

Case Studies

Case 01

Human rights and data protection

Human rights and data protection

C¹ complained through her mother that C's address and telephone number were disclosed by T for inclusion in a telephone directory for residential numbers in her geographical area without her consent. C asserted this was in breach of the first data protection principle under the Data Protection Act 1998 and a breach of her rights under the Human Rights Act 1998. C claimed compensation for the stress and danger this had caused her mother, a social worker, her mother's financial expenditure in needing to purchase additional security for her home and for her own cost of changing to another telecommunications provider.

The Adjudicator decided that whilst it is proper for a member of a family to assist a relative bringing a claim under CISAS it is vital to keep separate the role of representative and customer. CISAS covers disputes between a customer and a telecommunications provider. It does not enable claims by third parties, such as other family members, to be brought against the telecommunications provider. In the circumstances of this case there was no claim under the Human Rights Act 1998 as a telecommunications provider is not a public authority under the act. A claim for breach of the Data Protection Act 1998 may only be made for damage and distress suffered by the customer not for damage and distress suffered by third parties. The claim for damages on behalf of C's mother was dismissed.

Case 02

Customer service

Customer service

C complained that having been made redundant he informed T that he wished to cancel his mobile phone contract and asked T for help but it gave him none. T maintained it was not under any contractual liability to do so and refused to cancel the contract.

The Adjudicator found that while T's indication was contractually correct it was difficult to reconcile to the action of a responsible, customer driven company. T could have provided clearer advice to C of his options, one of which under the terms and conditions of the contract was to cancel the service agreement and pay a cancellation charge. While stating he wanted to cancel the contract C was not consistent in his behaviour to reduce usage after his redundancy. The exact opposite seems to have occurred. T discontinued C's service when C reached his credit limit. A reinstatement charge was immediately paid by C. The service was again suspended by T when C did not fully pay a bill. Discussions took place and C agreed to a payment plan to discharge the outstanding balance. It was confusing and was administered confusingly by T. The payment plan extended the term of the original agreement but there was nothing to indicate that C wanted this or agreed to it.

¹ The customer is referred to as, C, and the communication and internet service provider as, T.

C chose to pay nothing against the payment plan. Such lack of action was difficult to reconcile with C seriously wanting to clear the debt. T terminated the contract and issued a final bill. The Adjudicator concluded that both parties were at fault. If T had demonstrated more customer sensitivity through its customer services staff and financial team being less unhelpful and obstructive, then it was likely the situation could have been resolved amicably to the benefit of both parties at an early stage. However, any sympathy that may have been due to C as a result of T's approach was lost when C failed to make regular payments. The claim was dismissed C remained liable for payment of the outstanding money. The Adjudicator recommended T consider improving its procedures, communication policies and training of front line staff.

Case 03

Stolen SIM card charges

Stolen SIM card charges

C disputed charges incurred because her SIM card was stolen and used without her knowledge. C maintained that T should have noticed the increased usage and barred the account automatically. T insisted C was contractually liable for all charges on the SIM card up until she reported to T that the SIM card had been stolen.

The Adjudicator found that it is reasonable for customers to be responsible for the safe keeping of their mobile and SIM card and if these were lost or stolen for this to be reported immediately to the company so that a bar can be placed on the SIM card to prevent misuse. It is possible by monitoring the pattern of use for suspicions to be aroused if there are dramatic changes. This can only be achieved by an automatic system which by its very nature is a fall back and is imprecise as it depends on the level of sensitivity applied. If it is too sensitive customers would constantly be having their phone automatically cut off for minor changes. In the circumstances of the case the Adjudicator accepted that from C's account record there were changes which were of such a degree it was reasonable to expect that the trigger should have been generated. However, it was only a fall back and did not form part of the contracted service nor did it take away the primary responsibility of C for the safekeeping of the SIM card. C did not keep a regular check on her property if she had she would have been able to notify T of the theft at an earlier date. C remained liable for the charges incurred on the SIM card up until she reported to T that it had been stolen. C was given a reasonable period of six months to clear the debt by regular instalments.

Case 04

Reacting to problems

Reacting to problems

C complained about crackling when using her phone at home. T tested the service and found it to be in order. T pointed out that C appeared to have made extensive use of her phone and required further services from T. C responded she had enquired about further service believing T would rectify the faults. C had now taken out a contract with a competitor but asked that an

engineer attend her house to discover the true extent of her problems and for, '£ depends', compensation.

The Adjudicator decided C's account of difficulties was consistent and true but equally T had responded as best it could to resolve the problems. In view of this and the fact C had moved to a fresh service provider it was not appropriate to order T to arrange for an engineer to attend at C's house. As compensation in the form of account credits had already been paid and T allowed C to terminate her contract without imposition of a cancellation charge or early termination penalty it was not appropriate to order T to pay more compensation.

Case 05

Who to believe

Who to believe

C's bill for July was £363 as opposed to her normal bill of approximately £36, calls were shown to a number which C did not recognise. C insisted that T had charged her for calls that she did not make, her handset having been in her possession at all times and no one else had used it. T investigated the matter and found C had dialled the disputed number in May, June and August and it was sure that the calls were made from C's handset. C did not submit any comments to T's Defence despite being given an extended period to do so.

The Adjudicator decided that as the disputed number had been dialled in the two months before and the month after the July bill the number had been dialled from C's handset. Inline with the terms and conditions of the agreement between T and C, C was liable for the full amount of the July bill.

Case 06

Correcting a mistake

Correcting a mistake

C had purchased an *All in One* package which expired in October 2003. T started to charge C rent in July some three months before his package expired. He complained that T's customer services staff were rude to him on the telephone and did not deal properly with his complaint.

The Adjudicator found that T had made a mistake over the charging but had since corrected the mistake so that no extra money had been charged to C. T had written fully explaining how it had put the mistake right, apologising for any inconvenience C had experienced and for any offence caused by the rudeness of T's staff. This was sufficient, no further explanation or apology was called for and no compensation should be paid.

Case 07

Debt collectors

Debt collectors

C wanted a connection with his mobile phone to a computer. He tried several systems which T

recommended none of which worked except GPRS which gave an inadequate and fragmented reception. C maintained T had agreed to provide a small GPRS bundle at a set charge however T charged C on the basis of multiple per second billing which gave C no indication of actual charges. C was sent copies of his itemised bill by T together with confirmation that the charges were correct.

The Adjudicator found that T owed a duty to its customers to advise them properly and give them the necessary technical support. T failed to properly advise C, however, C did not fully mitigate his loss because he continued with something that clearly was unsatisfactory. Therefore, a fair and reasonable means of settling the dispute was for C to pay 33% of the disputed charges.

C accepted the Decision and immediately paid the amount directed by cheque. About 3 months later a debt collecting company wrote to C demanding payment of the original amount in dispute and indicated they had been:

'...instructed to seek IMMEDIATE recovery of all monies owed to our client. Payment in full is required within 7 days, failure to repay your outstanding debt to our client may result in the commencement of Legal Action which will result in extra costs being added to the balance of your account'.

The actions of T's debt collectors appeared to be contrary to the CISAS Rules which state that, 'The independent adjudicator's decision is binding on the company'. The matter was drawn to the attention of T for immediate action. T investigated the situation and found that as the name of T had not been written entirely correctly on the cheque by C it had not been processed. T apologised to C, returned C's original cheque and informed T's debt recovery department to withdraw all action against C.

Case 08

Compensation: factors taken into account

Compensation: factors taken into account

C lost his phone; he telephoned T immediately and reported the loss. During a second telephone call that day C requested his talk plan be lowered to the minimum for the duration of the contract as he no longer wished to use the services of T. This was not done. Bills were received by C for the higher talk plan rate. At no time was C presented with an itemised bill as he had requested.

The Adjudicator found T owed C a duty to act reasonably and responsibly when dealing with its customers. The behaviour of T was clearly unreasonable. C had suffered financial loss and was entitled to compensation. In setting the level of compensation both the seriousness of the failure and the way the matter had been dealt with by T were taken into account.

Case 09

Overcharging

Overcharging

For the year up until 4 October 2003 C had a contract with T with an *All in One* tariff. C wrote to T on 17 September 2003 that at the expiry of the *All in One* contract he wished to change to the *Anytime 30* tariff. C complained he was charged that tariff but T provided a lower level of service, attempted to charge him a higher price and were slow to deal with matters. T accepted it had made mistakes and offered £100 compensation which C accepted. T also apologised and offered an explanation but C stated that they did not go far enough and demanded T undertake a full review of its procedures.

The Adjudicator decided it would be inappropriate to order T to apologise again or to give a further explanation but the Adjudicator would, by the offices of CISAS, bring to the attention of the relevant bodies C's concerns.

Case 10

Supplying a defective system

Supplying a defective system

C complained that upon upgrading to an ADSL broadband connection T supplied a modem and software which did not work. T failed to make the system work over a 10 day period and did not respond to C's requests for help. As a result a new computer system had to be purchased by C. T thought that the reason the product would not connect was it required at least Windows 98 second edition and C was running Windows 98 first edition which was a very old product and not capable of working to the modern protocols required by ADSL broadband. In fact C was not running Windows 98 first edition but the second edition.

The Adjudicator found there was an implied term of the contract to give it business efficacy that T would take all necessary steps to make the system operate effectively and to ensure that the fault was corrected. T failed to provide sufficient or effective assistance. Damage was caused to C's computer system. As a result of the problems and lack of a connection C's business lost money. T were liable for all direct losses which included the cost of the replacement computer system, C's telephone charges and loss of profit in addition to a full refund of the cost of the broadband modem and software provided by T.

Case 11

Agreement to terms

Agreement to terms

C claimed she was not advised of T's full terms, conditions and tariffs before purchasing a phone. She asked to be relieved of liability to pay high charges incurred through phone use, failure to pay timeously by direct debit and early termination.

The Adjudicator found that T's terms and conditions had been provided to C verbally upon sale of the phone service by T's agent. An agreement setting out T's full terms and

conditions plus a booklet of tariffs had been provided to C. Although C then had the opportunity to cancel the service she did not, instead she used the mobile phone. Therefore, C had agreed to T's terms and conditions and must be bound by them. C should not be relieved of liability to pay T's charges.

Case 12

Misrepresentation

Misrepresentation

C complained about a bill from T which was over ten times the normal monthly amount. C had taken a three month free trial of T's WAP service. During this period C contacted T to enquire whether the WAP service was free outside the UK. C insisted she was told that it was. On return from holiday abroad C received a large bill because of the cost of WAP service. T maintained that C had misunderstood the charges, its three month trial package expressly stated that it only applied to WAP service in the UK, T's staff would never have indicated that the service was free outside the UK.

The Adjudicator accepted C's account of the conversation with T. C was not aware of the contract term that WAP service was free during the trial period only in the UK. Even if this term had been drawn to C's attention T was liable for misrepresentation by its staff. It was concerning that T had not told C of the existence of CISAS and had threatened C with a bad debt registration even though C offered to pay the bill by instalments. The Adjudicator found C was not liable for the disputed bill. T was ordered to pay C compensation for T's misrepresentation and the manner in which it had handled the dispute.

Case 13

Cancelling an upgrade

Cancelling an upgrade

C upgraded his mobile in early March. He was informed that he had seven days to try the new phone out. He decided within this period that he did not like the new phone and wished to cancel the upgrade. C telephoned T several times on the sixth and seventh days, but was unable to get through to T. He said *'I tried several times to get through, and held for what I would call a reasonable time. I work in a hospital, and cannot leave patients for long periods of time'*. He eventually managed to get through on the morning of the eighth day. C was told in no uncertain terms that it was then too late for him to cancel the upgrade despite C explaining that he had been trying for the two previous days to do so.

The Adjudicator found that in the circumstances C had validly cancelled the upgrade.

Case 14

Inaccurate records

Inaccurate records

C went on a holiday in July to Turkey. Her August bill was over £900. C accepted she had made some calls but not the large number of calls T alleged. T maintained C had entered into a

compromise agreement with it. C insisted she had rejected T's compromise offer.

The Adjudicator found C had rejected T's compromise offer. It was more likely than not C did not make the calls T alleged because of the timings and sheer volume of those calls. The Adjudicator had serious doubts about the integrity of T's records, for example, T had billed C for a voicemail message which had purportedly lasted over two hours. C was awarded £602.15 compensation which was the outstanding amount of her account.

Case 15

Downloading cost

Downloading cost

C was charged £298.68 for allegedly downloading 29.861 megabytes of GPRS data to his mobile phone whilst in the Netherlands. He disputed that he could possibly have downloaded this amount of data as his handset register of downloaded data indicated a total data transfer of about 380KB at the time C received T's invoice. C refused to pay the GPRS part of the bill. T barred C's phone.

The Adjudicator found that because of C's contract with T, C was liable for the disputed bill including all charges made by the foreign network even if a mistake had been made by the foreign network. The Adjudicator ordered T to restore C's mobile phone connection once the bill was paid in full.

Case 16

Charges by direct debit

Charges by direct debit

C disputed charges taken by T by direct debit from his account. T maintained C was acting vexatiously as T had offered to reimburse the disputed charges.

The Adjudicator found that T had not only failed to provide a clear and consistent explanation for charges deducted from C's account but had also failed to show exactly what its agreement was with C. Thus the disputed charges should be reimbursed to C. C had not made a vexatious claim because although T had offered to reimburse the disputed charges it had failed to clearly explain the charges to C. It was essential where charges were taken by direct debit that T could show exactly how they were assessed, C had every right to raise a complaint and should receive further compensation for the inconvenience caused to him by T failing to provide a clear and consistent explanation of how the charges were calculated.

Case 17

Chat line bills

Chat line bills

Over two months C contacted three third party service providers who delivered a chat line

service using text format. C claimed that T did not bar the service when T were asked to do so and that T were under a duty to control excessive levels of expenditure.

The Adjudicator dismissed the claim because C had not requested a bar be put on the service. More importantly C had initially contacted the third party service providers and continued to do so after he had paid his first month's inflated bill which contained charges from third party service providers. C by his own actions was solely responsible.

Case 18

Third party debt

Third party debt

C wrote to T asking that his mobile phone account be transferred to a third party company. T maintained it had not received the letter. Afterwards T dealt with the third party company for over a year until the third party company went into receivership owing T outstanding bills. T claimed it never transferred the account out of C's name and C was liable for the outstanding bills. T registered C as a bad debtor. Consequently C was refused a loan by his bank.

The Adjudicator found there was a transfer of responsibilities to the third party and C was not liable for the third party's debt. T was ordered to pay £250 compensation to C for the injury to his reputation caused by registering him as a bad debtor. T was ordered to ensure that all bad debt entries against C's name were removed as if they had never been entered and to forward to C proof that these corrections have been made.

Case 19

Not acting promptly

Not acting promptly

C complained after he had asked T to unlock his phone so he could use other service providers SIM cards within it but they had not done so at the date of the application for adjudication which was nearly a year later. During the adjudication T accepted this was a service it offered and unlocked C's phone. C still demanded compensation of £1,000 for the inconvenience he had suffered because T had not acted promptly. T insisted it had no record of C's first contact with T and T could not unlock C's phone when he did contact T as, *'a lap top had failed'*. T provided C with a code to unlock his computer from a WEB site and suggested C could have mitigated his loss by doing this himself earlier.

The Adjudicator found this was a service T offered subject to payment of a fee upon request. C had requested the service in July 2003 and agreed to pay the fee therefore there was a breach of contract as T had not provided it until after the adjudication had begun which was nearly one year later. C had not acted unreasonably by waiting for T to provide the service as he could not be expected to know a WEB service was available especially as T had not advised him one existed. The Adjudicator considered C's claim of £1,000 compensation was too high and ordered T to pay £300 as a best estimate of losses C had suffered.

Case 20

New contract

New contract

On 27 May 2003 T made a cold call to C first offering him a new handset which C declined and then offering a £5 per month reduction on line rental which C accepted. On 25 January 2004 C telephoned T to change his account over to a *Pay as You Go* tariff. T told C he would have to pay an early termination charge as he had entered into a new contract with it on 27 May 2003 (initially T stated that C had received a new handset but later T accepted that this was a mistake). C maintained that during the telephone call of 27 May 2003 T at no time informed him by accepting the £5 reduction he was agreeing to a new contract.

The Adjudicator decided, on the balance of probabilities, T had not informed C that by him accepting the £5 reduction he was agreeing to a new 12 month contract with T. T should pay C £150 compensation.

Case 21

Intense usage

Intense usage

Over a period of years C's phone bill had been gradually increasing until he received a bill for approximately £500. C discovered he had been charged for calls to mobile phones which had not been made from his telephone. C did not know how these calls came to be registered against his account. T's technician found a fault on the apparatus at C's home. The fault was with the master socket which T asserted could not possibly have led to the disputed calls, the socket could not unilaterally phone mobile telephone numbers.

The Adjudicator found that the pattern of the disputed calls was such that it was difficult to find they were caused by a fault. The calls were made in the evening with an intense usage of C's phone to particular numbers for varying lengths of time. The call log indicated that when the disputed number was engaged the caller tried again and again until the caller was connected upon which a longer call took place. The claim was dismissed. T was entitled to collect the outstanding balance on C's account.

Case 22

Faulty handsets

Faulty handsets

T was aware of a fault with one model of handset, it was company policy not to offer an alternative model until three handsets had all failed. Two sets of replacement handsets were supplied to C and failed to work. C decided to cancel the contract and returned the handsets to T. By mistake T continued to bill C for rental for three months and failed to deal with C's complaints about this. After the dispute had been referred to CISAS a debt collection agency contacted C threatening proceedings for the outstanding debt.

The Adjudicator held T was in breach of contract by continuing to provide faulty handsets. C was awarded a total of £1700 which included £100 per handset per month for the inconvenience caused by these faulty handsets which were being used for business by C together with a sum of approximately ten times the amount which was claimed by the debt collection agency whilst the matter was already subject to CISAS.

Case 23

Adequate recompense

Adequate recompense

C complained T had not adequately recompensed him for difficulties C had experienced with handsets and problems in getting complaints dealt with. T explained all it had done to resolve the problems, some handsets had been replaced to suit C and one month's credit had been provided. T maintained the sum it now demanded was due as C had used his phone to make calls over and above the inclusive minute allowance for each month.

The Adjudicator preferred T's account. C was to pay the sums demanded by T. The fact that debt collectors had been instructed by T was not proved to have resulted in loss to C.

Case 24

Premium rate calls

Premium rate calls

T claimed charges for two premium rate calls made to adult services via the internet. C denied making the calls. It was likely that if the calls had been made they were made by rogue software.

The Adjudicator found that the calls had been made and C was liable for them.

Case 25

Fraud

Fraud

A mobile phone previously owned by C's wife was incurring massive charges from mainly international calls which neither C nor his family had made. The problems were notified to T immediately C received an invoice showing fraudulent calls. The family stopped using the phone and the SIM card was destroyed. T offered a settlement which left C to pay hundreds of pounds.

The Adjudicator found C had informed T at the first opportunity he was aware of the fraudulent use of the mobile phone number. By comparing the previous usage with the disputed usage it was clear that neither C nor any authorised person was using it. The disputed calls within the itemised bills were predominantly made up of calls to many of the countries of the world associated with questionable activities. From the very detailed notes made by C, T did not appear to take the complaint seriously neither did T offer any reasonable form of assistance or advice to what, for C, was an unfortunate and stressful event which was not his fault. T seriously failed in their duty of care towards C. C was awarded compensation of the amount claimed, that is, £1,000.00 to reflect the way the

matter had been dealt with by T and the distress it had caused. T was directed to clear all international and UK charges connected with the mobile phone.

The Adjudicator recommended that a copy of the transcript of the notes made by C during his attempts to deal with T be sent by the company to its senior personnel at director level for consideration on what action should be taken to address improvements on how complaints are dealt with.

Case 26

Wrong information

Wrong information

C complained that the point of sale salesman misled her about the mobile phone package which she purchased by telling C the monthly cost of the package was £17.50 and insurance was included. When C damaged her phone she discovered that insurance was not included and the monthly cost of the package was £21 excluding VAT. T informed C that she was registered as a business customer their records showing she had a cleaning company. C maintained she had never stated that she had any sort of business. C attempted to cancel the agreement because she had been misinformed at the point of sale and for some reason inaccurate information about her had been recorded on T's computer system. If C cancelled the agreement C was told by T she would have to pay an early cancellation charge.

The Adjudicator decided that C had been misled at the point of sale and incorrect information about C had been entered onto T's computer system. However, C could have raised her concerns with T earlier than she had done. C was entitled to £300 in compensation.

Case 27

Arrears payment

Arrears payment

C's account got into arrears because of difficulties with her work. T made an informal arrangement with C under which C would pay what she could off the arrears each month until her work situation improved. In fact the arrears started to increase. T then sought to impose a strict regime requiring the arrears to be fully discharged within six months. C objected.

The Adjudicator found that T was entitled to impose the new payment regime to clear the debt.

Case 28

Wrong advice

Wrong advice

C asked the Adjudicator to assess compensation because he had been given wrong advice about international calls to a satellite mobile as a result of which he had run up £1,000 of unexpected charges. T failed to serve a Defence although it had been reminded a number of

times to do so by CISAS.

The Adjudicator decided T should not have further time to serve a Defence as T was an experienced service provider who had had ample opportunity. The scheme was designed to provide an efficient method for consumers to resolve a dispute. The Adjudicator found £890 was due to C comprising extra charges over and above the advised rate. The Adjudicator directed that T apologise to C.

Case 29

Existing customers

Existing customers

C noticed on T's website that the price for a service had been dropped to £19.99 from £21.99 in line with another company's pricing which he believed was the standard price and not a reduction for new customers. C contacted T but was told that the price applied to new customers. C considered the treatment he received by T was patronising and rude.

The Adjudicator dismissed the claim finding that T had correctly applied the terms and conditions of the contract between itself and C. It is a commercial matter how T prices and promotes its products, services and handling customer contact as to whether it alienates existing customers by offering cheaper services to newer customers particularly if it is not clear in advertisements that the lower prices apply only to new customers and is not a standard price applicable to all customers.

Case 30

Local calls

Local calls

C had an agreement with T for a tariff that enabled him to make free calls to *local* SDT codes. The availability of these free calls varied according to the location from which calls were made. The *local* calls were not the same as non mobile local calls. *Local* was defined not according to SDT code but to location of T's transmitters. C asked T to provide regular updates of the definition of *local* according to SDT codes.

The Adjudicator found it was an implied term of the tariff arrangement that such updates be provided and T had failed to provide them. However to order T to provide exactly what C needed may place an unreasonable burden upon T. A better resolution was for T to offer C free of charge change to any other available tariff of T, or without penalty end his agreement with T plus receive £150 compensation. The amount of compensation took into account payments and upgrades T had made before the Adjudicator's Decision.

Case 31

Tariff changed without

Tariff changed without notification

C's mobile phone service plan was renewed by T. Later the tariff was changed by T without

notification

notification to C to a more expensive tariff. T's explanation was that the original tariff had been withdrawn and C's account defaulted to the expensive tariff when C's old tariff expired.

The Adjudicator found T had failed to demonstrate that it had fulfilled its own contract terms when it withdrew the original tariff because it had not notified C or given him the opportunity to cancel his contract. By T's own admission there was a better value service plan than the one to which it had changed C's account. T had failed to properly advise C of the situation regarding the changed tariff. The compensation claimed by C was directed to be paid in full by T. Furthermore, T was to offer C an apology.

Case 32

Fraudulent line

Fraudulent line

A fraudulent line was opened in C's name. After several phone calls and letters to T the problem was temporarily resolved. Sometime later an amount appeared on C's telephone bill relating to the fraudulent line usage. T then referred the matter to a debt collection agency during the period of the dispute and disconnected the phone. This resulted in a loss of earnings to C who was a self employed carpenter and relied heavily on his mobile phone.

The Adjudicator decided that C and T were the subject of a fraud by an unknown third party. When C and T realised this they both took appropriate action, T suspending the fraudulent connection and C contacting T's fraud department. That should have been an end to the matter; however additional complications were discovered because a fraudulent credit card had also been used for interim payments made on the mobile phone. This should only have concerned T but through confusion an additional bill was wrongly sent to C which eventually resulted in his mobile phone being disconnected and the engagement of a debt collection agency by T. This action was wrong as the money was not owed by C and the fraud was known by T to exist in connection with the account. It caused C unnecessary stress. It was a breach of contract and a failure of duty of care as it concerned a long standing loyal customer. T was not liable for any loss of earnings firstly as these had not been substantiated and also C did not reveal to T that the phone would be for business use. C was awarded compensation for T's breach of contract, failure of duty of care in disconnecting C's phone and engaging the services of a debit collection agency during the period of the dispute.

Case 33

The importance of records

The importance of records

C complained he had made an agreement with T over the telephone for a mobile phone upgrade and a new tariff. The new tariff was to be on a par with the Hutchinson 3G network (H3G) tariff. T maintained C did not qualify for the new tariff and there was no agreement C could go on to this tariff. C insisted he only upgraded his handset because T had said he could go onto the H3G tariff. T denied it made such a representation.

The Adjudicator decided it was more likely than not that T's customer representatives had offered C a free handset upgrade and allowed him to change to the H3G tariff. T had not produced any records from its system whilst C had provided the Adjudicator with dates of telephone calls to T, the names of T's employees with whom he had spoken and notes of their conversations. C was to be allowed to cancel his agreement with T without any penalty and T was to pay C £225 compensation.

Case 34

Credit rating

Credit rating

C complained that T had made inaccurate and unjustified reports about him to a credit reference agency. C asked for T to be ordered to clarify what T considered to be the financial status of his two accounts. T provided a full analysis of C's payment record and said it had clarified the financial status of C's accounts to him on a number of occasions. C readily acknowledged that he had not managed at least one of his accounts at all well.

The Adjudicator decided that T was justified in reporting C to the credit reference agency, T on a number of occasions had explained to C the financial status of his accounts and why it had reported him to the credit reference agency. T had conducted itself properly and its records accurately reflected C's credit rating.

Case 35

Banking error

Banking error

C complained he had paid a cheque to settle an account due on time. T had made C prove this on many occasions, barred C's account and instructed debt collector even after T knew the monies had cleared. T maintained it did not know it had received payment due to a banking error the cheque had become 'stuck' within its bank's system. T considered the barring was correct, T had acted correctly and nothing was T's fault albeit T had apologised to C. C sought an apology to his bank from T, an explanation, a promise similar events would not occur again, uninterrupted future service, compensation for time and monies expended in communication plus business losses.

The Adjudicator preferred C's very detailed account of events. T had unreasonably barred C's service, instructed debt collectors and wasted C's time all of which had caused C loss. The Adjudicator recommended T review the way in which it recorded and responded to complaints and communications from customers. No award was made for business losses as C had not proved them, nor was it proved that T knew the service was for business use. No further apology from T to C's bank was required as T had apologised to C and no further explanation was needed as T had gone as far as it could. C was awarded £500.

Case 36

Stolen phone calls

Stolen phone calls

C's phone was stolen. He contacted T to put in place a call restriction preventing the phone being used for fraudulent calls. T recorded that whilst C initially asked for a call restriction to be put on the phone later in the same telephone conversation he changed his mind because the phone would be easier to trace if the call restriction was removed. The phone was used for fraudulent calls. C maintained that he should not be liable for the cost of those calls.

The Adjudicator dismissed C's claim holding C was responsible for the cost of calls made after the phone was stolen. T's records and notepad entries were clear, credible evidence that C did in fact remove the restriction shortly after it had been put in place. Throughout their submissions T's evidence was consistent.

Adjudicators recommendations for good practice

Adjudicators recommendations for good practice:

1. To achieve an efficient and timely procedure it is essential that all documents including T's Defence and C's Reply should always be provided within the CISAS timetable. CISAS should be informed immediately a document is likely to be delayed and a request, with reasons, should be made for time to be extended otherwise the Adjudicator may proceed to a Decision without further communication with the parties.
2. T should review their contract and tariff documents to ensure that clear, simple wording is used which makes them quickly and easily understandable by C.
3. C should be warned before using a roaming service that C will be liable for all charges made by the foreign network and there may be no way to challenge these charges if mistakes are made by the foreign network.
4. T should ensure there is a clear and auditable trail (which can be submitted with T's Defence documents) showing how T responded to C's communication be it individual requests for assistance or complaints.
5. Public confidence in CISAS requires cases² concerning data protection and human rights be accepted if possible for resolution under the scheme although an adjudicator is free to decline jurisdiction if the case involves complicated issues of law for which the scheme was not designed. It is helpful in such cases for T (if not C) to refer to the relevant sections of the Data Protection Act 1998 and Human Rights Act 1998 setting out reasonably fully any argument based on the statute. C will have an opportunity under the rules of the scheme to respond.

² The Data Protection Act 1998 and the Human Rights Act 1998 are considered in CISAS Case Studies 02.01.

