



Issue **03**
January 2005

Case Studies

Case 01

Cancelled mobile

Cancelled mobile

C¹ maintained that she had cancelled her mobile telephone contract both by telephone and in writing in March 2003. Sometime later she discarded the mobile by putting it in the household waste. In February 2004 the discarded mobile was used to make a large number of calls. T asserted that C had not cancelled the mobile telephone contract and C was liable for the call charges which were in excess of £1,300.00.

The Adjudicator acknowledged that this was a difficult case to decide with both C and T providing detailed and lengthy submissions. C's evidence was credible and consistent with her believing that the mobile telephone contract had been cancelled because C had not used the mobile since March 2003 and she had entered into a new contract with T in October 2003. The Adjudicator decided, on the balance of probabilities, that C had cancelled the contract and was not liable for the cost of the disputed calls.

Case 02

Renewal letters

Renewal letters

C complained that T had overcharged him for calls for 12 months, added additional charges to phone bill for usage outside of the 12 month period, failed to respond to C's letters and did not advise C that the matter could be taken to independent adjudication through CISAS. T maintained it had sent to C a renewal letter that the annual service charge was £99.00, C would be entitled to 30 free minutes per month of calls local, national and other customers of T as a continuation of the preceding year's annual service charge. Shortly afterwards T wrote a second renewal letter to C that the price plan was to be changed from, 'All In One', to, 'Everyone 30 Price Plan' with a monthly charge as opposed to an annual charge. The 30 minute free calls also applied to calls to other UK mobile operator's customers. T asserted C's account had been based on the first renewal letter, was not changed and as it was in arrears T referred the matter to a debt collection agency during the period of the dispute.

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

The Adjudicator decided that the two renewal letters were confusing, T had not made it clear which service plan and charges applied to C. The complaint procedure adopted by T was not only poor and confusing but also C's letters were not responded to, this amounted to a failure of duty of care. The dispute was genuine, for T to apply debt recovery procedures was wholly wrong in the circumstances and was a failure of duty of care particularly as C had been a long standing customer. It caused C distress and inconvenience and wrongly affected his credit rating. The Adjudicator directed T apologise to C, pay C £400.00 compensation and amend C's payment record to show that there has been no bad debt and reinstate C's former credit rating. The Adjudicator recommended that T review its procedures for sending out renewal letters, instruction of debt collectors and its complaints procedure.

Case 03

Stolen mobile

Stolen mobile

C denied responsibility for calls made on his mobile telephone after it was stolen from him while he was in hospital. He accused T of threatening behaviour in its actions to recover the charges which he disputed. C sought a repayment of the sums he had paid under protest to T, compensation and an apology. T maintained that under its contract terms not only was C liable for all calls made until C notified T that the mobile was lost or stolen but also T was entitled to use a debt collection agency and to report C to credit reference agencies. C said that he had been given the mobile as a gift and had no knowledge of T's terms and conditions.

The Adjudicator decided that C was bound by the contract terms, and was liable for the calls made while the mobile telephone was stolen. T was entitled to use a debt collection agency and to report C to credit reference agencies.

Case 04

Remote area

Remote area

C and his wife who live in a very remote village complained about T's failure to provide a proper telecommunications service to their locality. They sought compensation for lost calls and lost business.

The Adjudicator decided that the contract between C and T did not oblige T to provide a good service in a remote area. Indeed no other communication service provider supplied such a service in C's locality. C could not use the contract as a stick to force T to provide a good service in his area. T treated C with respect throughout and had acted reasonably promptly to repair the base transceiver station near C's home when this was down. C's wife was not entitled to claim for losses to her business as she was not party to any contract with T, such loss was quite properly excluded by the contract with T.

Case 05

Stolen abroad

Stolen abroad

C had her handbag containing her passport, purse and mobile telephone stolen from a hotel lobby in Zurich on Friday. She tried but was unable to contact T from abroad. C was only able to contact T when she returned to the UK on Monday. In the meantime calls worth over £500.00 had been made on the stolen mobile. The service contract between C and T provided that C was liable for all calls made on the mobile telephone until notice of its loss or theft was given to T.

The Adjudicator decided that C should not be liable for calls made from the stolen mobile telephone in the circumstances of this particular case, namely, the mobile was stolen when C was abroad also C's passport, money and other possessions were stolen thus making it extremely difficult for C to continue her day-to-day life let alone contact T over the weekend.

Case 06

Frustrating service

Frustrating service

C complained that he had entered into a service agreement with T via a retailer and signed a direct debit mandate but the mandate was never activated. C received no hard copy bills. C was alerted to the problem when he received a warning text message about unpaid bills from T. Following the recommendation of T, C registered for T's on line billing service but despite repeated attempts C could not access this service. He telephoned T numerous times; one of T's staff was rude to him. The situation caused C a great deal of inconvenience and upset.

The Adjudicator decided that T had been sending C monthly bills but C was not receiving these. C's problems with the on line billing service were much of his own making and this led to a great deal of frustration on all sides. The frustration manifested itself in T's customer services department and legal department not dealing with the complaints of C as well as they might have done. C should receive £100 in compensation.

Case 07

Renewal letters

Renewal letters

C complained that after renewing his yearly contract he queried with T the amounts charged on the first phone bill C received from T. This was the start of a long drawn out dispute which steadily became more complicated. C was most angered by the way T had handled the situation and the way C had been treated. The events are detailed in the Claimant's letter dated 19 June 2004. C sought an explanation and an apology from T. T accepted that errors were made and apologised.

The Adjudicator agreed with C's remarks in his Reply concerning the difficulty of understanding the Defence of T. T were going to change C's price plan but then renewed his existing plan which T had previously stated was ending. It was not at all clear from the

documents submitted with the Defence which price plan was applied or if C was charged for both plans. T tried to rectify the errors but inadvertently applied further incorrect charges. T accept that through no fault of C it made several administrative errors which T failed to rectify. The Adjudicator decided that T were in breach of contract for applying incorrect charges to the account of C further T had failed to fulfil their duty of care to efficiently resolve the matter. T had also failed in their Defence to explain how and why the mistakes were made. The Adjudicator found there was insufficient information within the Defence to verify and understand all the charges both correctly and incorrectly applied to the account of C by T. The Adjudicator directed that T provide C with a clear and concise explanation as to why and how each of the errors were made and also recommended T carry out an internal audit and review of its accounting and complaints handling procedures.

Case 08

Service: room for improvement

Service: room for improvement

C complained both about T having failed to provide mobile phones after they were ordered under a beneficial tariff offer and also T's customer care service. T failed to submit a Defence in time but instead simply wrote (late) an unhelpful letter claiming T had acted in good faith.

The Adjudicator found T had:

- Failed to advertise or explain tariff offers clearly;
- Failed to provide a consistent point of contact, or even a point of contact that had knowledge of communications with C when C sought to register and rectify problems;
- Failed to provide C with necessary forms that may have allowed C to delegate responsibility for liaison with T thus saving C more valuable time;
- Failed to explain to C what a £50.00 credit was for, how it was assessed or why it was made as £50.00 including VAT not £50.00 net of VAT plus VAT thereon;
- Failed until the adjudication commenced to seek to resolve C's complaints in a holistic manner e.g. by explanation and any appropriate credit;
- Instructed debt collection agencies and cut off C's telephone services without rounded consideration of C's situation;
- Failed to provide a meaningful defence within the timescale set in the Adjudication;
- Failed to provide a rounded explanation even when T did elect late to submit copy correspondence.

The Adjudicator ordered T to pay £1,000.00 compensation (reflecting the fact C was a business user), provide C with a dedicated service care advisor to resolve all outstanding problems, remove debts owing from C's account and ensure that T's instruction of debt collectors had not had and would not have any impact on the credit rating of C or his business. The Adjudicator recommended T review its complaint and customer service procedures to secure significant improvements.

Case 09

Reallocating priority line number

Reallocating priority line number

C, an expert in mobile phone technology had been without a phone service for 34 days. C complained that this was due to T's negligence; T had wrongly addressed the problem. C demanded that T explain what tests T had carried out to reinstate C's service. C maintained he had suffered as a result of T's failure to advise him properly about reallocation of his priority line number and sought business loss compensation of £5,000.00 a full explanation and an apology. T denied the problem could have been rectified quicker. T accepted it had mistakenly disconnected C's priority line number from C's main number and had reallocated it to someone else. T explained this had caused C's service problems. T also admitted that in some respects customer service had failed as two different departments had responded differently to C. T refuted the sum claimed, £350.00 had been offered to C which was sufficient as the priority line number was really only a back up, would only be used for incoming calls and C had never received any priority calls nor had the owner of C's original priority line number had calls from any of C's contact numbers as proved by the record of calls to the disconnected and reallocated number. As C had not signed up as a business user, T's contract terms excluded business liability and C could not claim for business loss. C replied that the contract was not as T claimed as was shown by a copy of the signed original submitted by C. Also by T giving C's priority line number to another customer without telling C, this could have caused C serious loss as C continued to give the number to contacts.

The Adjudicator decided that the contract was as C submitted. There was no evidence it had been varied. However, as C had not signed as a business user and the exclusion clauses were reasonable and fair C could not claim for business losses, which were in any case not proven. Noting C's expertise, the Adjudicator did not accept C had proved the service problem could have been resolved faster. T should not have to provide further technical explanations of work it had done to rectify the problem, this would place too high a burden on service providers that could ultimately increase costs. The Adjudicator awarded £500.00 compensation to C for loss of service, customer care failures admitted by T and the disconnection and reallocation of the priority line number to another customer of T which had resulted in C being concerned and inconvenienced.

Case 10

Bills paid late

Bills paid late

C complained that whilst he had initially been late paying invoices due in January 2001, he had paid them in June 2001. C had responded to advice from T that those invoices had not been paid by providing proof of payment in January 2002. Despite this C maintained that T had failed to correct its records with the result C was refused a credit card, refused a bank account move, had a County Court judgment entered against him and was involved in protracted correspondence to resolve the problem. T said C had failed to make payments due on time or in

the right manner, therefore, T had followed correct procedures. C had received, but ignored, warning notices from debt collection agencies acting for T.

The Adjudicator decided that C had made late payments and failed to pay outstanding sums in the correct manner this had caused payments due to be allocated to an incorrect account. In January 2002, in response to a letter from T, C had advised T of payment in June 2001 and provided proof of payment. On the basis that T had no records of communications with C, T had failed to communicate properly with C not only in response to C's correspondence of January 2002 but also on debts due generally. The Adjudicator found T should have, after January 2002, amended its records, advised debt collection agencies and corrected credit references. As T had not done so T was responsible for losses C claimed. T should pay C £400 and issue an apology.

Case 11

Charges

Charges

C was having difficulty accessing the internet via T's service by using a telephone number which was the dial up number C was given by T. C sought assistance from T's Help Desk who advised C to try a second number. C was under the impression that the second number was an alternative number and was free of charge. C used the second number and was charged. C sought reimbursement from T. T asserted it had told C that he would be charged for using the second number and that T's records proved that fact. T's records also showed that C had used the second number before the date when he said T told him to use the number. T's terms and conditions were clear; C was responsible for using the correct number to access the internet.

The Adjudicator in dismissing the claim of C decided that C had been told by T that if C used the second number C would be charged. As the documentation showed that C had used the number on earlier occasions he should have known that if he used it he would incur a charge.

Case 12

Responding to complaints

Responding to complaints

C complained T had placed C on an incorrect tariff, T had not properly responded to C's complaints, T had not told C about the availability of CISAS and C had been wrongly sent data relating to other customers when he requested records that T held relating to him. T maintained its response to complaints had been appropriate, correct action had been taken and C had generously (as T admitted no fault) been placed on the tariff he required and C's bills had been amended. C submitted records that T had provided to him showing the parties transactions and communications. C asserted these proved T had made mistakes and responded to complaints with inappropriate and misleading advice; also T had threatened C that T would withdraw credits applied to C's account if C pursued adjudication.

The Adjudicator decided that T's contemporaneous records supported C's complaints. C had been connected to the wrong tariff, C had received incorrect and misleading information from T and C had wrongly been sent records relating to other people. The Adjudicator also found that whilst CISAS could only be used after internal complaints systems were completed, T had failed to explain clearly to C what T's complaint system was and, therefore, C had suffered by trying to work through a confusing and inefficient process. As to the complaint about threats of credit being withdrawn, the Adjudicator found that where payments were made ex gratia to avoid adjudication it might be appropriate to make them conditional but great care was required to avoid seeming to threaten any customer. C should receive an apology and £500.00 compensation from T.

Case 13

Mistaken recollection

Mistaken recollection

C wished to register for T's AnyTime package, to do so C had to initially register for T's Pay-As-You-Go internet package. This C did and on the same day C upgraded to the AnyTime package. With the Pay-As-You-Go package the customer only pays when on-line with the internet calls being charged to C's telephone bill. Under the AnyTime package C does not pay call charges but simply pays a monthly fee. Subsequently C accessed the internet not by the AnyTime package but by the Pay-As-You-Go number. C was charged for these calls. C alleged that he had contacted T's technical department who had misinformed him and advised C to use the Pay-As-You-Go number. C sought the payment by T of the additional call charges plus compensation of £2,000.00 which in the Reply to the Defence C increased to £5,000.00. T asserted it was not responsible. T had no record of C contacting its technical support department.

The Adjudicator decided that T was not responsible and dismissed the claim of C. On the balance of probabilities the Adjudicator preferred T's evidence and held C was mistaken. T's technical support department had not been contacted by C.

Case 14

Changed settings

Changed settings

C's mobile phone was used by her daughter. Following an unexpectedly high bill, C contacted T and was informed that a setting had been changed on the mobile so that all WAP calls had been diverted to an expensive third party service shown as *Personal Number Services*. T said it would send an update to reset the phone. The following two bills were higher still and C disputed them. T said it had sent the updates but they had not been activated by C and so the high charging rate still continued.

The Adjudicator decided that the update had not been sent and, therefore, C was not liable for the two bills.

Case 15

Mobile thrown away

Mobile thrown away

C, 'threw away', his mobile phone and then because no bills arrived assumed his contract with T had stopped. T however contacted C after a while to advise of unpaid bills. At this point C discovered very high usage. C maintained T ought to be responsible for the high usage charges as T had sent bills to a revised address, T should have recognised unusual use and T should have barred the phone. In addition T had failed to co-operate with a police investigation. T maintained it could not simply bar phones each time use increased. T had communicated with C to alert him to unpaid bills. C had agreed to accept responsibility for his SIM card. C by throwing away the mobile phone allowed his SIM card to be used. C could not reasonably have thought that throwing away his phone would mean bills would just cease. Also T followed a protocol in aiding police investigations.

The Adjudicator decided that copy correspondence showed T's version of events was most probably right. C could not reasonably think that throwing away his mobile phone with the SIM card would end his contract with T, C must accept liability if his negligence had led to fraudulent use of it.

Case 16

Insuring branded mobiles

Insuring branded mobiles

C's faulty mobile telephone was replaced by T. When this second handset became faulty T told C to get a replacement from the manufacturer. C received two further faulty handsets before having a fifth handset that worked from the manufacturer. C took out insurance with T about 4 weeks before receiving the fifth handset. When C informed T he had received the fifth handset T maintained that T was not liable for faults on the handset because the insurance only referred to T branded phones. At the time the insurance was taken out the fourth handset C then had would have been covered. The fifth handset was not as it was not T branded. T continued to take money from C's account for insurance cover but refused to terminate the insurance policy which lasted for a minimum of 12 months.

The Adjudicator decided that T owed C a duty of care to properly advise him where T's product or service was faulty. The Adjudicator accepted C's evidence that T was aware that there was a possibility a replacement handset provided by the manufacturer might not be a branded phone. T was under an obligation to advise C on any implications as to his ability to claim under an insurance policy. T failed in their duty of care to properly advise C. C should have organised a branded handset either through the vendor or manufacturer as clearly the problem was not of C's making. The Adjudicator directed that T provide C with a branded handset to the equivalent or to a higher standard as C's first handset which would be capable of being insured under the existing insurance scheme taken out by C with T. On receipt of the sixth, branded, handset C was to return at the expense of T the replacement non branded fifth handset.

Case 17

International calls

International calls

C used international phone cards. To access the pre paid international call card service C had to dial an 0800 number. C complained T had charged her for calls to the 0800 number when they should be free of charge. C refused to pay the charges so T disconnected the television and telephone services that it supplied. T maintained that C had been billed for the international calls because they were directly dialled and an international phone card was not used.

The Adjudicator considered the information supplied by IDT Phonecards Ireland, the Raw Call Data File (RCDF) and C's telephone bills. The bills showed the time of the calls made, their duration and most importantly the number that had been dialled. The RCDF showed calls made from C's telephone number; the 0800 number had been dialled on approximately 50 occasions. The RCDF also showed that the international number had been dialled on seven occasions. When this data was cross referenced with C's bill it showed that C had not been charged for any of the 0800 numbers dialled but was charged for the occasions when the international number appeared on the RCDF. The Adjudicator in dismissing C's claim concluded that C had not been wrongly charged and that the international number had on occasions been dialled directly without the use of a phone card.

Case 18

Illness is no excuse

Illness is no excuse

C entered into a service agreement with T for T to provide a Talk Time 400 service plan costing £45.00 per month. In the first two months C used his mobile phone to such an extent that his call charges amounted to £1,400.00. C, who was ill and on limited income, argued that T should not have let this happen; T should have barred C's account. T asserted it had done everything possible, C was fully aware of the charges that he was incurring and C should be liable for the outstanding balance on his account.

The Adjudicator found that that the documentation supplied by T identified that on two occasions T did place a restriction on C's account and that C had subsequently contacted T requested that the restriction be lifted. T did explain to C the level of charges that he was incurring after which C continued to increase the number of high cost calls he was making. The Adjudicator decided that C's illness had not prevented C from entering into the contract with T, from dialling high cost numbers on innumerable occasions and from communicating with T when T expressed its concerns over the usage of C's account. C was entirely responsible for the call charges. C's claim was dismissed.

Case 19

Wrong service

Wrong service

The dispute concerned the liability of C for charges on her account for T's Pay-As-You-Go service and for charges incurred from accessing an internet premium rate service. C alleged that following advice given by T's technical support, she was connected to T's Pay-As-You-Go service whereas she should have been connected to its AnyTime service and therefore not been charged for her time online.

The Adjudicator decided that T had given proper advice, in particular how to set up C's computer so that C could use T's AnyTime service. C failed to act on this advice and must pay the charges incurred in consequence. C was liable for the premium rate services accessed from her computer.

Case 20

Second guessing

Second guessing

C complained that she was not advised properly by T on which package best suited her needs and would represent the best value. C joined BT SurfTime she was instructed by them to contact her chosen supplier, inform the supplier of her choice and ask the supplier for a telephone number to use with this scheme. This she did and was given a number by T. Later C learned she was paying BT SurfTime and also paying Pay As You Go with T. T told C she should have registered with HomeTime. C maintained she had never previously been advised of this at the time she had originally registered. C attempted to register with HomeTime but was refused as T were not taking any new customers. C felt she should be reimbursed for those costs she considered excessive.

The Adjudicator decided on the balance of probabilities that C had not presented a convincing argument that T failed to give her advice as it was not clear what if any advice was asked for or whether T were aware of the type and extent of use C required. It would be unreasonable to expect any service provider to second guess what a customer required. The claim was dismissed.

Adjudicators recommendations for good practice

Adjudicators recommendations for good practice:

- 1. T should ensure that its charging structures are clear and easily available.**
- 2. T should publish their complaints procedure ensuring it was accessible, efficient and easily understood by C.**
- 3. Users of the internet commonly make mistakes when changing the access numbers that they use with T. A common example is where C is on one account and for some reason changes the settings so that C ends up on a different package with consequential unforeseen charges. It is invariably an error made on the part of C.**

Whilst the Adjudicators recognise that the instructions of T on its web site are often very comprehensive, T is invited to consider how it could make its systems such that C could not wrongly access a different package to the one to which C subscribes.

4. An international dialling number should be printed on monthly statements issued by T to C so that C can contact T from abroad in an emergency.
5. Where T is aware that a parent is paying for a phone used by a child, confirmation in writing should be sent to the parent relating to any upgrades or other maintenance matters which require activation by the customer on the phone.