

Preliminary View – 22 September 2021 (De-identified for publication)

My Preliminary View is that, if the Consumer accepts this Preliminary View, the Telco should:

- waive \$844.50 in service charges
- waive the equipment charges if the consumer returns all of the equipment in good working condition. The Consumer should pay for any of the equipment the Consumer does not return in good working condition.

The reasons for my preliminary view are:

- I cannot make the Telco waive the charges for the equipment
- The Consumer should pay for any of the equipment they want to keep
- I cannot make the Telco give the Consumer any services
- The Consumer has not provided information to show their broadband internet service is faulty

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 Telco's response

The complaint is about the Telco's credit assessment. The Telco provided goods and services to the Consumer when the Telco should have been aware the Consumer could not pay for them.

The Consumer claims they returned a mobile handset to the Telco's local store and swapped it for a new mobile handset. The Telco charged the Consumer \$2,108.36, but they claim the Telco agreed to waive the charge.

The Telco said when the Consumer returned the old mobile handset, it generated an early termination charge of \$1,072.10, which it waived.

2 The recommended outcome and the parties' responses

The Telecommunications Industry Ombudsman issued a recommended outcome that found:

- the Telco should stop providing the Consumer post-paid services
- the Consumer should return the devices they cannot pay for
- the Telco should waive 50% of the Consumer's outstanding balance and the Consumer should pay the remaining 50% of their outstanding balance
- the Consumer should pay for the devices if they chooses not to return them

The Telco accepted the recommended outcome but will only waive half of the device charges if the Consumer returns everything in good condition.

The Consumer agreed to move to prepaid with two of their services. The Consumer said they would return some of the accessories they received from the Telco, but the phone screen was damaged when they dropped it from a low height.

The Consumer believes they should be able to keep the phone to make up for the poor experiences they had with the Telco, because they couldn't watch a movie on their broadband internet service.

3 Reasons

The reasons for my preliminary view are:

- I cannot make the Telco waive the charges for the equipment
- The Consumer should pay for any of the equipment they want to keep
- I cannot make the Telco give the Consumer any services
- The Consumer has not provided information to show their broadband internet service is faulty

3.1 I cannot make the Telco waive the charges for the equipment

The TIO is a dispute resolution service that is free for consumers. I can direct a Telco to reimburse a consumer for any financial loss they have suffered because of an error.

I do not have power to direct the Telco to pay compensation, or provide free goods or services, for inconvenience, or perceived poor service.

3.2 The Consumer should pay for any of the equipment they want to keep

The Consumer should pay for any of the equipment he wants to keep.

In this case, I agree with the recommended outcome, that the Telco should not have approved goods or services to the Consumer when they have not demonstrated an ability to pay for the services.

An appropriate remedy for the Telco's error is to put the Consumer back in the position they would have been in if the Telco had not approved the credit for the devices.

Before the approval, the Consumer did not have the equipment. They should return the equipment to the Telco in good condition. If they have damaged the phone screen, they will need to pay for the repair of the screen before returning it.

If the Consumer refuses to return the equipment, it is fair and reasonable that they pay for the equipment.

3.3 I cannot make the Telco give the Consumer any services

I cannot make the Telco give the Consumer any services.

I agree with the recommended outcome that the Telco should stop providing the Consumer with post-paid services. This does not mean the Telco is under an obligation to offer pre-paid services as an alternative.

If the Telco makes a commercial decision not to provide a particular customer with services, I cannot interfere in that decision.

3.4 The Consumer has not provided information to show their broadband internet service is faulty

The Consumer has not provided information to show their broadband internet service is faulty. While they claim the service dropped out while they were watching a video streaming service, they did not provide any documentation to support their claim, or information to show what speeds their service was achieving. The Telco's records show the Consumer did not report faults with the internet.

In the absence of information to support the Consumer's claim, I am unable to find there was a fault with the broadband internet service.

Louise Halliday

Adjudicator

Telecommunications Industry Ombudsman
