

Preliminary View – 2 July 2020 (De-identified for publication)

Service provider	The Provider
Account holder	The Consumer
Date	2 July 2020

This document sets out my Preliminary View on how this complaint about the Provider from the Consumer should be resolved.

My Preliminary View is that the Provider should:

- Waive all charges on the Consumer account
- Close the Consumer account

The Preliminary View 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.

2 July 2020

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1 Background

On 13 July 2019 the Provider approved the Consumer for two services with mobile phone handsets and accessories, for a total minimum monthly spend of \$394.66.

Service	Equipment	Monthly cost
Mobile plan [plan name] (xxxxxxxxxx)	Plan cost	\$100
	iPhone XS MAX 256GB	\$57.33
	Accessory repayment option	\$15.00
	Hardware repayment	\$10.00
	[After sales service]	\$15.00
Mobile plan [plan name] (xxxxxxxxxx)	Plan cost	\$100
	iPhone XS MAX 256GB	\$57.33
	Accessory repayment option	\$15.00
	Hardware repayment	\$10.00
	[After sales service]	\$15.00
Total minimum monthly spend		\$394.66

2 The complaint and the Provider's response

The Consumer complaint is that the Provider approved services she cannot afford. She says she took the services and equipment out on behalf of a third party. The Consumer says the third party stopped talking to her after he received the services and equipment. The Consumer says she thought she only agreed to one service, not two. The Consumer says she did not benefit from the services, and she cannot afford to pay for them.

The Provider says the Consumer signed up to all services and is responsible for all associated costs.

3 The Assessment and the Provider's response

The Assessment found the Provider should waive all charges on the Consumer account and close the account. This is because the Provider did not provide telecommunications services to the Consumer responsibly.

The Provider objected to the Assessment because:

- The Provider disagrees with the interpretation of the Provider's obligations in relation to the responsible provision of credit
- A retrospective assessment of the Consumer's financial circumstances shows the cost of the services were within her capacity
- The Assessment ignores the fact the Consumer agreed to sign up for at least one service, and she entered into the contract willingly. It also makes no acknowledgement of the agreement between the Consumer and the third party who she took the services out for.

4 Reasons

In my view, it is fair and reasonable for the Provider to waive all charges on the Consumer's account and close the account. This is because:

- The Provider has obligations under the Telecommunications Consumer Protection Code to provide telecommunications services responsibly
- The Provider did not provide telecommunications services responsibly
- The Provider's retrospective credit assessment shows the Consumer could not afford the services
- The Provider should waive the debt because it should not have approved the services
- The arrangement between the Consumer and the third party is not relevant to the Provider's obligations.

4.1 The Provider has obligations under the Telecommunications Consumer Protection Code to provide telecommunications services responsibly

The Provider has obligations under the Telecommunications Consumer Protection Code (TCP Code) to provide telecommunications services responsibly.

The TCP Code is a code of conduct designed to ensure good service and fair outcomes for all consumers of telecommunications products in Australia. The Provider is required to comply with the TCP Code.

The TCP Code requires suppliers to undertake a Credit Assessment before providing a post-paid service to a consumer.¹ Credit Assessment is defined in the TCP Code to mean the process by which a Supplier determines the level of credit to be provided by it (if any) to a Consumer.²

The Ombudsman is empowered to make determinations in relation to complaints arising under the TCP Code.³

¹ Clause 6.2 of the TCP Code

² Clause 2.1 of the TCP Code

³ Clause 1.7 of the TCP Code

4.2 The Provider did not provide telecommunications services responsibly

I am satisfied the Provider did not provide telecommunications services responsibly.

On 13 July 2019 the Provider approved the Consumer's application for two mobile services with bundled phones, and two accessory agreements with a monthly minimum spend of \$394.66.

The Provider says it assessed the Consumer's application for services by considering information in her credit report, her occupation, her duration with employer and residential status.

In my view, this information is not useful for assessing whether the Consumer could afford services of \$394.66 a month.

The Provider did not conduct reasonable checks at the time it approved the Consumer for services because it did not assess her actual ability to pay for the services it provided.

The Assessment considered the average Australian spends about \$73 on a phone service a month, and the Provider should not have approved services costing five times this amount without enquiring further into the Consumer's financial situation.

The Provider has raised concerns that the comparison to the average spend is not reasonable without context. I agree with the Provider on this point because it highlights the Provider's obligation to establish the context.

If the Provider had sought context, it would have found the Consumer is a part time employee earning approximately \$1,800 a month after tax.

I accept a provider such as the Provider is entitled to set its own procedures for assessing credit. I expect the Provider to demonstrate it has made appropriate enquiries about a consumer's ability to afford services, before approving them.

4.3 The Provider's retrospective credit assessment shows the Consumer could not afford the services

The Provider conducted a retrospective credit assessment which, in my view, shows the Consumer could not afford the services.

Table 1: Credit assessment

Income – range over 4 weeks	Minimum	Average	Maximum
Casual wage	\$1,398.62	\$1,764.42	\$2,187.20
Expenses			
Board	\$560	\$560	\$560

Income – range over 4 weeks	Minimum	Average	Maximum
Phone	\$116	\$116	\$116
Transport	\$176	\$308	\$440
Total expenses	\$852	\$984	\$1,116
Monthly Surplus before the Provider services approved	\$546.62	\$780	\$1,071.20
Minimum monthly charges for the Provider services	\$394.66	\$394.66	\$394.66
Monthly surplus after the Provider services	\$151.96	\$385.34	\$676.54
Weekly surplus after the Provider services	\$37.99	\$96.34	\$169.14

On these figures, the Provider calculated that the Consumer had a surplus income ranging from less than \$40 a week to around \$170 a week and concluded that the Consumer could afford the services.

I do not agree. The figures the Provider used do not include any allowance for living expenses beyond housing, transport and telecommunications.

4.4 The Provider should waive the debt because it should not have approved the services

I am satisfied the Provider should waive the debt because it should not have approved the services, and the Consumer has not received any benefit from the approval of the services.

The Consumer has provided the TIO with copies of her payslips. Her payslip dated 16 June 2019 shows a yearly net income of \$22,049, which suggests that the Provider's calculation of the average monthly income of \$1,764, or \$441 a week, is roughly correct. This left the Consumer with \$195 per week after board, transport and her existing phone service. I am satisfied that the Consumer's expenses were not limited to these three items, and it would be unreasonable to assume that these funds were available for additional phone services.

In reaching this conclusion, I have had regard to the 'Poverty Line' income levels⁴ which set the poverty line for a single person at \$529.57 per week. The Consumer's income of \$441 a week falls beneath the poverty line.

The Consumer already had a mobile phone service when she approached the Provider

⁴ Melbourne Institute: Applied Economic & Social Research. Figures based on March Quarter 2019

to apply for a new service for a third party. I am satisfied the Provider should not have approved any new services for the Consumer when her income fell below the poverty line.

In my view, the Provider should bear the risk of approving the services without conducting appropriate credit checks in this case. It would be unreasonable if the Provider's failure to conduct an appropriate credit assessment placed the entire risk of its misconduct on the Consumer.

Any reasonable enquiry into the Consumer's financial circumstances would have shown she was a part time employee and did not have the capacity to pay for any additional services.

4.5 The arrangement between the Consumer and the third party is not relevant to the Provider's obligations

The arrangement between the Consumer and the third party is not relevant to the Provider's obligations.

As I have discussed, the Provider has obligations under the TCP Code to provide telecommunications services responsibly. The Consumer does not owe the Provider an obligation to refrain from applying for services she cannot afford.

I accept that the Consumer applied for services on behalf of a third party, because she believed the third party would make payments towards the account.

However, I do not agree with the Provider that this point is significant and should impose the burden of the debt on the Consumer.

If the Provider had conducted an appropriate credit assessment, it would have declined the Consumer's application. In my view, the Consumer should not be liable for the debt on the account, because the debt is only there because the Provider breached its obligation.

Louise Halliday

Adjudicator

Telecommunications Industry Ombudsman
