *Telecommunications (Customer Service Guarantee) Standard 2011*

- what the provider has done to rectify any underlying causes of the fault
- the quality of the service between the faults, and
- how the fault has impacted on the consumer's ability to use their service over the relevant period.

Where I am satisfied there is a recurring fault that the Provider has not rectified, I will consider the consumer's eligibility for compensation under the CSG Standard from the time of the first fault report until the time the fault is rectified.

7 Reasons

The reasons for my decision that there was a recurring fault with the Consumer's service that was fixed after repair work was undertaken on 21 March 2018 are, on the information available:

- the nature of the fault was a recurring issue of the same or similar nature
- the Provider did not rectify the fault until 21 March 2018, and
- the recurring fault resulted in the Consumer's service being partly unusable during the period.

8 The nature of the fault was a recurring issue of the same or similar nature

I am satisfied the nature of the fault was a recurring issue of the same or similar nature during the period. This is because the information shows the outages and dropouts occurred regularly and within a short space of time.

The Consumer says there were ongoing dropouts and outages between 29 December 2017 and 11 April 2018. The Consumer recorded the dates and number of dropouts in a document titled 'NBN problems'. The Consumer has given my office a copy of that document.

The Provider has given my office a copy of its customer interaction notes and usage records.

In my proposed resolution, I concluded the Consumer's running sheet was a reliable description of the faults they experienced with the service. This was because the records were generally consistent with the raw data information the Provider gave my office, and the Provider's records of the fault reports the Consumer made.

In its response to my proposed resolution, the Provider said it was not enough to compare faults by their *symptoms* and particularly, by the fault code given by the

consultant's initial understanding of the issue. It says the correct way to determine whether a fault is the same or of similar nature is by comparing the *cause* of the faults as determined by the investigating technician(s).

In my view, technician's reports are a relevant consideration when deciding whether the fault is the same or of similar nature for the purposes of the CSG Standard. However, I do not consider the technician's opinion about the cause of the fault at the time of the inspection is conclusive in determining whether faults are related.

The Provider gave my office a document titled *Customer Service Guarantee Response* dated 14 June 2019 in support of its position. In that document, the Provider relies upon the information from technicians as set out in Table 1 below:

Table 1 Fault Reports and Technician Response

Date of Report	Recorded Fault	Date of Tech Visit	Conclusion
30 December 2017	Loss of Connection/Intermittent Problems	4 January 2018	[nothing recorded] ²
10 January 2018	Intermittent Service/Dropouts	11 January 2018	nbn network cable repaired to restore the service.
15 January 2018	No tone	17 January 2018	A range of testing was completed and no fault was found.
25 January 2018	Intermittent Service/Dropouts	1 February 2018	nbn network cable was repaired to restore service.
20 February 2018	Cut off speaking	22 February 2018	Technician completed repairs on the cross connect unit to restore service.
15 March 2018	Cut off speaking	17 March 2018	Technician transferred the faulty ISAM Port to new port to restore the service.

² Whilst the Provider did not include a conclusion in the Consumer Guarantee Response dated 14 June 2018, the wholesaler's technician notes say that no fault was found, and no corrective action was needed.

According to the Provider's Customer Service Guarantee Response, the cause of the faults was either not found, or was due to either:

- a problem with the network cable, or
- the port.

The Provider says each fault report was discrete and unrelated and this is supported by the technicians' different conclusions about the cause of the faults and/or what was required (if anything) to fix them.

I do not agree with the Provider's conclusion. This is because, despite the technicians' visits, the problem with the service persisted.

According to the Provider's interaction notes, during the period 30 December 2017 to 17 March 2018:

- the Consumer contacted (or attempted to contact) the Provider about dropouts and outages on approximately 13 occasions, and
- the Provider contacted (or at least attempted to contact) the Consumer about dropouts and outages on approximately seven occasions,

The Provider's notes record dropouts occurring during some of those telephone interactions.

The Provider's interaction notes, the Provider's technician reports and the wholesaler's technician notes are consistent with the fault being related. These include:

- on **22 January 2018**, the Consumer contacted the Provider about their bill. The notes record that the Provider told the Consumer the *'account was placed on hold 09/02/2018. Once service is up and running thats (sic) the time we can provide compensation'*
- on **2 February 2018**, the Consumer contacted the Provider three times about their service. The notes record the Consumer telling the Provider they still had *'no internet connection'* and *'FTTN Voice issues'*
- the wholesaler's notes confirm the Consumer's report of there being no *'internet connection'* and *'no lights on phone'* on **2 February 2018**
- on **5 February 2018**, the wholesaler's notes say, *'our findings from our extended testing have identified high resistance on the line, therefore a field technician will be required to repair the line'*
- on **7 February 2018**, the wholesaler's notes say, *'our field technician has*

attended the premises and has identified the Problem/Cause/Action Taken as the following: NBN DSLAM fault/faulty ISAM Port/Transferred to a new port'

- on **9 February 2018**, the wholesaler's notes say the Consumer still does not have an internet connection or working home telephone. This appears to be fixed after the modem was reset later that day. However, the wholesaler's notes record the Provider giving it information to show there had been 49 dropouts over **11 and 12 February 2018**
- on **14 February 2018**, the Provider created a new 'subcase' known as [fault case record]. The Provider's notes say the Consumer reported having '*no home phone connection*' and that a fault had been reported within seven days. The Provider notes the fault was fixed after the Provider replaced the gateway and the old phone point
- the wholesaler's notes record the Provider giving it information to show there had been 29 dropouts between **24 and 16 February 2018**. The wholesaler's notes say a field technician visit on 3 March did not identify any fault on the provider's side of the boundary and suggested the problem was due to the Consumer's equipment
- the wholesaler's notes record the Provider giving it information to show there had been 25 dropouts between **3 and 4 March 2018**
- on **6 March 2018**, the Provider's notes record it telling the Consumer the cause of the fault was the Consumer's internal cabling. On 12 March 2018, a technician replaced the Consumer's cabling. Despite this, on 13 March 2018, the Consumer told the Provider the issues remained. The Provider's notes from this call record the Provider telling the Consumer it could see three dropouts on 12 March and eight dropouts 13 March 2018, and
- the wholesaler's notes record the Provider giving it information to show there had been 10 dropouts on **18 March 2018**.

Considered together, I am satisfied the Consumer's record of dropouts and outages, the Provider's interaction notes, the Provider's technician report and the wholesaler's technician reports show the existence of a fault that was the same or of a similar nature recurring throughout the period.

9 The Provider did not rectify the fault until 21 March 2018

I am satisfied the fault with the Consumer's service persisted between 30 December 2017 and 20 March 2018, indicating that the underlying cause was not rectified by:

- the various repair works undertaken by the Provider and the wholesaler

technicians during that period,

- the Consumer's replacement of the internal wiring in their home, and
- the Consumer replacing their modem.

In my proposed resolution, I concluded that the wholesaler's technician attended the Consumer's premises on 21 March 2018 and undertook repair works, which resolved the fault with the Consumer's service.

In reaching this conclusion, I considered:

- the Consumer's running sheet of events taken contemporaneously,
- the Provider's response,
- the wholesaler's technician report notes, and
- the wholesaler's email response dated 11 October 2018.

The Provider disputes my finding on the basis it says *'it would not be reasonable to pay a CSG entitlement on unsubstantiated facts'*. The Provider has not given me any further information to support its position.

In circumstances where I am given inconsistent factual information, I need to form a balanced view as to what I consider to be a reasonable conclusion.

The parties gave me information to support their respective positions.

The Consumer gave a contemporaneous record of what they saw take place on the day. They also gave me information to show the number of dropouts and outages experienced before and after 21 March 2018. It showed a marked improvement after 21 March 2018.

The Provider relied upon the notes the wholesaler gave it concerning the scheduled appointment, in particular that the appointment was missed due to poor weather.

However, the wholesaler said its testing of the Consumer's service was consistent with the Consumer's statement that the service had improved after 21 March 2018. It also acknowledged it was *'possible'* a technician attended the premises that day and undertook work on the pit despite its notes not recording it.

In the absence of new information from the Provider, I maintain the view reached in my proposed resolution. That is, that the wholesaler's technician attended the Consumer's premises on 21 March 2018, and from that date, the issue with the Consumer's service was fixed.

Even if the technician did not attend, the information available shows the service improved from that date, with or without a technician. In my view, the Provider is liable to pay compensation until the date the service was functioning normally, even if it did not fix the service, as it was required to do.

10 It is fair and reasonable that the Provider pay \$2,095.10 in compensation

Given the nature of fault and the degree of disruption to the Consumer's service over almost three months, I am satisfied it is fair and reasonable for the Provider to pay compensation to the Consumer pursuant to the CSG Standard for the period 5 January 2017 to 21 March 2018. This approach is consistent with my Guidance Note for Faulty Services or Equipment.

In my Proposed resolution, I set out my calculations for arriving at the sum of \$2,167.60. The Provider says in arriving at that sum, I failed to consider a credit of \$72.60 the Provider applied to the Consumer's account issue on 12 June 2018 as compensation under the CSG Standard. I agree.

The Provider has not otherwise disputed my calculations.

Accordingly, I rely upon the calculations set out in my proposed resolution and find that \$72.60 should be offset from the total. The total compensation should be \$2,095.10 (that is \$2,167.60 less \$72.60). I summarise the relevant calculations in Table 2.

Table 2 Updated Calculation of CSG payment

Days	Rate	Payment
5	\$14.52	\$72.60
47	\$48.40	\$2,274.80
1	\$14.52	\$14.52
Sub Total		\$2,361.92
Less credits applied		(\$194.32)
Total Payable under my Proposed Resolution		\$2,167.60
Less further credits applied		(\$72.60)
Total Payable		\$2,095.10

Judi Jones

Telecommunications Industry Ombudsman
