

## Case Studies

### Guidance on unfair contract terms:

The terms of a consumer contract which unfairly limit or exclude the rights of a consumer in the event of non-performance or inadequate performance by a supplier may be nullified by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999, for example:

- A term which limits the liability of T to pay compensation to C may be of no effect.
  - If T does not provide what has been agreed and charged for, T may be in breach of contract and have no right to demand or to take money from C; an exclusion term may be of no effect.
  - If a reseller (or retailer) is the agent of T then T may be liable for a promise made to C by the reseller on T's behalf unless T can show that it was plain to C from the outset that the reseller was offering something on his own behalf and not on T's behalf. A term limiting T's obligation to respect commitments undertaken by its agents may be of no effect.

### Migration Authorisation Code

C complained that she had been with T for over a year before she changed her telephone number due to obscene phone calls since then C had tried to get a Migration Authorisation Code (MAC) from T. T would not provide one, C was advised to cancel the service and T would then clear her line. For about 7 months C tried unsuccessfully to get her line cleared. T accepted there were some problems in C receiving a MAC number

The Adjudicator decided that T has a duty to provide a MAC in a reasonable manner and within a reasonable timescale in response to a reasonable request. T delayed the provision of a MAC unreasonably and adopted a, *'laissez faire attitude'*. The lack of thoroughness and care adopted by T in dealing with the complaint was reflected in T's

Defence which was inconsistent, contradictory, used jargon with no glossary of terms, sought to blame other parties or unspecified products and referred to a differently named person rather than C. The fact that C changed her telephone number should not have impacted on her request to be provided with a MAC. T consistently failed in their duty of care to C over several months by not responding properly to a reasonable request and causing C inconvenience. The Adjudicator directed T to apologise to C and pay £250.00 compensation.

## Case 02

### Broadband service speed

#### Broadband service speed

C complained that T promised a 2 megabit per second<sup>1</sup> internet service plus UK phone calls at either £19.99 or £19.49 per month, but provided 1 mbps at £19.99 per month although another provider confirmed C could get a 2 mbps service. T insisted they never promised 2 mbps and their line test showed that C's line could not receive it. They also stated they responded to requests for assistance and C had made frequent use of their services.

**The Adjudicator found C's recollection of price was confused, but he had provided clear evidence that a 2 mbps service was promised by T, his line could provide it and neither his requests for assistance nor complaints had received appropriate responses from T. £100 compensation was awarded for inconvenience caused to C by the failure of T to respond to requests for assistance and complaints. The Adjudicator directed T to release C from his contract without penalty and recommended T apologise to C.**

## Case 03

### T bound by reseller's promise

#### T bound by reseller's promise

C complained that having entered into a contract through T's reseller for two mobile telephones for company business, C received bills for unexpectedly high charges. T would not honour the tariff promised by the reseller but insisted that C accept one of two less favourable tariffs. C attempted to cancel the contract and returned the phones to the reseller, but one of the phones was sold to somebody else who continued to use it on C's account. T accepted most of the liability but offered C £400 compensation whereas C wanted £2,500.

**The Adjudicator decided that T is responsible for what a reseller says in arranging contracts, because a reseller is the agent of T so far as the world at large is concerned regardless of any contrary agreement between T and the reseller. By refusing to honour the tariff agreed between C and the reseller, T had repudiated the contract. In doing so, T also deprived itself of any protection against claims that the contract terms and conditions may have given T. C was entitled to have the bills recalculated on the tariff that**

<sup>1</sup> Megabit per second is referred to as, **mbps**.

was originally agreed. As C had lost £1,000 in his own chargeable time in dealing with the matter T was directed to pay C that sum as compensation.

#### Case 04

##### No broadband

##### No broadband

C's broadband service was disconnected in January due to the telephone line which was owned by another provider being upgraded. No temporary service was provided until May. Meanwhile C was billed for a broadband service that did not work. The stress exacerbated C's psychiatric condition. T admitted there had been problems but said it had done what it could to remedy them.

**The Adjudicator decided that T upgraded the broadband service without C's prior knowledge. The other provider's telephone line could not take the enhanced service; T could not use problems with line as an excuse to avoid responsibility. If a provider fails to provide what has been agreed and charged for it is in breach of contract. It has no right to demand or to take money for something it does not provide. Exclusion clauses in the terms and conditions were void under the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. The Adjudicator directed T to cancel its contract with C, remove its marker from the telephone line, repay all sums paid by C after the broadband service failed, cancel any outstanding invoices and pay C £350 compensation. Compensation for personal injury, such as the exacerbation of C's psychiatric condition, was outside the scope of CISAS.**

#### Case 05

##### 18 weeks without internet

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C complained that she subscribed to T's broadband service but after 18 weeks she was still without a service. C had great difficulty communicating with T and consequently suffered anxiety and inconvenience. Even though C was not receiving a service T continued to deduct her monthly subscription of £14.99 a month. T considered the problem may have been with the telephone line but before T's investigations had been completed C had referred the matter to CISAS. T had reimbursed the subscriptions paid by C, cancelled the contract without penalty and provided C with a MAC. T denied that C was entitled to any compensation for anxiety and inconvenience.

**The Adjudicator decided that C had suffered a great deal of anxiety and inconvenience as T had tried for 18 weeks without success to deal with the connection problems and it was not acceptable for them to state that they had insufficient time. C had a very difficult and frustrating time contacting T to the extent that she telephoned their helpline at 4.30am in the morning because she found that this was the only time she could get through. In all the circumstances the Adjudicator found that the Claimant was entitled to compensation of £150 for the anxiety and inconvenience caused by the failings of T.**

## Case 06

### No internet connection

#### No internet connection

C complained that T transferred him from their 1mb to their 8mb internet service but shortly afterwards he had had no internet or e-mail service despite the fact that he had been paying his monthly subscription. After C had cancelled his direct debit T, without the permission of C, charged his debit card with the monthly subscription. The lack of internet connection had caused C and his family a great deal of inconvenience.

**The Adjudicator decided that the product of another provider had been used by T on C's telephone line which had caused all the problems. C had difficulty contacting T about his connection problems. The whole episode had been very frustrating for C and his family. As T was silent on C's assertion that T had debited C's debit card with the costs of monthly subscriptions without C's permission, the Adjudicator found that the allegation was proved. The action of T was highly inappropriate. C was awarded £600 compensation. T were directed to refund C all the monthly instalments that had been taken from the account of C since C lost his connection also T were to release C from the contract without any payment. T were to provide C, if required, with a MAC and remove any offending products from his line. T were directed to ensure that C's credit rating was not adversely affected as a result of this dispute.**

## Case 07

### T bound by their promise

#### T bound by their promise

C sought £500.19 from T for high charges incurred as a result of an erroneous connection to a Pay As You Go number instead of a connection to a £4.99 day time package which C had requested. Initially T told C that T would refund the charges but later refused to do so. C applied for adjudication. T did not provide a Defence despite being notified of a new deadline to do so.

**The Adjudicator decided that not only was C credible but that T in one of their letters had impliedly admitted the error and a willingness to effect a refund as earlier promised. T was directed to immediately refund £500.19 to C.**

## Case 08

### No unfair terms

#### No unfair terms

C entered into a contract for a broadband service to be supplied to her home by T for a minimum of 12 months and asserted that in February T had assured her they would upon C's request be able to transfer the broadband service to her new address. A few months later C moved. T could not transfer the broadband service as the new address of C was in a non serviceable area. T demanded £243 cancellation and early disconnection charges from C. C refused to pay the charges as T were in breach of the assurance given to her in February and also T had no right to charge C for a service she no longer received as a term providing for cancellation and early disconnection charges ran contrary to the **Unfair Terms in Consumer Contracts Regulations 1999**.

**The Adjudicator did not accept C's version of events about the purported assurance (which she could not prove) and did not find that the contractual term complained of by C contravened the Unfair Terms in Consumer Contracts Regulations 1999 regulation 5 in the absence of any proof of bad faith, negligence or breach of contractual obligations by T. While there were other reasons for terminating the contract, C still remained liable to pay the outstanding balance and was not entitled to a refund. The Adjudicator recommended that C approach T to negotiate more favourable payment terms and that T should consider such a request with sympathy.**

## Case 09

### Broadband speed

#### Broadband speed

C complained that he had bought T's interim 1 mbps broadband service expecting it to be upgraded to 8 mbps but the upgrade was delayed. T explained that the delay was caused by its restructuring. C also complained that T had not provided a MAC code and had taken direct debit payments after obtaining C's bank details for only a one-off payment.

**The Adjudicator decided there was no contractual obligation for T to provide an 8 mbps service by any particular date. C failed to prove that any direct debit payments had been wrongly taken by T. T had correctly continued to request payment until it had received confirmation of successful migration, if it had closed the account earlier the migration would have failed. All the claims failed. The Adjudicator recommended that T remove C's personal details, including bank details, from its live databases.**

## Case 10

### Broadband service

#### Broadband service

C complained that his previous Internet Service Provider<sup>2</sup> stopped providing a broadband service. The advert on his screen asked to sign up T. Two days later C decided to sign up for T's 512k pay monthly service, believing it to be a monthly contract. Three days later after ascertaining that he was actually on an annual contract and after receiving poor service, C emailed T cancelling the contract. C still had not had the service cancelled despite several weeks of correspondence with T. C could not use another ISP because his line was still live.

**The Adjudicator decided that C had validly terminated the contract in accordance with the Consumer Protection (Distance Selling) Regulations 2000. C was awarded £100 in compensation. T was directed to either cancel the service and put a cease on C's phone line or give C a MAC so that he could go to another ISP, whichever of these two options could be achieved quicker.**

## Case 11

### Reseller is agent of T

#### Reseller is agent of T

C complained he was mis-sold two contracts by a reseller, who he understood was the agent of T, which he did not need as an existing customer of T paying by direct debit. T refused to cancel the contracts and continued to over charge. C fell into serious arrears with his bank, he incurred large bank charge fees and was unable to pay his usual bills.

**The Adjudicator decided whilst T did not state the precise relationship between themselves and the reseller, T did not deny that the reseller was their agent. The reseller had gained access to information regarding C's contract with T and was the agent of T. The reseller acting as T's agent made C a number of offers, one of the conditions C made to accepting those offers was that the overall charges would not increase, the reseller agreed. This effectively varied the original terms of the contract C had made with T. T broke the terms of the varied agreement almost immediately by charging more than what C had been paying prior to the variation. All other problems and issues flowed from this breach. Despite C alerting T several times to the problems T did nothing to mitigate the mounting loss and inconvenience to C although T realised C was being caused financial hardship. Rather than proactively addressing the breach of contract T exacerbated the situation causing loss to C. The Adjudicator directed T to apologise to C and pay compensation of £2,016. The Adjudicator recommended that T review the business practices of their agents.**

<sup>2</sup>An Internet Service Provider is referred to as, ISP.

## Case 12

### Poor service

#### Poor service

C complained that as a result of an upgrade of T's Pay As You Go email service his Pay As You Go email address was accidentally made inoperable. T took 76 days to restore the email service. When C later phoned T to cancel the anti-spam package on his Pay As You Go email service, T accidentally cancelled the whole account. T did not reinstate the Pay As You Go email account as requested by C. C also complained that his broadband service had been upgraded without his authorisation. T refused to transfer the account back to the original package maintaining that C had made the upgrade himself online. C pointed out that he could not access the online service at the time the account was upgraded.

**The Adjudicator decided that T had not provided a reasonable service on the Pay As You Go email account due to the 76 day outage and by failing to reinstate the email account after T cancelled it through misunderstanding C's instructions. Neither had T provided reasonable customer service by refusing to put C back onto his original broadband package. T was directed to apologise and to pay C £195 comprising £150 compensation, £35 for telephone calls and £10 for stationery and postage. The Adjudicator recommended that if within 90 days of accepting the Decision C requested a move back to the original broadband package (or its nearest equivalent) then T should action the request.**

## Case 13

### Fees due

#### Fees due

C complained that T had reported C as a debtor but the report was wrong as C's failure to pay bills had only occurred because T had not adjusted their records showing her change in address so C had not received the bills. C understood at the time of moving she was up to date with payments. T maintained not only had C defaulted just before moving resulting in service suspension but also C was only 7 months into a 1 year contract so she must have known fees were due. C sought £2,000 which she said were losses incurred as she could not get a low interest mortgage and had been forced into a credit agreement at 49% because T had wrongly reported her as a debtor. T said they had not wrongly reported her as a debtor and it was not proved their mistake had led to such losses.

**The Adjudicator decided that C had acknowledged during the adjudication that fees and a service charge would be ongoing after she moved home. C had a responsibility for ensuring payments due were made. C had not proved the losses she claimed arose from T's failure. The claim failed.**

## **Case 14**

### **Loss of business**

#### **Loss of business**

C, a small business, contracted with T for the provision of a broadband service. T were unable to provide the broadband service and C cancelled the contract. T then tried to charge C for the service they could not provide and C was threatened with action from a specialist debt management team. T admitted they had no right to any monies. Several months later T contacted another communications and internet services provider and placed an order for T's broadband on the line of C. As a result, C's existing contract with the other provider was interrupted for several weeks. T did not file a Defence.

**The Adjudicator decided that T were liable for loss of business for the 20 days C was without a broadband connection, that was, £2,000.00.**