

Case Studies

Guidance on cashback agency, evidence and direct debits:

1. Sometimes there is confusion over whether a reseller is an agent of T¹ particularly when a reseller sells products and services or offers a cashback deal which C may believe are those of T but T later says they are not. If C alleges that a reseller was:
 - Acting as an agent of T; and
 - Made an offer on behalf of T; which
 - C accepted; and
 - For which C provided consideration e.g. made either a single or monthly paymentThen:
 - C must provide evidence to prove on the balance of probabilities each of those allegations. It is not sufficient for C to make a bare allegation. If only a bare allegation is made then it is difficult to see how C could succeed.
 - If T maintains a reseller is not an agent of T, T should provide evidence of that, for example, an agreement which stops the creation of any agency.
2. Terms and conditions of a contract between T and C may be amended from time to time. If T relies in its Defence on particular terms and conditions then a copy of the relevant edition of those terms and conditions must be provided as evidence for each case. It is inappropriate for T to simply state that they had been supplied as evidence in another case; when papers are submitted to CISAS in one case they stay with that case they are not put aside to be referred to in other cases. Checklists for the type of evidence which C and T should submit in each case are given at the end of this Case Study.
3. C may complain about T's billing and also the way in which T has used the direct debit of C. Where the main complaint of C is a billing complaint rather than a

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

complaint about the abuse of a direct debit then CISAS will have jurisdiction to deal with the dispute. It is a privilege for T to be able to directly debit an account of C, it is common practice within the communications industry but it is still a privilege. As a result T must ensure billing is accurate and any inaccuracies are quickly corrected. If T takes a long time to resolve the inaccuracies and during that period persists in taking monies from C's account then T may be regarded as not having tried to proactively resolve the dispute.

Case 01

Billing and wrong use of direct debit

Billing and wrong use of direct debit

First Adjudication. C made a billing complaint against T. C had been trying for several months to close her two accounts with T and complained of the failure of T to properly operate them. Often T would either not take money from C's direct debit and then disconnect C for, 'non payment', or T would take money from them after the services were cancelled. This had an adverse affect on C's credit rating yet T wrote to C saying that her credit rating was not affected. C was caused considerable anxiety and stress.

The first Adjudicator found C had proved her case, awarded C £600.00 compensation and directed that a senior executive of T write a letter to C confirming C's request for disconnection.

Second Adjudication: T did not pay C compensation before the deadline for payment under CISAS Rule 4.n², T continued to take money by direct debit from C for accounts which T had closed in March, T's letter confirming disconnection was wrongly addressed and T's website showed that as of November the two accounts had charges of more than £600.00. T explained compensation was paid late due to having to get a signature from their highest level management, a payment was taken in error from C's account and she was instructed to reclaim this through her credit card company and the letter was addressed incorrectly from T's chief executive officer because of an error by T's customer relations and complaints team. C replied that T did not understand the great distress and worry they had caused to her the best indication of T's, *'arrogance is the fact that they say when they helped themselves to more of my money after being told not to by CISAS, 'the customer was instructed to reclaim this through her card company'*.

The second Adjudicator found that for T to take further money by direct debit from C after the previous CISAS adjudication was unacceptable and was an extremely serious breach of contract and duty of care. Insult was added to injury when C was instructed by T to reclaim the money through her credit card company thus putting the onus on C rather than on T to sort out T's own, 'terrible blunders', as C described them. The wrongly addressed

² CISAS Rule 4.n states, ' If the adjudicator decides that either the customer or the company should pay an amount to the other, and the customer accepts the decision, the payment must be made within four weeks of the customer accepting the decision. If the company must pay an amount to the customer, the company must pay the customer direct and must tell us that they have made the payment'.

letter was inept as one would expect a specialist team to be able to address a letter correctly. The second Adjudicator awarded £600.00 further compensation to C and directed T take all necessary steps to remove C from their billing system.

Case 02

Little evidence

Little evidence

C disputed bills he received from T. In his Claim C provided little evidence other than recorded excerpts of a few conversations with T leaving it to his Reply to include extracts of some bills. In their Defence T included a billing history and contact log.

The Adjudicator found that C's claim failed for want of evidence. C's recordings proved that the figures quoted by T were correct. The billing breakdown of T was comprehensive and the contact log showed conversations where C was refusing to listen to explanations.

Case 03

Separate cashback agreement

Separate cashback agreement

C purchased from a reseller three mobile phones with a minimum term of 18 months with T for network services. The reseller agreed a cashback deal with C by paying C's bills for 18 months. When the first 3 months bills were received by C from T, C forwarded them to the reseller for payment. The reseller ceased trading without having paid C. C wanted to cancel his contract with T without penalty but T refused to do so unless C paid an early cancellation fee.

The Adjudicator found that the claim failed because the cashback deal was a separate agreement between C and the reseller. C remained liable for the bills from T. The contract between C and T was for a minimum term, an early cancellation fee had to be paid by C in accordance with the terms and conditions if C wished to cancel it.

Case 04

Cashback: inappropriate claims

Cashback: inappropriate claims

A reseller went out of business after having offered cashback deals with mobile phone purchases. In two cases the customers both wanted to have their contracts with T cancelled alleging without the cashback deals they could not afford the monthly fees and T was responsible for providing the cashback as the reseller had gone out of business. T, noting this had had a lot of publicity, suggested customers were using the situation to evade contracts.

The Adjudicator found that the claims failed as neither customer provided evidence they ever had a cashback deal or any involvement with the reseller.

Case 05

Contract termination: price increase is a change

Contract termination: price increase is a change

C was given notice of increased charges by T. C made several attempts to end his mobile phone contracts but T did not respond. T denied that the increased charges constituted a change to the contract between C and T justifying termination. T had no record of receiving C's four letters, two of which were delivered by recorded delivery

The Adjudicator found a price increase is a material change to the detriment of C allowing C to terminate the contracts. On the balance of probabilities T had received the letters from C. T was ordered to refund C all monthly sums paid since the first attempt to terminate the contracts.

Case 06

Television service

Television service

C was without broadband for six weeks. He complained about poor customer service from T in repairing both his broadband and television services. C was frustrated when T cancelled an engineer's visit without informing C. After having spent 40 hours telephoning T, writing eight letters and numerous emails trying to resolve the problems C claimed compensation of more than £1,700.00 which he calculated at his hourly business rate. T maintained that the television service was working with the exception of the remote control which was replaced. There was no fault with the broadband service T having replaced the top box and cable modem but there was a fault with C's computer which had no Ethernet drivers for the cable modem. T agreed to give two months credit of £36.00 for loss of broadband service.

CISAS does not normally consider complaints about television services. However, under CISAS Rule 2.1³ if the dispute is about something that is not covered by the CISAS rules then T can agree to use the scheme. T agreed to use the scheme for both broadband and television disputes.

The Adjudicator found that the television could be operated with manual controls and no compensation was due for loss of television service. C had suffered frustration by T's breach of duty of care to provide reasonable customer service for which £60.00 compensation was awarded to C. It was not appropriate to use C's business rates to calculate compensation for a domestic service.

³ CISAS Rule 2.1 states, 'If the dispute is about something that is not covered by these rules, the member company can agree to use the scheme but does not have to'.

Case 07

Cashback: two separate contracts

Cashback: two separate contracts

T offered free international calls in a free minutes bundle which C wanted. C agreed a contract with a reseller for two mobile phones on an understanding that £40.00 + £40.00 per month would be paid by C to T through direct debit. Also during the full 18 month period of the contract when C showed her bills from T to the reseller she was to be refunded by the reseller i.e. a cashback. In June T withdrew free international calls from C's free minutes bundle. In August the reseller advised C that she would not be receiving the cashback. Later the reseller stopped trading. C requested T to cancel the contracts without penalty and cancel all bills from August. T refused maintaining T was not a party to the cashback arrangement between C and the reseller, also under its terms and conditions T were entitled to vary the contract between C and T.

The Adjudicator found that there were two separate contracts, one between C and the reseller and the other between C and T. As C did not contact T to cancel the contract with T in a timely manner following notification of the changes to her package, she was out of time and her claim failed.

Case 08

Cashback: only one contract?

Cashback: only one contract?

C purchased two mobile phones from a reseller who provided him with a contract by which he received cashback each month for 18 months. T provided the network service. The reseller went into liquidation. C alleged that because he could no longer receive any cashback he was entitled to cancel his contract with T early without any charge, he had only one contract and did not have a separate contract with T.

The Adjudicator found on the balance of probabilities that there were two contracts. The resellers Order Form clearly identified that it was the reseller alone who was providing the cashback. T was not connected with the cashback offer, the cashback arrangement was separate and discreet from the service that T were providing to C. C was not entitled to cancel his contract with T without incurring an early termination charge. C's claim was unsuccessful and was dismissed.

Case 09

Cashback: contract terminated

Cashback: contract terminated

C wanted to cancel a contract with T for network services to two mobile phones without imposition of penalties by T following the inability of a reseller to honour a cashback agreement due to the reseller ceasing to trade.

The Adjudicator found that each case must be decided on its own peculiar facts in accordance with the claim made by the parties and the evidence adduced and accepted by the Adjudicator. In this case C did not ask for T to honour the cashback agreement entered into with the reseller. C simply sought to extricate himself from a contract that he could no longer service once the agreed cashback was no longer forthcoming. The Adjudicator accepted compelling evidence from C that he could not service the contracts on two mobile phones in the absence of the cashback payments and he would never have entered into the contract without the inducement of the cashback offer from the reseller. The Adjudicator also accepted documentary evidence that the cashback was to be paid, and indeed was paid on one occasion, by the reseller and not T. The Adjudicator decided that there were two separate and collateral contracts being one between C and the reseller and the other between C and T, C was entitled to terminate the contract with T since the reseller had ceased to trade and there had been a material change of circumstances it was only fair that C was allowed to terminate the contract without penalties as C could no longer service a contract in the absence of cashback payments, C must pay all outstanding amounts on his account for the month he gave notice of intention to terminate and for the duration of the notice period. Even if C had sought to rely on the principles of the law of agency to hold T liable to honour the cashback agreement in the absence of the reseller, based on the evidence in this case the Adjudicator would have had sufficient reasons to dismiss such a claim.

Case 10

Charges

Charges

C made three complaints:

1. In the first complaint C's house was fitted with an alarm system and every time the alarm was set or unset, a call was made to an alarm monitoring company. This procedure operated without comment for about eight years until T increased their charging tariffs for premium rate calls and C suddenly realised that set and unset was being sent on a 0900 premium rate number. The alarm company said that they had set the equipment on a 0870 number which would have been charged at a lower rate. C believed that he had been paying premium rates for about eight years amounting to an extra £3,000.00. T said that although the calls passed over their telephone lines, they could not alter the number dialled and if that was a premium rate number it commanded an appropriate charge.
2. The second complaint was that C had asked for an explanation of charges made within the tariff believing that calls made within the allowance were also being charged separately. Many efforts by C to obtain an explanation from T had failed.
3. The third complaint was about the poor customer service of T. Many telephone calls were made by C and letters written about the other two complaints, some calls were diverted to inappropriate branches of T, other calls were not returned, and there was a general inability to discuss sensibly the issues which were troubling C.

The Adjudicator found that:

1. **In the first complaint, the burden of proof was on C and as he had no evidence to show that T was at fault his claim failed.**
2. **In the second complaint the Adjudicator directed that an explanation be given by T and any overcharging be reimbursed to C.**
3. **In the third complaint a breach of the duty of care was found and compensation of £100.00 awarded to C.**

Evidence checklist for Claimant

Evidence checklist for Claimant

The type of evidence which C should submit to CISAS is set out in the Claimants Checklist below. If all answers to the checklist sections are yes or C is satisfied that any departures are justified the Claim, supporting documents and completed Claimant's Checklist should be sent to CISAS.

Action	Yes	No
1 CISAS Form, 'Application to use the communications and internet services adjudication scheme': signed and dated.		
2 Check Claim covers:		
i. Contract between customer and company:		
• Date of contract.		
• Who contract was made with.		
• Relevant terms of contract.		
• The cost.		
ii. Brief history of events.		
iii. Details of dispute / complaint		
iv. What you want the company to do and why:		
• Give an apology.		
• Give an explanation.		
• Pay compensation and how much.		
• Give a product or service, specify.		
• Take some action, specify.		
v Offers of settlement:		
• Has any offer of settlement been made, if so what.		
• Date of offer.		
• Has any compensation been paid, if so how much and when.		
• Have you been asked to return compensation, if so when.		
• Have you returned compensation, if so when.		
3 Written acceptance for dispute to be settled under CISAS.		
4. Relevant documents e.g.		
• Bills	• Service agreement	• Price schedule
• Letters	• Debt recovery	• Terms & conditions

Evidence checklist for Respondents

Evidence checklist for Respondents

The type of evidence which T should submit to CISAS in each case is set out in the Respondents Checklist below. If all answers to the checklist sections are yes or T is satisfied that any departures are justified the Defence, supporting documents and completed Respondents Checklist should be sent to CISAS.

Action		Yes	No
1	CISAS Form, 'Defence to Claim': signed, dated together with name, telephone number and e-mail address of contact person.		
2	Check Defence covers:		
i.	Contract between customer and company:		
	• Date of contract.		
	• Who contract was made with.		
	• Relevant terms of contract.		
	• The cost.		
ii.	Code of Practice:		
	• Date / edition of Code of Practice.		
	• Relevant terms of Code of Practice.		
	• Web address for Code of Practice.		
iii.	Succinct chronology of relevant events.		
iv.	Each complaint made by the customer indicating whether the company:		
	• Agrees.		
	• Disagrees, if so the reasons for the company disagreeing.		
v.	Offers of settlement:		
	• Has any offer of settlement been made, if so what.		
	• Date of offer.		
	• Has any compensation been paid, if so how much and when.		
	• Has customer been asked to return compensation, if so when.		
	• Has customer returned compensation, if so when.		
3	Written acceptance for dispute to be settled under CISAS.		
4.	Relevant documents e.g.		
	• Bills	• Service agreement	• Price schedule
	• Letters	• Debt recovery	• Terms & conditions