

## Decision – 15 April 2021 (De-identified for publication)

---

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

I have decided the Provider must waive all charges on the Consumer's account.

This is because I am satisfied:

- The Consumer did not enter into the contracts with the Provider
- The Consumer did not authorise a third party to enter contracts in their name
- It would not be fair to hold the Consumer liable for the equipment

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.

15 April 2020

---

## Contents

1	The complaint and the Provider' response.....	3
2	Reasons .....	3
2.1	The Consumer did not enter into the contracts with the Provider .....	3
2.1	The Consumer did not authorise a third party to enter contracts in their name	4
2.2	It would not be fair to hold the Consumer liable for the equipment.....	4

## 1 The complaint and the Provider' response

The Consumer complained that a debt collector sent them a bill for \$7,123.50 from the Provider. The Consumer says they did not sign up for services with the Provider.

The Provider said:

- Someone signed up for services and equipment using the Consumer's identification details
- It sent the equipment to the Consumer's address and he accepted delivery of them, so he should pay for them.

## 2 Reasons

The reasons for my decision are:

- The Consumer did not enter into the contracts with the Provider
- The Consumer did not authorise a third party to enter contracts in their name
- It would not be fair to hold the Consumer liable for the equipment

### 2.1 The Consumer did not enter into the contracts with the Provider

I am satisfied the Consumer did not enter into the contracts with the Provider. This is because the available information supports a conclusion that a third party signed up for the contracts using the Consumer's details, and the Consumer was not aware of this.

The Consumer says they did not sign up for the services. They say until they received a copy of the bill in October 2019, they were not aware that the third party had signed up for services in their name.

The Provider says the services were ordered online. The Provider has provided information supplied with the online orders. The information provided with the online order was not consistent with information the Provider should have had on file for the Consumer.

The Provider sent an order confirmation to 04xxxxxx82, which is not the Consumer's number. The Provider should have been aware this was not the Consumer's number, because he had been the Provider's customer with 04xxxxxx81 in 2017 (this remains his number).<sup>1</sup>

The person who ordered the service provided the email address [email@email.com](mailto:email@email.com).<sup>2</sup> The Provider' records should have reflected the correct email address for the

---

<sup>1</sup> The phone numbers have been de-identified for publication.

<sup>2</sup> The email addresses have also been de-identified for publication.

Consumer was email2@email2.com.au (the email address the Provider should have associated with the Consumer's previous service).

## **2.1 The Consumer did not authorise a third party to enter contracts in their name**

The Consumer may be liable for the services added by the third party if he authorised them to act as his agent. I am not satisfied the Consumer gave the third party actual or implied authority to act as his agent and enter into a contract with the Provider on his behalf.

Agency describes a relationship where an authority is granted in favour of one person to create a legal relationship between another person (a principal) and a third party.

The Provider says the person who signed up for the service used the Consumer's drivers licence details.

The Consumer explained that he exchanged his licence details with a third party he met online and formed a romantic attachment with. He says they exchanged drivers licences to show they were serious about their relationship. I accept the Consumer's explanation.

The Provider has structured its sales process to allow people to sign up online. This reduces costs for the Provider, but increases the risk that third party scammers can impersonate individuals and sign up for services without their consent. The Provider cannot pass the risk it has chosen to adopt onto the world at large.

In addition, there were a number of other factors which should have alerted the Provider to the absence of authority including:

- The unusual nature of the activity being the addition of numerous services within a few days to a residential account, and
- The high value of the services being added.

While the Consumer accepted delivery of the equipment and sent them to the third party, he did so under the belief he was acting in accordance with his agreement with the third party.

In the absence of confirming information, I am unable to be satisfied the third party had actual or implied authority to bind the Consumer to a contract with the Provider.

## **2.2 It would not be fair to hold the Consumer liable for the equipment**

It would not be fair to hold the Consumer liable for the equipment.

I have found that the Consumer did not enter into the contract himself, and did not authorise anyone else to do so on his behalf.

The Provider considers it is not fair for the Provider to have to bear the full amount of the loss, but I do not agree. A consideration of what is 'fair and reasonable' requires an

objective assessment of the facts, instead of a subjective assessment from one party's perspective. While the Provider may not consider it fair to be deprived of the devices without compensation, it would only be fair to hold the Consumer responsible for this loss if I considered he knowingly engaged in conduct with an intention to deprive the Provider of its rights in the goods.

I do not agree that the Consumer intended to deal with the property in a way that was inconsistent with the Provider's rights. The Consumer had been duped by a third party, and believed the third party had purchased the goods.

A fair outcome would be for the person who ultimately received the goods to pay for them. I have no control over this outcome, but it is open to the Provider to investigate what action it could take, either civilly or through pursuing criminal charges, to recover its loss from the third party. The Consumer should cooperate with any actions the Provider takes against the third party.

Judi Jones

Ombudsman

Telecommunications Industry Ombudsman

---