

Decision – 21 November 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 and direction

My decision is the Provider must, within ten business days of the Provider receiving the Consumer's written acceptance of this decision:

- waive all charges on account xxx xxxx xxx,
 - close that account, and
 - write to the Consumer to confirm she has no liability for charges on that account.
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2 Background

In mid-2018, the Consumer made an online friendship with a third party on Facebook. The third party told the Consumer he would like her to accept delivery of some handsets and to send them on to him. She agreed to do this.

In October 2018, the Consumer received a bill from the Provider for \$19,326.02. The bill included charges associated with six services under a new account xxx xxxx xxx set up in her name.

3 The Consumer's complaint and the Provider's response

The Consumer says she should not have to pay for the charges on account xxx xxxx xxx because the Provider initiated the services without her knowledge or consent. The charges included usage, handset and plan costs of \$19,326.02.

Initially, the Provider offered to waive the service and early termination charges on the account, leaving a balance of \$11,360.64 for the cost of the handsets.

Following my office's assessment of the complaint, the Provider withdrew its offer. The Provider told my office it claims the full balance on the account (\$19,326.02) because it considers the Consumer signed up for the services knowingly.

4 My proposed resolution and the parties' responses

On 6 June 2019, I sent the Consumer and the Provider my proposal for resolving the complaint.

I proposed that the complaint be resolved by the Provider waiving all charges on the account. I was satisfied this was fair and reasonable because, on the information available, it was more likely than not that the Consumer:

- did not enter into the contracts with the Provider, and
- did not authorise a third party to add services to her account or extend her credit.

The Consumer accepted my proposed resolution.

The Provider rejected it, saying the Consumer was liable to pay the debt because it said the information showed:

- the Consumer signed up for the services herself,
- the Provider took proper steps to identify the Consumer by her personal details when adding the services, and
- the Consumer accepted delivery of the handsets and gave them to a third party.

On 28 June 2019, the Provider gave me further information about the services that were added. Specifically, it said the person adding the services did not supply a password but instead, gave personal details.

Other than this explanation, the Provider did not give any new information to support its position. It referred me to information it had previously given my office.

5 Reasons

The reasons the Provider gave for rejecting my proposed resolution do not change my view of a fair and reasonable outcome to this complaint, which is that the Provider should waive all charges on the account.

The reasons for my decision are that:

- the Provider has not shown it had the Consumer's authority to add the six services and handsets, and
- the Consumer handed the handsets to a third party on the reasonable belief the third party had purchased them.

5.1 The Provider has not shown it had the Consumer's authority to add the six services and handsets

I am not satisfied the Provider has shown the Consumer requested the account or gave authority to the third party to establish the account and add the six services and handsets.

The Provider says the Consumer requested the services and handsets. The Consumer says she did not. She believes the third party ordered the services and handsets, pretending to be her.

The Provider added the six services and handsets, two at a time, during online chats between 24 and 27 September 2018.

The Provider relies upon the following to show it obtained the Consumer's authority to add the services:

- chat transcripts created on 24 and 25 September 2018,¹
- screenshots of its order management system for orders processed on 24, 25 and 27 September 2018,
- screen shots of its account notes, and
- a screen shot of the account information recorded for the Consumer.

The chat transcripts are direct records of online conversations had between the Provider representative(s) and 'the applicant'.

The subsequent internal order forms and account notes are created later in time.

¹ Provider has not given my office a chat transcript for the two services/handsets added on 27 September 2019

The chat transcripts record the Provider asking 'the applicant' for the following information:

- ABN
- Company name
- Contact number
- Contact email
- Contact date of birth
- Driver's licence number, state of issue and expiry
- Passport number, issue date and expiry.

Save for the ABN and a contact email, the chat transcripts do not record answers. Instead, there are asterisks where the answers should be.

The Provider says it cannot provide this information as it did not keep it.

The Provider says the documents subsequently created show the Consumer authorised the services and handsets.

The internal order forms record the Consumer's date of birth. The Consumer told my office her date of birth was part of her Facebook profile at the time, and the third party may have used that information. She was also an existing Provider customer at the time and it is possible the Provider took the date of birth information from that account.

The account notes do not contain any more details to identify the Consumer. The note for the order made on:

- 24 September 2018 records '*Auth NA*',
- 25 September 2018 does not record anything about authorisation, and
- 27 September 2018 records '*Auth: Y*'.

The Provider says:

- since the account was created on 24 September 2018, it did not need to authorise the applicant a second time on that day, and
- the password placed on the account was a 'back of house' step.

I accept the Provider's explanations.

However, I am not satisfied the account notes fill the gap in the online chats to show the Consumer was the person who engaged in the chat sessions or authorised the services or handsets.

The Provider's account notes show on 2 October 2018, it became suspicious of 'possible identity theft' and tried to contact the Consumer the same day but was unable to reach her.

I am satisfied there were other factors, which should have alerted the Provider to the likelihood of fraud at the time the orders were placed, including that:

- the activity was unusual in that six business services were added to a residential account over four days, and
- the services were of a high value.

There is no information to suggest the Provider took further steps to verify the legitimacy of the orders before sending out the handsets.

In all the circumstances, I am not satisfied it was reasonable for the Provider to consider the Consumer authorised the addition of the services and handsets.

5.2 The Consumer handed the handsets to a third party on the reasonable belief the third party had purchased them

I am satisfied the Consumer handed the handsets to a third party on the reasonable belief the third party had purchased them.

It is common ground between the parties that the Consumer received the handsets and sent them to a third party.

The Provider says because the Consumer accepted delivery of the handsets, she should pay for them. However, had the Provider taken appropriate steps to identify the applicant at the time of adding the services, the handsets would not have been sent to the Consumer in the first place.

The Consumer says she sent the handsets to the third party because she promised the third party she would do so. Specifically, the Consumer told my office in September 2018, the third party asked her to accept delivery of handsets at her address and forward them to the third party. The Consumer said she did so without knowing the services and handsets had been signed up in her name.

The Consumer gave my office a copy of messages between herself and the third party sent after she received a bill from the Provider in October 2018 (between 15 October and 3 November 2018). According to the messages, the Consumer asked the third party if it had used her name to sign up for the handsets.

I am satisfied the Consumer was not aware the services had been added in her name at the time she accepted delivery of the handsets. There is insufficient information to show she knew they had been added, and the steps she took when she received the Provider's bill are consistent with her version of events.

This is an unfortunate situation as it appears both the Provider and the Consumer are victims to the wrongful actions of the third party.

However, I am satisfied it is fair and reasonable that the Provider should bear the costs associated with the service and handsets it added to the Consumer's account.

Judi Jones

Telecommunications Industry Ombudsman
