

Case Studies

Adjudicators recommendations for good practice¹:

1. Where promises are made by T that help lines will be available, for example to set up or maintain internet connections, T should ensure their help lines have the capacity and ability to assist customers.
2. C should not have to hold onto a telephone line for a long period of time e.g. more than 10 minutes, before being put through to a person who can deal with C's concern.
3. T should clearly and simply explain to C that broadband will commence after activation which often involves third party line providers.
4. Difficulties can arise where an open ended 'goodwill' offers have been made by T, the Adjudicator has found T is not at fault and T then wishes to withdraw the offer which C wishes to accept. To avoid such difficulties T should make it clear both to C and the Adjudicator whether or not offers have a time limit attached or will be withdrawn if CISAS is pursued.
5. High charges amounting to several hundred pounds a day often follow the theft of mobile phones. C is almost always liable for these charges. C should be reminded (for example, through appropriate publicity by T) not only to set a PIN for a mobile phone as a precaution against misuse but also to *immediately* inform T of a theft.
6. The standard CISAS claim form or reply can be difficult to read if C has completed it in handwriting and many lines have been written in a small space. It would be more legible if continuation sheets were used for any lengthy section or even better if it was typed. CISAS will provide forms in Word if requested.

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

Case 01

Free calls

Free calls

C complained that he had not only been charged for calls which should have been free and for some which he had not made but also T had changed the definition of *free* calls. T maintained they had correctly charged C who had made the disputed calls and that they had clearly defined what was a *free* call.

The Adjudicator decided T had not changed their call price plan and that the relevant information had been provided to C. C's mobile phone had been used to dial the disputed numbers in a chargeable area or period. Consequently, any costs attributable to those calls were payable by C to T.

Case 02

Three phones

Three phones

About 2 years after C had first entered into a contract with T a company who supplied him with an additional mobile phone contacted him. Then 4 months another company who supplied him with a third mobile phone contacted C. All three phones were registered on C's account with T. C received a monthly bill for the three mobile phones which was in excess of £1,200. C initially said that he had not received the three mobile phones which led T to believe an administration error had occurred. When T acquired the delivery notes for the two most recent mobile phones C then said he had given one mobile phone away after destroying the SIM card and he had sold the other mobile phone to a person he knew, that person had changed service providers.

The Adjudicator found that there was clear evidence C had received the additional mobile phones because the proof of delivery for both of them had been signed by C. C was mistaken when he stated that he had destroyed the SIM card on one mobile phone and that the other one had been sold and transferred to another service provider. C was responsible for the calls incurred on the three mobile phones as they had obviously been used and C had not in anyway protected them from misuse or informed T of their possible fraudulent use. The Adjudicator decided that C was liable to T for the cost of the calls.

Case 03

Reasonable procedure not followed

Reasonable procedure not followed

C ordered a broadband service but was unable to connect. T's technical support promised a test would be done, it was not. C employed a computer technician to ensure the problem was not with his computer. T informed C that he would be charged per month but there was no guarantee of C receiving a service, C had had 7 days to cancel the service after being fully provisioned with the service. C maintained that this was a stage he did not reach. T informed C he could not cancel the contract and refused him access to their second line technical team. Subsequently C

received an offer from T to cancel the service and refund monies taken from C. C refused this offer and requested his costs, legal expenses, compensation for stress and a letter of apology. He received no reply from T.

The Adjudicator decided that T had a reasonable procedure for dealing with broadband service connection problems which included a 7 day cooling off period after a customer had been provisioned with the service, technical assistance and if there were still a problem a second line technical team who if they could not resolve the problem could cancel the contract without penalty to C. C had informed T there was a problem and reasonably asked for a test. No such test was ever carried out and effectively the 7-day cooling off period never began. T should apologise to C, ensure that all monies were refunded and pay C compensation of £250 for breach of contract and failure of duty of care as T knowingly failed to provide a service, did not follow their own procedures to refer the matter to their second level team and attempted to deny C access to a means of resolving the dispute both technically and administratively while at the same time charging for that service which caused considerable inconvenience to C. C could not recover his costs as under the Scheme both parties bore their own costs.

Case 04

Two accounts

Two accounts

C complained he was double charged by T for T's broadband service since the date when he started to subscribe. One monthly charge was being taken from his bank account whilst another was being taken from his credit card because when T was setting up C's account T in error opened two accounts on one telephone number. C was only aware of one account and consequently the second account had never been used. C sought compensation equivalent to six monthly charges which he believed should not have been paid to T.

The Adjudicator dismissed the claim having found T's evidence compelling and credible that two accounts had been opened three weeks apart. Upon opening each account and it becoming active C would have received e-mails automatically generated by T. The only way T would have both C's bank and credit card details was if C provided them when he registered each account. As both accounts had been accessed by a username, which was unique to each account, then C must have been aware of the existence of both accounts.

Case 05

Broadband trial

Broadband trial

C took a one-month free trial of T's internet service. Within the month C claimed he had no service and sent T an email to cancel his contract. C then applied for broadband complaining he had not received it and should not have been charged for it as he had a one-month free trial

offer. C requested £5,000 compensation. T maintained they never offered a free broadband trial, C requested it one month later than he claimed and had contributed to his own problems by refusing to contact T's technical services.

The Adjudicator made further enquiries about offers sent to C, dates of acceptance and records of contacts between the parties. The Adjudicator decided both parties were at fault. C had not taken care to read the terms and conditions of the contract and appeared confused between dial up and broadband services. Some duty rests with consumers to ensure they understand and can utilize the services requested and software provided. T however had issued confusing literature and failed to properly investigate C's complaint. As a result T had tried to force C to pay for a year's broadband service that C could not benefit from. C must accept some responsibility and had not proved a £5,000 loss had been suffered. The Adjudicator awarded C £100 for T's failure to investigate the complaint and not clearly explaining the services and offers.

Case 06

Paying for stolen mobile calls

Paying for stolen mobile calls

C had his bag containing his passport, money, credit cards, possessions and mobile telephone stolen whilst he was on a beach in Spain. C who did not speak Spanish received some help from the Spanish police but it was not until the following day that any money could be wired to him from the UK. He then tried but was unable to contact T, but a relative in the UK managed to do so. T placed a bar on the phone. In the meantime calls worth over £600 had been made on the stolen mobile. T refused to waive the charge for these calls as 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 found that this case was almost identical to the case reported in CISAS Case Studies Issue 03 case 05 where it was decided that C should not be liable for calls made from a stolen mobile phone where the mobile was stolen when C was abroad and where C's passport, money and other possessions were stolen at the same time thus making it extremely difficult for C to continue his day-to-day life and contact T. The fact that C had not set a PIN to protect his phone did not alter this principle as there was no requirement for him to do so. The Adjudicator decided that C was not liable on the disputed bill and T should apologise to C for their handling of this matter.

Case 07

Terminating a contract

Terminating a contract

C lost his mobile phone. He reported the loss and asked for an upgrade. When T told C that he was not entitled to an upgrade C cancelled his contract. C then entered into a new contract with T and received a new mobile phone and a new number. About 3 years later C lost this mobile

phone. When dealing with the matter almost a year later he discovered that he was still being charged for the line rental of his first misplaced mobile phone. Although the charge had been appearing on C's monthly invoices C had misunderstood them and did not realise that he had been paying the charge. T maintained they had acted properly by charging C because when C originally contacted them about his first misplaced phone he simply requested a bar be placed on the account and did not terminate the account. C sought an apology together with £750 in compensation for the line rental he had paid over the four years. **The Adjudicator preferred C's recollection of events. It was particularly noteworthy that T had exhibited various computer records of their discussions with C but had not disclosed the record of the conversation when C had, according to T, requested a bar be placed on the account and T did not terminate the account. The Adjudicator decided that C had terminated his contract and as a consequence he should not have been charged for the line rental. C was awarded compensation of £750. The Adjudicator decided that the giving of an apology by T was unnecessary.**

Case 08

Website search

Website search

C complained of a breach of contract when T moved C's website from a UK based host to a server outside the UK. As a consequence C claimed his website was not searched by UK search engines and he lost business. T disputed this as the physical location of their server remained in London even though their administration was conducted outside the UK. T could not explain why C's website did not come up in a search using a UK search engine but T was not connected with or responsible for its operation.

The Adjudicator decided that the service application form set out the service which T was to undertake. There was nothing in this form which required T to either host the service or administer it from within the UK nor ensure C's web site would be listed by a UK search engine. There was no breach of contract. The claim was dismissed.

Case 09

Another's personal information

Another's personal information

C complained that he had been able to access the personal information of a third person, he had received a phone call for that person on his mobile and T had failed to respond to correspondence questioning the security of information and how he could safely use his on line account. T maintained that only the third person could claim for data security breach not C, T had responded to correspondence also C was bound by a one year contract, he should pay debts due and could not cancel his contract nor was he due compensation.

The Adjudicator decided C had a contract with a minimum term of one year and must pay

charges for services provided by T under it. C could not claim for data security breach. The correspondence showed T had not responded promptly to questions about secure on line account access. C had suffered inconvenience and had received phone calls meant for the previous phone number owner. The Adjudicator ordered T to allow C to escape from his minimum one-year contract without penalty and, as he claimed to have stopped using the services, T should credit C's account with outstanding fees. T should pay C £100 compensation which was less than the £250 C requested as such level of loss was not proved.

Case 10

Poor treatment

Poor treatment

C entered into an agreement with T for a service option which was modified to suit C's needs. C complained that T billed her incorrectly for this service and despite many promises T failed to credit C's account with the overpayments she had made. The following year C's mobile phone developed a fault. C returned her mobile phone to T only to find that T expected C to pay a one off charge and a monthly fee for another service which C had not been informed about. C complained that for a whole year T had treated her very poorly. C sought £5,000 compensation. T accepted that they had not dealt with the matter at all well and admitted that they had connected C to the incorrect service. T did not accept that C had not been told about the other service rather C had voluntarily agreed to join it.

The Adjudicator decided that C had not been told about the second service. T had dealt with the disputes in a very poor manner which had caused C a great deal of wasted time, anxiety and stress. The appropriate level of compensation payable was £500.

Case 11

Settling a mistake

Settling a mistake

C complained that T had been taking payments from his bank account when both he and his sister were trying to cancel the payments. The payments were for an account set up in error. C sought compensation of £500. T made no admission as to liability but offered £200 as a goodwill gesture which C refused.

The Adjudicator decided one of the main issues was whether a duplicate account in the name of the son of C's sister registered 3 years ago upon which C would pay the instalments was set up in error by T (as claimed by C) or whether the error was that of C's nephew (as asserted by T). C's nephew did not make a statement denying that he set up a duplicate account or describing the procedure he went through to register the account. Therefore the Adjudicator accepted T's submission that the duplicate account was set up in error by C's nephew. The fact that two accounts had been set up should have become apparent when C checked his bank statements. For whatever reason this was not picked

up immediately and as a result C continued to pay for a service set up in error for which he received no benefit. The claim was dismissed because there was strictly no breach of contract or failure of duty of care on the part of T. However, it had taken almost 3 years to resolve a matter which both C and T accepted arose from a mistake. The Adjudicator considered that T could in the early stages of the dispute have been more proactive in seeking a resolution, in the circumstances T might feel it appropriate to again offer the goodwill payment of £200 to C given that the account had never been used or any value realised from it while T had received income over a three year period from a genuine mistake.

Case 12

Contract terms

Contract terms

C, having been provided with a WAP/GPRS service free of charge for 30 days, complained he was not notified of any fair use restriction over this period and disputed his liability to pay T for his use of the service above such a limit. T, thinking that its advertisements all referred to the fair use restriction, suspended C's account for non-payment and gave C a bad credit reference. T then found the literature on which C had relied; this did not refer to any fair use limit. T refunded C the charges made for the WAP/GPRS service, but refused to pay C's legal costs which amounted to £540.

The Adjudicator decided that that under the CISAS rules each side must bear their own legal costs and so he could not order T to pay C's legal costs. However T was liable for wrongly terminating C's account and for entering bad credit references for C. £750 was appropriate compensation for this. The Adjudicator ordered T to cancel the bad debt references for C as though no such bad debt references had ever existed and to provide written evidence to him that they had done so.

Case 13

Dispute over £3

Dispute over £3

C complained about problems connecting to T's broadband service and being charged because although she had upgraded from a dial up service T had continued to charge her for it. C sought £325 comprising a year's free broadband, £44 disputed double charging and for suffering caused by the failure of T to resolve the problem and refusal to provide a CISAS reference number. T considered there had been no broadband problems. C had tried to use it before activation. T had offered £41 to settle the overcharging dispute and reimburse fees after broadband was activated. No more was due.

The Adjudicator decided that both parties seemed to have failed to try to resolve what was at base a dispute over £3. C should bear some responsibility not only for pursuing such a small dispute but also because she could have stopped the double charging at an

earlier date. C should receive £55 in full and final settlement as T had not explained their services properly and had not provided a CISAS reference number.

Case 14

Faulty modem

Faulty modem

C complained that T failed to identify a problem with the modem T supplied for his broadband service for many months, and that T had been charging him for a year for a service he had not received.

The Adjudicator decided that the modem supplied by T had worked properly for over a year before it developed a fault. When the modem was found to be faulty, T then replaced it without delay. From T's records it was clear that C had received the service for which he paid and had been making extensive use of it. Accordingly the claim was dismissed.

Case 15

Releasing personal data

Releasing personal data

C complained about T releasing personal data because her monthly statements were sent to her old address and she accessed her account by guessing her password. C claimed £5,000 stating the failure had caused her to receive malicious telephone calls from someone she did not wish to have contact with. T's records showed they had advised C that registering a password would prevent unauthorised access to her account; someone had used the password to access C's account and change address for statements back to an old address T held for C. T argued a claim under the Data Protection Act 1998 should not be decided under CISAS Rules.

The Adjudicator decided that as the case turned on its facts it could be decided under CISAS. T had taken care to protect the security of C's data. C had not proved her statements had been sent to her old address due to T's failures. There were other explanations. The claim failed.

Case 16

Free calls and text allowances

Free calls and text allowances

C complained that her bills were inconsistent and unfair because they did not allow her to take advantage of free call and text allowances. T explained that whilst some calls were billed in the next monthly period to when they had been made yet free allowances could not be rolled over. T manually recalculated the bills to show the calls made against all free calls and texts allowed demonstrating some calls would still have been charged and C had not suffered loss. T asserted they should not be liable to pay compensation as they had offered to waive all charges but C had elected instead to pursue the matter through CISAS and claim compensation of £300 despite not suffering loss.

The Adjudicator decided that whilst in some cases the mode of billing whereby calls might be billed a month late yet free allowances were not rolled over to the next monthly bill might give rise to unfairness, in C's case no loss was proved. T had made all reasonable efforts to try to explain their billing system to C and made a generous offer. Thus C's claim for compensation and an apology must fail.

Case 17

Changed number

Changed number

C who had had a fixed price account for internet services of £14.99 per month complained when he was charged £428 excluding VAT on his quarterly telephone bill for internet services to a chargeable 0845 number. Unbeknown to C the number dialled to access internet services had changed. T maintained the number was changed accidentally by C, this C denied. **The Adjudicator decided that the issue was who was liable for the consequences of the change of numbers which resulted in the quarterly charge. The conditions of the contract were clear that the consumer was responsible for the maintenance of the connection and liable for any incorrect settings. As this condition was not unreasonable the Adjudicator found there had been no breach of contract by T or failure of duty of care therefore C had failed to prove his claim and the claim was dismissed.**

Case 18

Communications provider transfer

Communications provider transfer

C placed an order for broadband with T which she cancelled a month later as she was entitled to do. Following the cancellation it took five weeks for her line to be transferred to another communications provider. C was without any phone access for several days, and it was five weeks before she had access to the internet once again. C sought £150 per day compensation, amounting to £3,600 in total. T offered to reimburse her mobile phone charges over the five-week period, but made no other offer of compensation. **The Adjudicator decided that T should reimburse C for phone charges and pay £100 per week compensation, total £500.**

Case 19

Free text for life

Free text for life

C complained when his package of 5 free text messages each day for life was withdrawn from him due to a system error by T. C maintained it could only be varied by mutual agreement. T offered C the original purchase price and £50 goodwill whereas C sought compensation of £3,000.

The Adjudicator decided that it was unreasonable for T to deny C a service simply on the basis that there was a problem with the system, it could be a relatively simple but inconvenient method to provide a manual adjusted credit if the automated system did not work (as T had done previously on C's account). Given the potential value of 5 free texts for life T's offer was insufficient. Whether it was commercially expedient to offer the package in the first place was a matter for T but having offered it T could not withdraw (without reasonable compensation) when T chose simply because there was a system fault. Equally if it had become impossible to provide the service then it was reasonable it should be terminated but only by paying reasonable compensation. To withdraw the service without mutual agreement or reasonable compensation was a breach of contract. The Adjudicator directed that T should either reinstate the service of 5 free text messages for life making any adjustments by crediting C's account if necessary; or if T wished to withdraw the service to pay reasonable compensation to C, which in all the circumstances the Adjudicator assessed as being 5 texts at 12p per text per day for ten years at 365 days per year excluding leap years, total £2,190.

Case 20

Reference to CISAS

Reference to CISAS

The Rules of the CISAS Scheme (2003 edition) at 1(d), 3(e) and 3(f) state:

- 1(d)** *Customers can use the scheme if they have not been able to settle a complaint with the company within three months of putting it through the company's own complaints procedure or if the company has accepted, in writing, that the dispute should be settled under the scheme...*
- 3(e)** *The dispute must have already gone through the relevant company's own complaints procedure and the company must have accepted, in writing, that the dispute may be settled through the scheme.*
- 3(f)** *Customers must apply to the scheme within three months of receiving the last reply on the matter from the company.*

T disputed that a matter should be resolved by CISAS upon an *Application to Use the Communications and Internet Adjudication Scheme* having been made by C. The complaint did not comply with CISAS rule 1(d) and should be excluded because T had not accepted in writing that C's complaint should be settled under CISAS. Furthermore, 3 months had not elapsed

since C's initial complaint.

The Adjudicator decided rule 1(d) is in two parts:

- i. *Customers can use the scheme if they have not been able to settle a complaint with the company within three months of putting it through the company's own complaints procedure*

or

- ii. *if the company has accepted, in writing, that the dispute should be settled under the scheme.*

These two parts are separated by the word, 'or', not, 'and'. They are alternatives. Therefore, either part i or part ii can apply, both parts of rule 1(d) are not required to be satisfied. As far as part i is concerned C can use the Scheme within 3 months of the matter not being resolved. It implies two criteria:

- i. **There has been an attempt to try to resolve the dispute using the normal complaints procedure of T.**
- ii. **There is a three-month time limit in which cases can be brought under the Scheme. In other words if there is a rejection of the complaint by T or a rejection of an offer made by T to C on say 3 June then an application must be made by 3 September of the same year.**

To satisfy the first criteria there must be a dispute, there must be some correspondence between C and T prior to an application being made to CISAS and it should be clear that there is a rejection of any offer. For all intents and purposes it is an unresolved dispute.

To satisfy the second criteria all that is required is for T to give written acceptance that the dispute can be referred to CISAS. This allows circumstances which fall outside the first part of rule 1(d) to be dealt with expeditiously.

Rule 3(e) must also be considered:

*The dispute must have already gone through the relevant company's own complaints procedure **and** the company must have accepted, in writing, that the dispute may be settled through the scheme.*

Rule 3(e) appears to conflict with rule 1(d) in that the word, 'and', has replaced the word, 'or', used in rule 1(d). In other words, under rule 3(e) for a dispute to be settled under CISAS not only has the complaint to go through T's own complaint procedure but T must also agree in writing that the complaint goes forward to CISAS. There is logic in rule 3(e). CISAS is a voluntary scheme; it can only exist with the trust and agreement of T and others. By implication it follows that consent for a dispute to be determined through the Scheme should not be unreasonably withheld.

The Adjudicator decided that the dispute was a suitable dispute for CISAS but that to be validated there should be a willingness by T to act reasonably. The Adjudicator recommended that T be given the opportunity to immediately reflect upon providing agreement for the dispute to be settled through CISAS.

T subsequently gave agreement.