

## Preliminary View – 29 October 2020

### (De-identified for publication)

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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 Background**

On 10 November 2018 the Consumer signed a 24-month contract with the Telco for a lease mobile plan with a mobile handset for \$129.00 a month and a handset swap plan for an additional \$10.00 per month.

In 2019 the Consumer told the Telco the phone was stolen and the Consumer made a complaint to our office. In October 2019 the Consumer and the Telco agreed how to resolve the prior complaint. The Consumer would apply to upgrade their phone using an upgrade term in their contract (mobile swap) and recontract with the Telco and the Telco would waive the upgrade fee. The Consumer was unable to upgrade as they did not pass the Telco's credit check.

On 5 March 2020 the Consumer ported their service to another Telco. The Telco billed them \$1,165.21 in unpaid service charges and cancellation fees.

## **2 The complaint and the Telco's response**

The Consumer's complaint is that the Telco would not recontract with them. As a result, they had to go to another service Telco. They say the early termination fees could have been avoided if the Telco had approved the recontract, like it agreed.

The Telco says it could not recontract the Consumer, because they failed a credit check. The outstanding debt is made up of charges for services used, the charges for the mobile device and cancellation fees.

## **3 The recommended outcome and the Consumer's response**

The Telecommunications Industry Ombudsman issued a recommended outcome that found:

- the Consumer rejected the Telco's offer to exit their contract without charge
- the outstanding debt of \$1,007.25 is valid.

The Consumer claims the Telco did not offer to release them from contract without early termination fees. The Consumer believes that the decision of their new service Telco to accept their application for a service means their credit rating is good, and the Telco should have accepted their application too.

## **4 Reasons**

The reasons for my preliminary view are I am satisfied:

- The TIO cannot consider a complaint about the Telco's decision not to provide credit
- The Telco is not required to waive the device charges
- The Telco did offer to release the Consumer from his contract

#### **4.1 The TIO cannot consider a complaint about the Telco's decision not to provide credit**

The TIO cannot consider a complaint about the Telco's decision not to provide credit to the Consumer.

When the Consumer entered a contract with the Telco for a mobile lease plan, the Consumer opted to include a mobile swap as part of the contract. Mobile swap allows the Telco's customers to upgrade their leased phone twice in a 12-month period for a flat fee of \$190 when signing up to a mobile lease plan.

In order to sign up for a new plan, the Consumer first had to be approved for the new plan. At the time they applied, the consumer had outstanding charges with the Telco, so it declined their application. It was entitled to do so.

I appreciate the Consumer considers themselves a good credit risk, and points to the fact that their new service Telco approved their application for a new service to support their position that the Telco should also have approved their earlier application.

The Telco is under no obligation to apply the same considerations as the Consumer's new Telco in assessing an application for credit. The Telco was entitled to exercise its commercial discretion to decline the Consumer's application, and I have no power to interfere with that decision.

#### **4.2 The Telco is not required to waive the device charges**

The Telco is not required to waive the device charges.

Under the lease mobile plan, the Consumer was required to return their leased device to the Telco.

The Consumer's handset was stolen, so it could not be returned. As a result, the Consumer is liable for the non-return fee of \$300.

#### **4.3 The Telco did offer to release the Consumer from their service contract**

I am satisfied the Telco did offer to release the Consumer from their service contract and waive the Early Termination Charges (ETC).

On 20 November 2019, the Telco sent an email to, the dispute resolution officer handling the consumer's prior complaint TIO complaint. In the email, the Telco offered to either request a review of the decision to decline the Consumer's credit assessment, or credit the service ETCs.

On the same day, there is a record of a call from the Consumer to the dispute resolution officer. The summary of the call is set out below:

Comments:

The consumer called.

*I explained the Telco's most recent email.*

Consumer said:

*The Telco won't tell me why I keep failing the credit assessment.*

*I have been late paying bills.*

*I own property, I own my car.*

*I don't have a copy of my credit report.*

*I don't know how to get a copy of my credit report.*

I said:

*I explained how to get a credit report.*

Consumer said:

*I spoke to my lawyer, the Telco has reneged.*

*I can pay \$2000 for a lawyer.*

*Either next Friday, if I don't get a phone, I will sue the Telco and TIO.*

*Either the Telco sends a phone, sends it to my address, I spend \$4000 on a contract, or I will take you and the Telco to court.*

*I will talk about the Telco on Facebook.*

*Give me the review.*

*Between you and the Telco, you said that you would give me a phone.*

*Where's my phone?*

*Do you know how much I'll get for reneging a contract?*

*I'll get \$25,000.*

*It's highly illegal.*

I said:

*I'll send you the information on how to get a copy of your credit file.*

*I'll forward you the copy of the email from the Telco.*

*I'll let the Telco know you want to make a review request.*

*I'm not sure how else we can assist you further.*

At 5.01pm on 20 November 2019, the dispute resolution officer forwarded the Telco's email to the Consumer.

From the call record and email, I am satisfied the Consumer was aware of the Telco's offer, and rejected it.

Louise Halliday

**Adjudicator**

**Telecommunications Industry Ombudsman**

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