

Preliminary View – 14 October 2020 (De- identified for publication)

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

My Preliminary View is that the Telco is not required to take any action to resolve this complaint.

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.
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1 The complaint and the Telcos' response

The complaint is about disputed minimum monthly charges for the services and agreed credits and discounts.

In March 2020, the Telco told the Consumer that 'moving forward' their bills would be \$230 a month. The Consumer claims they relied on this before entering into contracts for a new data plan and tablet service.

2 The recommended outcome and the Consumer's response

The Telecommunications Industry Ombudsman issued a recommended outcome that found:

- the Telcos' conduct was misleading
- the Consumer did not rely on the misleading conduct
- the Telco's offer remedies any potential financial detriment the Consumer may have suffered

The Consumer rejected the recommended outcome because:

- they want the Telco to acknowledge its error and cancel their contracts, but allow them to pay their devices out on a monthly basis as if the contracts were not cancelled
- this is not the first time the Telco has given them incorrect information
- software is available that would allow a third party to retrieve data from their devices if they were to return it to the Telco, so they want the Telco to allow them to pay the devices off at a monthly cost of \$150. They think the contracts allow this
- it's not true that the Consumer wasn't affected by the misleading conduct, because it affected them mentally as a result of the extra stress and sleepless nights
- the Telco has not reduced the monthly bill to \$316.98, in line with an offer it made in April 2020.

3 Reasons

The reasons for my preliminary view are I am satisfied:

- The Telco has offered the appropriate remedy for misleading conduct
- The Consumer must either return the devices or pay for them

3.1 The Telco has offered the appropriate remedy for misleading conduct

I am satisfied the Telco has offered the appropriate remedy for misleading conduct.

The Consumer appears to believe that the Telco should have to waive legitimate charges because it made an error in calculating the monthly payments. The Consumer is not correct. This is not the remedy they are entitled to.

The Australian Consumer Law provides that a person (in this case the Telco) must not engage in misleading or deceptive conduct.

If a person (in this case the Consumer) relies on misleading conduct and suffers loss as a result, they are entitled to recover that loss from the person who engaged in misleading conduct.

The remedy operates to restore the Consumer to the position they would have been in if they hadn't relied on the conduct. It is not to punish the Telco for making the misleading representation.

This means to establish the appropriate remedy, I have to consider whether the Consumer relied on the incorrect information in the March email and suffered loss as a result.

I accept the Telco provided incorrect information in an email dated March, but this did not change the Consumer's existing contractual obligations at the time.

On 21 April 2020, the Telco sent the Consumer an email to confirm that the minimum monthly spend was \$267.52, and additional services such as the iPad would be on top of this amount. The Consumer entered into the contract for the iPad after the Telco gave this information.

As a result, I am satisfied the Consumer did not rely on the misleading conduct. They were aware of the correct cost of the services prior to entering into another contract.

3.2 The Consumer must either return the devices or pay for them

The Consumer must either return the devices in good working order or pay for them.

I cannot consider the hypothetical consequences of a third party with the qualifications to restore data on the Consumers' devices gaining access to it.

3.3 The Consumer did not accept the Telco's offer

In April 2020 the Telco offered two options to resolve the Consumer's complaint:

1. The Consumer could pay the minimum monthly amount of \$316.98, or
2. The Consumer could return the equipment and the Telco would waive the device payouts.

The Consumer did not accept the Telco's offer.

Louise Halliday

Adjudicator

Telecommunications Industry Ombudsman