

Preliminary View – 21 July 2023

Deidentified

Dear consumer

On 12 April 2023 you told us you did not accept the Telecommunications Industry Ombudsman's (TIO) recommended outcome for your complaint.

You did not point to any errors in the recommended outcome or give us any new information.

In these circumstances there is no basis for me to change the recommended outcome. I consider the recommended outcome is the appropriate resolution for the complaint.

The complaint and the recommended outcome

The complaint is about:

- Service fees.
- Cancellation fees.

On 12 April 2023 the TIO issued a recommended outcome that found the provider is not required to take any further action.

This is because the provider is entitled to charge the business for the remainder of the fixed term contracts.

Your objection

On 12 April 2023 you rejected the recommended outcome.

This is because:

- You wanted the provider to negotiate with the business because the business has been a customer of the provider for more than 21 years.
- The provider received money from the business for more than 21 years.
- The business did not need the equipment and services it contracted for.
- The people who are currently running the business are paying \$300 a month whereas the business was paying \$1,500 a month.
- The provider provides your mobile service and supplied your laptop.

My view on the complaint

In my view, the provider is not required to take any further action.

This is because:

- The business agreed to the fixed term contracts and no longer needing the services and equipment is not a valid reason to be released from the contract terms and conditions.
- The provider did not over-sell the business.

The business agreed to the fixed term contracts and no longer needing the services and equipment is not a valid reason to be released from the contract terms and conditions

The business signed and agreed to the fixed term contracts. This included agreeing to pay the monthly service and equipment fees while the contracts are active, and cancellation fees if the contracts are cancelled early.

The Australian Consumer Law allows a consumer to cancel their contracts early in certain circumstances. This means the provider of those contracts is then required to waive the cancellation fee and refund or waive fees already charged.

I understand the business was a long-time customer of the provider and it is no longer using the services and equipment it contracted for because it is no longer running the business. However, this is not a circumstance where the provider is required to waive the contract cancellation fees and refund fees already charged.

Based on this, in my view, the provider is not required to take any further action.

I acknowledge the equipment is leased under finance contracts with [Finance Company]. [Finance Company] is not a member of the TIO scheme and therefore we cannot consider a complaint about [Finance Company]

You are free to contact [Finance Company] directly, or discuss a complaint about [Finance Company] with Australian Financial Complaints Authority (AFCA).

The provider did not over-sell the business

I have reviewed the contracts you signed on behalf of the business. In my view, the contracts clearly show the services and equipment provided in the contract, the duration of the contract and the ongoing costs.

You are a business-person and you were acting on behalf of the business. In my view, you are expected to exercise reasonable diligence by reading the contracts before signing them.

For this reason, in my view, when you signed the contracts you knew, or should have known what services and equipment the business was agreeing to.

I have also reviewed the provider's customer interaction notes. I cannot locate any information to suggest that before entering the contracts you told the provider you did not need these services and equipment, or that you wanted less sophisticated services and equipment.

Based on this, in my view, the provider did not over-sell the business.

I acknowledge that the current business running the business may be paying less to their telco provider than you did. This could be for a variety of reasons that we do not know about. In any event, in my view, what the current consumer running the business is paying its telco provider is not relevant to this complaint.

I have closed our complaint file

I have closed our complaint file. The TIO cannot consider your complaint further.

You are not bound by the recommended outcome. If you are still dissatisfied, you can raise your complaint in another forum, for example a court or tribunal. If you are considering this, you may wish to seek independent legal advice or representation.

Yours sincerely

Senior Lead – Dispute Resolution
Telecommunications Industry Ombudsman
