

## **Decision – 25 October 2019 (De-identified for publication)**

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

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

- relevant laws (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**

Based on the information given to me, my decision is that the Provider must, within 10 business days of receiving the Company's written acceptance of this decision, pay \$1,877.95 by bank cheque to the Company.

This is because:

- The Provider agreed to pay out the Company's equipment rental contract and return equipment to [equipment lease company]
  - In breach of the agreement with the Company, the Provider did not pay out the [equipment lease company] contract
  - It is fair and reasonable for the Provider to reimburse the Company \$1,877.95.
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### **2 Background**

The Company has been the Provider's customer since 2014.

In October 2018, the Company's phone equipment developed a fault. The phone equipment was subject to an equipment finance agreement with [equipment lease company].

The Provider quoted to replace the equipment with new equipment and said it would pay out the existing term of the [equipment lease company] agreement if the Company purchased new equipment through the Provider.

The Company followed the Provider's instructions to obtain a payout figure from [equipment lease company] and, on 19 October 2018, notified the Provider that the payout amount was:

- \$1,375, if the equipment was returned, or
- \$2,152 if the equipment was not returned.

### **3 The complaint and the Provider's response**

The Company complained that the Provider took the equipment but did not pay out the equipment lease or return the equipment to [equipment lease company].

This meant the Company had to pay the [equipment lease company] monthly payments totalling \$1,375 plus a non-return fee of \$502.95.

### **4 Inference taken from the Provider's failure to provide information**

The Provider did not respond to my office's request for information or to my proposed resolution issued on 16 September. From this, I have inferred that either the Provider does not have information to support its position, or the information the Provider holds supports the Company's position.<sup>1</sup>

### **5 Reasons**

The reasons for my decision are:

- The Provider agreed to pay out the Company equipment rental contract and return equipment to [equipment lease company]
- In breach of the agreement with the Company, the Provider did not pay out the [equipment lease company] contract
- It is fair and reasonable for the Provider to reimburse the Company for \$1,877.95.

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<sup>1</sup> See clause 5.5 of the Telecommunication Industry Ombudsman's Complaint Handling Procedures

## **6 The Provider agreed to pay out the Company equipment rental contract and to return equipment to [equipment lease company]**

I am satisfied the Provider agreed to pay out the Company's equipment rental contract and to return faulty equipment to [equipment lease company].

The agreement to pay out [equipment lease company] is included in the agreement between the parties dated 12 October 2018 (see Figure 1). After the agreement was signed, the Provider collected the faulty phone equipment and said it would return this to [equipment lease company].

**Figure 1 An excerpt of the agreement between the Provider and the Company**

[photo of excerpt of agreement document]

## **7 In breach of the agreement with the Company, the Provider did not pay out the [equipment lease company] contract**

I am satisfied, in breach of the agreement with the Company, the Provider did not pay the agreed amount. This meant the Company had to pay \$1,375 to [equipment lease company] to avoid debt collection action.

The Company told my office the Provider did not pay out the [equipment lease company] agreement or return the equipment to [equipment lease company]. The Provider has not provided information to the contrary.

## **8 Fair and reasonable: the Provider to reimburse the Company \$1,877.95**

I am satisfied it is fair and reasonable for the Provider to reimburse the Company \$1,877.95 (see Table 1), which is five months' rental charges, plus the non-return fee.

The Company said the Provider collected the faulty phone equipment to return it to [equipment lease company]. However, on 16 April 2019, [equipment lease company] emailed the Company to say the equipment had not been returned and the Company was liable for the charge of \$502.95 for not returning the equipment.

**Table 1 Amount payable to the Company**

Five months rental charges @ \$275 per month	\$1,375.00
Equipment non-return fee	\$502.95
Total	\$1,877.95

Judi Jones

Telecommunications Industry Ombudsman

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