



Issue **07**
July 2006

Guidance on
damages

Case 01

**'Asked for as
much as he could'**

Case Studies

Guidance on damages:

1. The amount of damages awarded to C¹ depends on the nature and duration of the breach by T. Under CISAS rule 5.g compensation can be awarded up to £5,000 including VAT. In previous CISAS decisions damages have ranged from £100 to £3,000. In a few cases where there have been exceptional circumstances £4,000 to £5,000 has been awarded. The majority of successful Cs are awarded damages in the £100 to £500 bracket.
2. CISAS rule 4.b states that C's application '*...must give reasons for the claim and, in particular, should include details of... the reasons for the amount of any compensation claimed*'. It is not sufficient for C only to give a figure for the amount of compensation that C would like from T. Credible, supporting evidence to substantiate the details of a claim for compensation should be provided by C.
3. CISAS rule 2.c states that the adjudicator is, '*...to settle the dispute in a fair and reasonable way and in line with the law and the member company's code of practice*'. A telephone or internet service is a contract for services by which C would have enjoyment and peace of mind. Interference with C's enjoyment of or peace of mind about the services could be actionable in law if it causes inconvenience to C. Damages for inconvenience may be awarded to C.

'Asked for as much as he could'

C complained T had failed to provide an internet service, T should have charged him £21.00 a month for phone and internet services but had in fact charged him £1.00 in month one, £56.51 in month two, £31.85 in month 3, £31.85 in month 4, and £12.85 in month 5. T's responses to C's requests to correct charging had been poor with 7 operators over 8 calls either saying they could not correct the problem, failing to return calls or advising they were in training. T accepted wrong charges had been applied but did not say what the charges should have been. However, T promised to correct the over charging and ultimately refund fees paid. T also refuted the account of events by C but did not provide records of communications with C.

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

The Adjudicator decided that reimbursement was adequate compensation as T's contract obliged C to use his line for residential purposes and C had not proved substantial loss. Also C had said he had just, 'asked for as much as he could'. C had not proved internet service failures and he had had several months of free internet and phone services which had to be taken into account. A direction ordering a further explanation by T was inappropriate, as the contractual relationship between the parties had ended. Neither was a direction for an apology appropriate, as an apology had been provided.

Case 02

Lost data

Lost data

C complained that about six years ago T had suspended services and erased personal data from his 2 SIM cards without warning and had wrongly quoted £11,500 as the cost of retrieval. T maintained C had Pay As You Go services under terms that allowed T to suspend services if not used for 365 days and then cancel the accounts if not re-activated. T's accounts had been cancelled for this reason, SIM data was not now retrievable and they had not quoted C £11,500 to retrieve it.

The Adjudicator decided that C had lost valuable data. However, as the Terms and Conditions of T did apply to C's accounts and these allowed suspension after a 365-day period of non-use with cancellation of accounts, there was no breach of contract by T. C had just left it too late before he contacted T. Also T did not offer and could not offer a data retrieval service as the SIM card numbers had been re-allocated, thus T had not quoted £11,500 costs. Again C had simply left it too late. The data was now lost.

Case 03

Offers to cover inconvenience

Offers to cover inconvenience

C complained that T had made mistakes recording his name, address and post code during registration for a broadband service. As a result T had not sent C the modem he required to connect to their services and had failed to respond to correspondence. T did not accept the errors were their fault or that they had failed to deliver the modem. T provided detailed records showing they had tried to deliver on several occasions. T maintained that even if they had made a mistake they were not liable to cancel C's contract and pay compensation, as the errors were remediable.

The Adjudicator decided that it was not feasible to apportion blame. T had taken down addresses and names incorrectly but transcripts of telephone conversations between the parties indicated C was rushed in his approach and on occasion could not recall his address, home phone number or password which suggested he may have acted carelessly. T had offered the practical solution of cancelling the contract without penalty and refunding monies paid. The Adjudicator did not order T to pay other monies they had offered (£50 for inconvenience and £30 towards costs of communicating about problems) as there was no proof T had been at fault or that such offer remained open.

Case 04

Evidence of loss

Evidence of loss

C complained the web mail service provided by T had never really worked; it was to an unacceptable standard. For many months T promised C that they were dealing with the issue but the service had not improved. T asserted that it was a free feature which was supplemental to the services they provided. T did not provide any service level agreements for the web mail service and T's Terms and Conditions protected them from consequential loss. T also asserted that C had not identified or quantified the loss he claimed to have suffered.

The Adjudicator did not accept T's argument that the web mail service was free and supplemental to the other services that T provided. It was promoted as part and parcel of the subscription service offered and T had to provide the web mail service to an appropriate standard. The Adjudicator dismissed C's claim, C had not provided any details as to how his claim for compensation was calculated and consequently he had not proved any of the loss that he was claiming. This was despite the fact that in their Defence T had raised that very issue and C therefore had an opportunity to include the information in his Reply.

Case 05

No evidence of £7,250 damages

No evidence of £7,250 damages

C sought damages of £7,250 as compensation from T because T had not expeditiously rectified a technical fault resulting in the loss of C's telephone and broadband connection. T took six days to restore a normal telephone and internet connection. During this time C's company incurred losses of about £1,200 per day in addition to the cost of making several telephone calls to T.

The Adjudicator decided that no liability attached to the conduct of T in the manner they responded to the complaint and rectified the technical fault. C had not produced any evidence to substantiate his claim for the amount of damages. The Adjudicator dismissed C's claims.

Case 06

Insufficient credible evidence

Insufficient credible evidence

C subscribed to T's broadband service and was sent a modem by T. C complained that T had knowingly supplied a defective modem, which meant C was unable to connect to the internet, he regularly lost his internet connection and on occasions his computer would freeze. C also alleged that T removed anti-virus software from C's computer and T provided unsatisfactory customer service. C claimed compensation for the time he had wasted trying to resolve this problem with T.

The Adjudicator dismissed C's claim deciding that C had not provided sufficient credible evidence to prove, on the balance of probabilities, either that T had sent him a defective modem or that the modem was the cause of the problems C was experiencing with his computer. C had submitted insufficient evidence to prove that T were responsible for the anti virus software loss. C was not entitled to any compensation for time wasted trying to

resolve the problem because C had not quantified the amount of time which he had spent trying to contact T and in any event the Adjudicator found that there was insufficient credible evidence to hold T liable for C's problems.

Case 07

Terms and conditions

Terms and conditions

C's SIM card fell into the hands of people who used it to make expensive international calls, £623 excluding VAT. C complained that he should not be held responsible for the cost of these calls and they should be deducted from his bill. Also T should have warned him of the consequences of losing his SIM Card and they should have systems in place that puts a bar on their customers' accounts before a large number of expensive calls are made. T maintained that the responsibility for protecting the SIM card is on C and that it was they who identified an unusual usage on C's account and had placed a bar on it to prevent further fraudulent calls being made.

The Adjudicator decided that under T's Terms and Conditions C was responsible for the cost of the fraudulent calls. C should have protected his SIM card by the use of a PIN. The Adjudicator dismissed C's arguments that it was for T to monitor his account so that it would not be subjected to fraudulent calls.

Case 08

Providing broadband

Providing broadband

T telephoned C and asked if C wanted to join T's broadband. C said he would as it could allow him in future to consolidate his three dedicated lines for home telephone, fax/telephone and computer into two lines. C requested that the broadband service be provided on his dedicated home computer line but T incorrectly noted the dedicated home telephone line as the number to which broadband was to be added. C complained he was not getting a connection. Several months later T asked C whether he had received the modem and connected it. C replied that he had not received the modem. C sought compensation of £5,000 referring to the inconvenience caused, the cost of using dial-up services, and the monthly charge for a service he did not receive.

The Adjudicator decided that T failed in their duty of care to C by not providing a reasonable level of customer service. C took up the offer of a broadband service because it potentially increased his enjoyment from the internet by giving an improved level of speed and service; C could reasonably expect that it would not cause him inconvenience. In reality the opposite happened, it cost C more money for a service he did not receive and he spent a significant amount of time trying to sort out a problem not of his making. C clearly suffered inconvenience and incurred costs by the failures of T. £300 was awarded to cover all parts of the claim.

Case 09

Inconvenience damages

Inconvenience damages

C complained that T charged C at mobile phone rates instead of landline rates for calls C made

to a number in Jamaica. Despite C's queries and complaints, T insisted that it was a mobile phone number. As T took more from C's bank account on a direct debit than C expected, it resulted in the bank making an extra charge because there was not enough money in C's account to cover it. T made an offer to settle the dispute which expired almost as soon as C received it.

The Adjudicator directed the parties to make enquiries of the Jamaican provider who confirmed that the number was for a landline. C had been overcharged by £41.65. The Adjudicator decided that C had suffered inconvenience and general costs by the failure of T in what was essentially an agreement for services by which C would have enjoyment, peace of mind and would not be overcharged. The Adjudicator ordered T to pay C compensation of £250 for inconvenience, apologise to C and to refund the overpayment of £41.65. The Adjudicator recommended that T check the nature of any telephone number if it was queried in the future instead of relying on published dialling codes. It would be good practice for C to be given at least 14 days and preferably 21 days to accept any offer of settlement.

Case 10

Not responding to complaints

Not responding to complaints

A company approached C offering a free upgrade on his mobile phone, together with a large number of telephone minutes, texts, photo messages and a spare handset of C's choice for a monthly payment. The company assured C that they represented T with whom C had an existing contract for telephone services. C later found that the company had no affiliation with T. C did not receive the free handset for five months, the company said it was unavailable and instructed C to choose another phone until the model he wanted was available. When C did this his bills increased. He was given a new number he did not want, never used and was charged for. When C received the phone he had originally requested he was given another phone number and charged for that one too which increased his bills by over 500%. The company did not respond to the complaints of C and made no defence to the claim.

The Adjudicator decided that the company owed a duty of care to respond to C's complaints and make a positive attempt to resolve them. By not doing so the company had seriously failed in their duty of care to C. The adjudicator agreed with C's claim and ordered the company to pay C the amount claimed of £1,800.

Case 11

No compensation for a friend

No compensation for a friend

C had a long standing contract with T. C applied for a broadband service the costs of which were to be covered by a direct debit from the bank account of C's friend. The service was activated three weeks later. C complained she had cancelled her application before then, she had never received the service and T had not kept promises to reimburse money taken by T from the bank account of C's friend. C sought compensation of £1,000 for her friend as well as reimbursement of the money. The records of T showed they had not been advised that C wanted to cancel the service until about 6 months after her original application. T transferred £1,053 to the bank

account of C's friend and offered a number of without prejudice payments which were refused. C did not know about this until she had received T's Defence.

The Adjudicator decided that there was no evidence of a breach of contract or any failure of duty of care by T. C had not suffered any personal loss as she had not paid any money directly to T. Under the CISAS rules there was no power to compensate a third party, C's friend, who was not a party to the contract between C and T. The claim was dismissed.

Case 12

Costly fraudulent calls

Costly fraudulent calls

C travelled to Peru on a voluntary project. He lost his mobile phone in a Peruvian hostel. Fraudulent roaming calls from Peru were made with the mobile phone amounting to £1,770.82. C complained that T ought to have blocked the mobile phone when T discovered that C's average monthly bill had been considerably exceeded. In any event C had not agreed to a roaming facility on his mobile and therefore the bill should be cancelled.

The Adjudicator was unable to accept the claims of C either as regards the loss of the mobile phone or his denials that he had not contracted for roaming. This was because C, despite an earlier report to the Peruvian police, failed to notify T of the loss of the mobile phone until he received a bill from T of more than £1,770 upon his return to the UK about two months later.

Case 13

Damages and refusing reasonable offers

Damages and refusing reasonable offers

C alleged that an employee of an independent dealer had misled C into believing she was an employee of T and had lured C into accepting an upgrade on his contract. When a week later C discovered the employee was not an employee of T but of an independent dealer, C demanded that the upgrade contract be cancelled as both the independent dealer and T were seeking to defraud him. T repeatedly offered to cancel the upgrade contract provided C returned the new phone which had been sent to him. On each occasion C refused claiming that he was entitled to damages which rose over three months from £191 to about £938. These amounts were based on C's charges of £15 for each letter and phone call made.

The Adjudicator dismissed C claims for damages and that the contract between T and the independent dealer be cancelled, but upheld C's claim that the contract between C and T be cancelled without any penalties imposed on C.