

## Preliminary View – 15 September 2021 (De-identified for publication)

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My Preliminary View is that the Telco should:

- Remove the default listing on the Consumer's credit file
- Apply \$1,500 to the Consumer's debt to compensate her for non-financial loss

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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## Contents

|     |  |   |
|-----|--|---|
| 1   | Background.....  | 3 |
| 2   | The complaint and the Telcos' response .....   | 3 |
| 2.1 | Disputed charges.....  | 3 |
| 2.2 | Default listing .....  | 3 |
| 3   | The recommended outcome and the parties' responses.....  | 3 |
| 4   | Reasons .....  | 4 |
| 4.1 | The Telco has obligations to put credit management on hold while a complaint is with the TIO ..... | 4 |
| 4.2 | The Telco continued credit management when it should not have.....                                 | 4 |
| 4.3 | The Telco should remove the default listing .....  | 5 |
| 4.4 | An award of \$1,500 is appropriate in the circumstances .....                                      | 5 |

## **1 Background**

The Consumer had account number XXXXXXXXXXXX with the Telco for a mobile service with a mobile handset and a watch on a 36-month plan.

## **2 The complaint and the Telcos' response**

The Consumer's complaint is about disputed charges and a default listing.

### **2.1 Disputed charges**

The Consumer says in August 2020 they moved to a new area where the Telco had no mobile coverage, and she cancelled her service.

They say the Telco offered to let them continue paying their device plan, if they kept one of their service numbers active.

They say when they ported their mobile number to a new Telco the Telco cancelled their plan and sent them a final bill for \$527.23.

In January 2021 the Telco sent them a new bill for \$2,672.81 and told them it referred the matter to a debt collections agent.

The Telco says the charges are valid.

### **2.2 Default listing**

After the Consumer lodged their complaint with the TIO, a debt collector acting on behalf of the Telco listed a default on the Consumer's credit file in relation to the debt.

## **3 The recommended outcome and the parties' responses**

The Telecommunications Industry Ombudsman issued a recommended outcome that found:

- The \$2,105 of charges on the Consumer's account are valid
- The Telco should not have listed the default on the credit file while the TIO was handling the complaint
- The Telco should compensate the Consumer \$1,500 for breaching her privacy
- It would not be in the Consumers' interests for the default to be removed unless the debt is paid

The Consumer accepted the recommended outcome.

The Telco rejected the recommended outcome because:

- The Telco met the notice requirements in the Privacy Act before listing the default
- The TIO does not have jurisdiction to award compensation for punitive damages under the Terms of Reference or the Telecommunications Consumer Protection Code.

Neither party disputed the finding that the \$2,105 of charges on the Consumer's account are valid. I will not revisit this issue in this preliminary view.

## 4 Reasons

The reasons for my preliminary view are:

- The Telco has obligations to put credit management on hold while a complaint is with the TIO
- The Telco continued credit management when it should not have
- The Telco should remove the default listing
- An award of \$1,500 is appropriate in the circumstances

### 4.1 The Telco has obligations to put credit management on hold while a complaint is with the TIO

The Telco has obligations to put credit management on hold while a complaint is with the TIO.

Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* ([the Act](#)) requires carriers and eligible carriage service Telcos to enter into the Telecommunications Industry Ombudsman scheme to provide a dispute resolution service for complaints about telecommunications services.

Under section 132 of the Act, a carriage service Telco who is a member of the TIO scheme must comply with the scheme.

Our Terms of Reference allow the Ombudsman to make policies and procedures for handling complaints. Our [Complaint handling procedures](#) set out the main procedures we use when handling matters brought by consumers.

Clause 3.5 of our Complaint Handling Procedures says when we have referred a complaint to the Telco, it must stop credit management action on disputed charges for the duration of the referral period, and while the complaint is open.

Paragraph 4.1 of our Terms of Reference provides examples of credit management action, which includes any communication aimed at collecting money, and reporting credit information to a third party or threatening to do so.

### 4.2 The Telco continued credit management when it should not have

The Telco continued credit management when it should not have.

This complaint was lodged on 29 January 2021, and the referral period ended on 12

February 2021. The Consumer contacted the TIO on 12 February 2021 and again on 26 February 2021 because they had received contact from a debt collector, acting on behalf of the Telco, seeking to recover the debt.

The TIO wrote to the Telco on 26 February 2021 asking the Telco to stop credit management action for the disputed charges of \$2,672.81.

The Telco listed the default on 3 March 2021.

The demands for payment and default listing are "credit management". The Telco was not entitled to list the default on the Consumer's credit file.

#### **4.3 The Telco should remove the default listing**

The Telco should remove the default listing because it was not entitled to list the default on the Consumer's credit file.

The Telco, as the credit Telco who listed the default, is obliged to ensure information is up to date.

Section 21U of the Privacy Act require a credit Telco to take positive steps to correct personal information if the information is inaccurate and out-of-date. This includes where the credit Telco has disclosed the default information in error.

#### **4.4 An award of \$1,500 is appropriate in the circumstances**

In my view, an award of \$1,500 is appropriate in the circumstances. This should be applied to the account to repay the Telco's outstanding debt.

The Telecommunications Industry Ombudsman Scheme is a recognised dispute resolution scheme under section 35A of the Privacy Act.

The Ombudsman has power to provide remedies consistent with the declarations available to the Commissioner, set out in section 52 of the Privacy Act. These include:

- Directing the respondent entity (in this case, the Telco) to ensure the conduct is not repeated or continued
- Directing the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant
- Awarding compensation for any loss or damage suffered by reason of the breach of privacy.

Under the Privacy Act, 'loss or damage' includes injury to the complainant's feelings, such as stress and embarrassment suffered by the complainant.

When we assess the amount of compensation payable for injury to feelings and humiliation, the guiding principle is that the type, remedy and amount of compensation must be fair and reasonable, taking into account the injury to feelings and humiliation experienced by the individual as a result of the actions of the Telco.

We apply the same approach as the Commissioner in determining loss, based on the principles set out in *Rummery and Federal Privacy Commissioner and Anor*:<sup>1</sup>

- where a complaint is substantiated and loss or damage is suffered, the legislation contemplates some form of redress in the ordinary course
- awards should be restrained but not minimal
- in measuring compensation, the principles of damages applied in tort law will assist, although the ultimate guide is the words of the statute
- in an appropriate case, aggravated damages may be awarded
- compensation should be assessed having regard to the complainant's reaction and not to the perceived reaction of the majority of the community or of a reasonable person in similar circumstances.

I accept that the default listing would have caused the Consumer stress and embarrassment. The Telco added to the Consumers' stress and embarrassment by refusing to acknowledge its error in continuing credit management while the complaint was open.

Louise Halliday

**Adjudicator**

**Telecommunications Industry Ombudsman**

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<sup>1</sup> [2004] AATA 1221