

Issue **12**
June 2008

Case Studies¹

(A)

Guidance on disputes involving criminal matters and revising credit rating

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1. Disputes involving criminal matters are outside the scope of CISAS so:
 - If the basis of the customer's claim is that the company² is alleged to have, for example, committed a fraud or given forged documents to the customer then the claim will be rejected by CISAS as being out of scope.
 - If the customer's claim includes, amongst other things, very serious criminal allegations against a company then an adjudicator may decide that such a dispute is one which the adjudicator cannot settle because it involves a complicated issue of law and CISAS rule 2(j) states, '*The dispute must not involve a complicated issue of law*', also under CISAS rule 5(c) only the adjudicator can decide whether he or she can settle a dispute³.
2. There are an increasing number of cases where customers are being advised by companies to pay bills (which the customer disputes) to avoid gaining a poor credit rating. A company should not take action to revise the credit rating of a customer or instruct debt collectors whilst a dispute is being considered by CISAS. Such action may not only be looked upon as wrong but also lead to an increased level of compensation being awarded to a customer whose case succeeds and who has established that they have suffered even more inconvenience and damage as a result of that action⁴.

(B)

Adjudicators recommendations for good practice: bills

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If the bills of a company have not been accurate, duplicate payments have been taken in error by direct debit or a customer is confused by charging procedures then the company within its Defence should provide a clear statement showing balances or credits due as

¹ Cases can be referred to by giving the case study edition number followed by the case number. For example, **12:01** is a reference to edition 12 of the Case Studies, Case 01 Business loss. The Case Studies are summaries of cases they are not the full case. They are merely a guide rather than a precedent. In each case there are circumstances which are particular to that case, which have been considered and have lead to a particular Decision being made by the Adjudicator.

² The communication and internet service provider is referred to as, '**the company**'.

³ See below Case Studies 12:02 and 12:09.

⁴ See below Case Studies 12:07 and 12:11.

well as providing copies of previous bills.

Case 01

Business loss

Business loss

The customer, who ran an accountancy business from home and was an existing customer of the company, requested an upgrade to a business package with a static IP address. After the upgrade was completed the customer had constant connection problems and often telephoned the company's help desk which was outside the UK. A year later the connection problems were resolved. The customer complained his business suffered losses due to the amount of time he was unable to connect to the internet; he calculated the cost of the wasted time as £4,620.00. The company admitted that there were connection problems but maintained that the customer was not on a business package and the amount of compensation he claimed was excessive.

The Adjudicator found that the customer was on a business package, had made numerous calls to the company's helpdesk without receiving any real assistance and had endured a great deal of frustration. The amount of compensation claimed was excessive and the figures supporting it were subjective. However, the customer's business had been adversely affected by the connection problems. £1,500.00 was appropriate compensation.

Case 02

Forgery allegation CISAS rule 5(c) applied

Forgery allegation. CISAS rule 5(c) applied

CISAS rule 5(c) states:

Only the adjudicator can decide whether he or she can settle a dispute.

The customer complained that calls appeared on his bill which he had not made. Investigation of the calls by the company and their detailed records confirmed the calls were made from the customer's telephone line. The customer examined the records and suggested they had been, 'concocted', to defeat his claim.

The Adjudicator found that the customer's case amounted to a very serious allegation of forgery which might have consequences in the criminal law. It was not an appropriate matter to be dealt with under the CISAS procedure. The claim was dismissed.

Case 03

Barring outgoing calls

Barring outgoing calls

The customers had a contract with company 1 for both home and business premises until they transferred to company 2. Two years later the customers discovered that traffic was again passing over the network of company 1. The customers refused to pay the bills produced by company 1 who then barred the customers outgoing calls and placed the matter in the hands of debt collectors. Company 1 accepted there was no agreement to re-provide a service to the customers, they did not know how it had occurred, they should not have call barred the customers and they apologised. The customers requested compensation of £1,400.00.

The Adjudicator found that there was a significant failure of duty of care by company 1 who had wrongly charged the customers, then inappropriately used call barring when the

customers refused to pay and instructed their debt collectors who had given notice of legal proceedings to the customers after the matter had been referred to CISAS. The disregard of the CISAS adjudication process was in the words of the customers, '*cynical, needless intimidation... bullying techniques*', which was inexcusable. The Adjudicator directed company 1 to pay the customers £1,400.00 compensation.

Case 04

Cashed cheque for lesser amount not a settlement

Cashed cheque for lesser amount not a settlement

The customer complained that he was charged an extortionate rate for using his mobile phone in the Dominican Republic. While accepting the contract stated charges were available upon request, the customer maintained that upon his arrival in the Dominican Republic the company should have sent him a text message warning of the charges and should have contacted him when the cost of the calls he was making began to mount up. The customer sent a cheque to the company for a smaller amount than that billed based on what he thought was a more reasonable rate per minute, he also thought the company accepted the cheque in full and final settlement of the larger amount billed. The company replied that it did not accept the cheque in full and final settlement but as part payment of the outstanding charges which were payable and owing in accordance with the terms of the contract.

The Adjudicator found that the claim failed and the customer was liable for the full cost of the calls made in the Dominican Republic because:

- **The company had no legal obligation to provide a text message or monitor the calls of the customer.**
- **The company had cashed the customer's cheque only on the basis of it being for part of the sum that was due; the company had not agreed to give up the balance of the account.**

Case 05

Unsatisfactory credit references

Unsatisfactory credit references

The customer wanted an apology, an explanation, permission to terminate his contract and £1000.00 compensation because the company refused to connect his wife to their network services after three applications. The company's refusal was due to the unsatisfactory credit references of the customer's wife which the company had received from a number of agencies.

The Adjudicator found the company was not liable for the credit reference agencies decisions and there was no breach of the customer's own contract as a result of the company rejecting his wife's application. The claim was dismissed.

Case 06

Broadband service failed

Broadband service failed

The customer had a broadband connection for nearly two years before the connection failed. The company tried unsuccessfully to find the fault and restore the service. The company eventually agreed to cancel the contract and offered to reimburse the monthly fees which had been paid by

the customer as well as the cost of calls she had made to the company's technical support team. The customer refused the offer and claimed the cost of all telephone call charges, car parking and bus fares in lieu of on-line shopping, mobile top-ups and £1,000.00 for time, stress and the unsatisfactory customer service.

The Adjudicator found that the customer had suffered stress and inconvenience as a result of the poor service she had received from the company but there was no evidence to support her claims for car parking, bus fares or mobile top ups. The company were directed to pay the customer £15.00 for identifiable telephone calls she had made to their technical support team and £200.00 for stress and inconvenience.

Case 07

Paying to avoid poor credit rating CISAS rule 5(g) applied

Paying to avoid poor credit rating. CISAS rule 5(g) applied

CISAS rule 5(g) states:

If the adjudicator agrees with the customer's claim, he or she can tell the company to do any or all of the following... Pay the customer the amount claimed on the application form, which must be no more than £5,000 (including VAT).

The customer complained not only about a poor broadband service, the company neither answering correspondence nor giving her a MAC when she asked for it, but also that the company had pursued her for £10.32 after her account ended and after she had paid £10.32 by cheque; the company's debt collectors had forced her to pay £10.32 again. The customer was confused and frightened about her credit rating and what the debt collectors would do. The company acknowledged mistakes had been made but said the account ended one month later than the customer claimed so £10.00 of the £10.32 in dispute was due.

The Adjudicator accepted the customer's claim including her recollection of the date the account ended as the company had not provided a copy of the contract showing a different date; the customer had been overcharged and wrongly pursued by debt collectors even after she had paid the overcharge. The Adjudicator found that a rebate of £640.00 was due for overcharging, a refund of fees due to poor service, £30.00 compensation a month for inconvenience caused by the poor service plus £150.00 for the upset and inconvenience caused by the company's negligent instruction of debt collectors. However, under CISAS rule 5(g) the award was limited to the amount claimed by the customer which was £500.00.

Case 08

Compensation for lost landline and broadband

Compensation for lost land line and broadband

The customer lost his landline phone for two weeks and broadband for four weeks causing him inconvenience and the expense of using broadband elsewhere than home. The company's technical and customer service teams took nearly two weeks to work out that the customer's line no longer had the company's broadband service on it. The company accepted there had been a service failure as well as poor customer service and offered £300.00 compensation which the

customer rejected. The customer claimed £1,000.00.

The Adjudicator found that the company's offer of £300.00 was reasonable and awarded the customer £300.00 compensation.

Case 09

Fraud allegation CISAS rules 2(j), 5(c) applied

Fraud allegation. CISAS rules 2(j), 5(c) applied

CISAS rules 2(j) and 5(c) state:

2(j) *The dispute must not involve a complicated issue of law.*

5(c) *Only the adjudicator can decide whether he or she can settle a dispute.*

The customer complained that she had not agreed to enter into a contract with the company for a mobile telephone service and the supply of a telephone handset; if she did she was tricked into it by the company's agent. The company disputed the customer was entitled to her claim for an apology, an explanation, cancellation of her contract, bills, debts and further contact from or on behalf of the company together with compensation of £1,000.00 for poor customer service.

The Adjudicator referring to CISAS rules 2(j) and 5(c) decided that the dispute could not be settled under CISAS because of the complicated issues of fact and law which involved allegations of fraud.

Case 10

Error making customer un- creditworthy

Error making customer un-creditworthy

The customer complained she was made un-creditworthy due to the company's error more than 12 months earlier. She suffered financial loss, stress and harassment as a direct result despite huge efforts on her part to sort out the company's mistake. The customer sought £2,500.00 compensation. The company maintained that the entries on the customer's credit file were correct and were due to her failure to maintain regular payments and not contacting the company to cancel the broadband account after asking for reconnection.

The Adjudicator found that the customer had established that she had paid all sums owed, the error with the billing was purely down to the company, the company had acknowledged that they had made an error but they failed to rectify the situation promptly after they had been notified of the error. The company was directed to pay the customer £1,285.00 compensation for the stress and harassment she had suffered for over one year as well as an increased mortgage payment which directly resulted from the failures of the company.