

## Decision – 1 September 2020 (De-identified for publication)

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

On 17 July 2020 I advised the parties of my Preliminary View. My 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.

The Consumer has accepted the Preliminary View, but the Provider did not respond.

I have decided the Provider must refund \$716 to the Consumer within 10 business days of being notified of the Consumer's acceptance of my decision.

1 September 2020

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## Contents

1	Background.....	3
2	The complaint and the Provider's response.....	3
3	Reasons.....	3
3.1	The Provider should not have pursued the Consumer for the outstanding balance when it was in dispute.....	3
3.2	The charges are invalid.....	4

## 1 Background

The Consumer had a [plan] service with the Wholesaler connected at [address] State.

## 2 The complaint and the Provider's response

The Consumer's complaint is about an unsolicited sales call from Company A, now known as the Provider. Following the call from the Provider, the Consumer's services were disconnected and transferred away from the Wholesaler.

On 11 June 2019, the Consumer says he was contacted by someone who said they were from the Wholesaler. He says on the call he agreed to change his existing land line service (xx) xxxx xxxx to a cheaper plan.

The Consumer says for a month his land line service stopped working.

The Consumer says the Wholesaler told him his land line had been transferred to another provider.

In July 2019, The Consumer says he reconnected his telephone service with the Wholesaler. He says the Wholesaler was unable to reconnect (xx) xxxx xxxx so it provided a new number.

The Consumer says he started getting invoices from the Provider requesting payment. He did not pay the account as he did not receive a service from the Provider.

The Provider terminated the Consumer's service and demanded payment of \$716 from him, which the Consumer paid.

The Consumer wants the Provider to refund \$716, because he does not know what this amount was for.

## 3 Reasons

The Provider should refund \$716 to the Consumer because:

- The Provider should not have pursued the Consumer for the outstanding balance when it was in dispute
- The charges are invalid

### 3.1 The Provider should not have pursued the Consumer for the outstanding balance when it was in dispute

I am satisfied the Provider should not have pursued the Consumer for the outstanding balance when it was in dispute.

Clause 6.9.1 of the Telecommunications Consumer Protections Code (TCP Code) says a provider must not take credit management action in relation to an amount which is

subject to an unresolved complaint.

On 8 August 2019 and 24 October 2019, our office contacted the Provider to notify the Consumer was disputing the existence of the account and subsequent balance. The obligation not to take credit management action on disputed amounts was explained to the Provider on both notices.

The Provider has provided a call recording it says is from 18 November 2019, where it says the Consumer agreed to pay the outstanding balance.

At the beginning of the call the Provider told the Consumer it was calling about the overdue balance of \$417. The Consumer told the Provider the complaint was currently being investigated by our office. The Provider asked the Consumer when he last spoke to our office and the nature of the correspondence. The Provider then told the Consumer he needed to pay \$417 in unpaid service charges and \$299 in cancellation fees to finalise his account. The Consumer said he would pay the balance at a post office and the call was ended.

I am of the view the Provider was contacting the Consumer for credit management purposes and not to discuss the existing complaint. The Provider should not have requested payment from the Consumer until the complaint had been addressed and an outcome reached.

### **3.2 The charges are invalid**

I am satisfied the charges are invalid. This is because the Provider has not provided information to show they are valid.

Clause 5.2.1 of the TIO's Complaint Handling Procedures outlines if a party does not provide information we ask for, we can draw inferences from this. This includes:

- The party does not have information or evidence to support their position. Or
- The information the party holds, supports the other party's position.

The Telecommunications Industry Ombudsman service has asked the Provider to provide information to support its claim.

On 4 December 2019, we asked the Provider to provide the following information:

- Call recording of the original sales call on 11 June 2019 between the Consumer and the Provider
- Contract for the services between the Provider and the Consumer
- Invoices for the account the Provider had with the Consumer
- Any account notes.

We also sent a reminder to the Provider on 10 December 2019, 17 December 2019 and 3 January 2020.

On 18 January 2020, the Provider said it could not provide the sales call from 11 June 2019.

On 20 January 2020, we asked the Provider to provide the other information we had asked for. We sent a reminder to the Provider on 6 May 2020. The Provider has not provided any of the information we asked for.

The purpose of the Telecommunications Industry Ombudsman Service requesting the information is so we could determine if the amount of \$716 paid by the Consumer is valid. As the Provider has not provided the information requested, I have drawn an inference the Provider does not have information which supports its position, or it has information which supports the Consumer's position.

As such, I cannot be satisfied a contract existed between the Provider and the Consumer or if the Provider provided a working service to the Consumer which he used and benefited from.

The Provider should refund \$716 to the Consumer by cheque.

Louise Halliday

Adjudicator

Telecommunications Industry Ombudsman

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