

Preliminary View – 22 June 2023

Deidentified

This document sets out my Preliminary View on how this complaint about the provider from the consumer should be resolved.

My Preliminary View is the provider should pay the consumer \$1,000 in compensation for non-financial loss in addition to any other credits it has already provided her.

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

The consumer lives with her husband and son in a country town. She and her husband are on Centrelink payments so have a limited income.

The consumer had a mobile service with the provider that was the sole phone and internet connection for her family. She was paying \$38 a month for that mobile service.

2 The complaint and the provider's response

The consumer says:

- From around July 2022 she was in financial hardship and could not pay her monthly service charges
- The provider only allows payment through its app which only allows full payment of the outstanding charges and doesn't allow a partial payment to be made
- A charity offered to contribute to her mobile invoice (as it was the family's only form of communication) and she asked the provider for information on how the charity could pay part of her invoice but it did not provide her with any details
- In October 2022 she asked the provider for a financial hardship payment arrangement for the outstanding debt (approximately \$114) she asked to pay \$25 per month towards this outstanding amount starting on 26 October 2022 and provided the provider information to support her request
- She submitted the paperwork to the provider but did not receive any confirmation it had been received or that her requested hardship arrangement had been approved
- On 25 October 2022, after she contacted the provider again it confirmed that her financial hardship arrangement had been approved and offered her 10GB of extra data as a goodwill gesture
- On 26 October 2022 she went to pay \$25 as per the financial hardship arrangement but the provider app would only allow her to pay the entire account balance
- On 27 October 2022 her service was suspended without notice
- As she had no other service, she had to travel into town with her family where she had access to WiFi so she can contact the provider to ask for information to pay her account and reconnect her service
- The provider advised her the service would be reinstated but it was not
- She needed to be contacted by Centrelink and access the internet, the suspension of her service without notice meant she had to use a payphone to

contact Centrelink which involved several hours standing in a payphone

- On 31 October 2022 the provider provided her bank account details and she paid \$25 in line with her financial hardship arrangement
- Despite making this payment, the provider did not reinstate her service, instead saying she needed to pay the entire account balance to have her service reinstated.

To resolve the complaint The consumer wanted the provider to reconnect her service, waive the entire outstanding account balance and compensate her for the stress and inconvenience the suspension caused her.

The provider says:

- On 25 October 2022, it approved the consumer's financial hardship application, in the application the consumer said she could make her first payment on 26 October 2022
- The provider did not receive payment on 26 October 2022 and on 27 October 2022 it suspended her service
- On 31 October 2022 the consumer paid \$25; she has not made any other payments
- It was concerned the consumer's hardship arrangement (\$25 per month) did not meet her minimum plan fees (\$38 per month) and therefore, decided to refuse the consumer a service to limit further debt on her account, and
- On 23 November 2022, it reactivated the consumer's number to allow her to port the service to another provider but the consumer refused.

To resolve this complaint The provider waived the \$131 that was owing on the consumer's account and said it would reactivate her number so she can port it to a new service provider.

3 The recommended outcome and the parties' response

On 22 February 2023 the Telecommunications Industry Ombudsman (TIO) issued a recommended outcome that found the provider's offer to resolve the complaint is fair and reasonable.

The recommended outcome found:

- The provider met its financial hardship obligations to the consumer.
- The consumer is not entitled to more compensation than the provider has already offered.

The provider accepted the recommended outcome.

The consumer did not accept the recommended outcome. The consumer said her reasons for rejecting were:

- The provider did not meet its financial hardship obligations when it suspended her service without notice
- The provider was incorrect to assume she would only pay \$25 per month when it was clear on the paperwork she submitted that the \$25 per month payment would be for the outstanding amount only, and
- The suspension of her service severely impacted her entire family.

4 Reasons

My Preliminary View is the provider should pay The consumer \$1,000 in compensation for non-financial loss, in addition to any credits it has already provided her.

This is because:

- The provider did not comply with the obligations set out in Chapter 7 of the Telecommunications Consumer Protections (TCP) Code, and
- The consumer should be compensated for the interference with expectation of peace of mind caused by the provider's actions.

4.1 The provider did not comply with the obligations set out in the TCP Code

It is my view that The provider did not comply with the obligations set out in Chapter 7 of the [TCP Code](#) relating to financial hardship.

This is because:

1. The provider did not engage with the consumer when assessing her claim for financial hardship assistance, and
2. The provider did not contact the consumer before it started credit management action.

4.1.1 The provider did not engage with the consumer when assessing her claim for financial hardship assistance

Having considered all the information provided, I am satisfied the provider did not engage with The consumer when assessing her claim for a financial hardship arrangement.

The TCP Code sets out specific points when a provider must communicate with its customer when they have requested a financial hardship arrangement. These points are:

- That a provider must advise their customer *“how long it will take to make an assessment for assistance, and must ensure that an assessment regarding eligibility for assistance under a Financial Hardship policy is made within 5 Working Days”* as outlined in Clause 7.4.5
- That a provider must inform their customer of their *“rights and obligations under the Financial Hardship arrangement”* as outlined in Clause 7.5.2, and
- That a provider must advise the customer *“of the duration of the Financial Hardship arrangement or of the review date of the arrangement”* as outlined in Clause 7.5.3

The interaction records provided by the provider and the consumer show:

- On 10 October 2022 the consumer requested a financial hardship arrangement and was provided paperwork to complete (Appendix B).
- On 15 October 2022 the consumer submitted the paperwork. The provider requested proposing to pay \$25 per month towards the \$114 that was outstanding (Appendix A & B). This arrangement was to commence on 26 October 2022.
- The provider did not contact the consumer to discuss her proposed financial hardship arrangement or tell her it accepted her proposed payment plan until 25 October 2022. This contact was only made after the consumer contacted the provider about her proposed arrangement and resent her documentation to the provider (Appendix B), and
- The provider did not advise the consumer how long it would take for her hardship arrangement to be approved, of her rights and obligations under the financial hardship arrangement (including how she could make payments), or advise her of the duration of her financial hardship arrangement.

The lack of engagement on the provider’ behalf does not meet the expectations set out in Chapter 7 of the TCP Code when it comes to assisting a customer who is in a position of financial hardship.

4.1.2 The provider did not contact the consumer before it started credit management action

The provider has acknowledged that it did not contact the consumer before it started credit management action by suspending her service on 27 October 2022.

Clause 7.7.1 of the TCP Code says credit management must be suspended while a financial hardship arrangement is being discussed or in place unless:

- The customer does not meet their obligations under the arrangement and the provider takes reasonable steps to contact the customer

- The provider decides credit management action is required (e.g to prevent further debt being incurred), or
- The customer agrees the financial hardship arrangement cannot be completed.

Clause 7.7.2 of the TCP Code says credit management action can only be restarted where the customer has agreed they cannot meet their obligations, or where reasonable attempts have been made by the provider to contact the customer prior to restarting credit management.

On 19 May 2023, in response to a request for information to finalise the Preliminary View, the provider accepted that it did not contact the consumer before recommencing credit management and suspending her service on 27 October 2022. However, in earlier responses to this office the provider states it was entitled to do this because:

- The consumer did not meet the payment obligations outlined in the hardship arrangement, and
- It was concerned the consumer's proposed payment plan (\$25 per month) would not pay the outstanding debt as well as ongoing monthly charges (\$38 per month).

The provider did not provide the consumer the information required for her to make payments in line with the financial hardship arrangement until 31 October 2022 which was after her service was suspended. Considering the obligations outlined in the TCP Code, it is my view that it was solely the provider's responsibility to ensure the consumer had information so she could make the payments agreed in the financial hardship arrangement.

The financial hardship form the provider provided the consumer (Appendix A) asked what amount was outstanding and how much she could *'repay on your outstanding [provider bill] on a monthly basis'*. Because the provider did not contact the consumer to clarify the rights, obligations or duration of the hardship arrangement it is unreasonable for the provider to assume the consumer's proposed payment plan would not factor in ongoing monthly charges.

Reviewing the due dates of the consumer's invoices, along with the payment arrangement detailed in the financial hardship form it is my view the consumer's financial hardship arrangement was intended to look like this:

Date	Payment	Notes
26 October 2022	\$25	\$89 remains owing from outstanding debt (\$114)
19 November 2022	\$38	Ongoing monthly charges
26 November 2022	\$25	\$64 remains owing
19 December 2022	\$38	
26 December 2022	\$25	\$39 remains owing
19 January 2023	\$38	
26 January 2023	\$25	\$14 remains owing
19 February 2023	\$38	
26 February 2023	\$14	Final payment for the hardship arrangement

If the provider had any issues with the consumer's proposed payment plan it was the provider's responsibility to address this with the consumer before approving her financial hardship arrangement and suspending her service.

4.2 The consumer should be compensated for the interference with peace of mind caused by the provider's actions

When the provider suspended the consumer's mobile service on 27 October 2022 it interfered significantly with her expectation of peace of mind that she had negotiated by setting up a hardship arrangement with the provider for the outstanding debt.

Our [Terms of Reference](#) provides us the power to award compensation to a consumer for non-financial loss caused by circumstances where *"an unusual degree or extent of physical inconvenience, time taken to resolve the situation or interference with the consumer or occupier's expectation of enjoyment or peace of mind has occurred."*

The financial hardship form the consumer provided the provider outlined her family's limited income (Appendix A & B). In her emails and submissions to the provider and this office (Appendix D) The consumer outlined the impact the suspension of her service had on her including:

- Removing the only form of telecommunications the family had in their home
- The need for the family to travel to town to access WiFi to contact the provider
- The need for the family to have a service to be able to engage with Centrelink

to ensure income and home school her child, and

- The time and effort taken by the consumer and her family to try and get the service reinstated.

I am satisfied that the above circumstances The consumer and her family experienced not only caused an unusual level of physical inconvenience but also caused a high degree of stress at a time that the consumer needed to communicate with Centrelink to ensure she continued to receive an income. The impact was further heightened by the fact that her service was suspended on the day of her son's sixth birthday and the family lost the opportunity to celebrate this milestone.

Considering my assessment of how the provider addressed The consumer's claim for financial hardship assistance and actions in suspending the service, it is my view that the provider did not take reasonable steps to mitigate or minimise the impact the sudden loss of service would have on a customer in the consumer's circumstances.

Whereas, I am satisfied the consumer took all reasonable and appropriate steps to mitigate or minimise the impact the loss of service could have had on her including limiting expenditure by having one service for her family, seeking assistance from charities, engaging with Centrelink to ensure payments would continue, and actively driving the communication with the provider to negotiate a hardship arrangement that would mean she would still have access to her service while paying the outstanding charges.

It is my view that the provider contributed significantly to the circumstances of this complaint and should compensate the consumer \$1,000 (in addition to any charges it has previously waived) for the disruption in her service and interference this caused on her expectation of peace of mind while she was navigating a period of financial hardship.

Senior Lead – Dispute Resolution

Telecommunications Industry Ombudsman

Appendices removed for deidentification

Appendix A – Financial Hardship application

Appendix B – Interactions between the consumer and the provider organising financial hardship application

Appendix C – Interactions regarding suspension

Appendix D – Submissions from The consumer detailing the impact of the suspension

** Further submissions from the consumer attached separately