

**Telecommunications
Industry
Ombudsman**

**Simon Cohen
Ombudsman**

19 July 2010

Ms Fay Holthuyzen
Chair
TCP Code Review Steering Group
Communications Alliance
P.O. Box 444
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Dear Ms Holthuyzen

Review of the Telecommunications Consumer Protections Code

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with this opportunity to contribute to the review of the Telecommunications Consumer Protections (TCP) Code.

As I indicated in my recent discussion with Michael Lee and John Stanton of Communications Alliance Limited (Communications Alliance) on 8 July 2010, the TIO proposes at this stage to provide broad comments and suggestions for the Steering Group's consideration in its review of the TCP Code (the Review).

These comments relate to the following main themes:

- structural gaps within the TCP Code
- the industry's awareness of and genuine commitment to the TCP Code
- the cohesiveness of the TCP Code
- accessibility of the TCP Code
- measuring the success of the TCP Code.

We have not included in this submission, complaint or code data or comments about specific provisions in the TCP Code. However, we will be pleased to provide this information at subsequent stages of the Review where this will assist.

We also note the various views of the industry, regulators and consumer representative groups as outlined in the Issues Paper, and do not propose to re-state those views in this submission.

"... providing independent, just, informal and speedy resolution of complaints"

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Introduction

As you are aware, the TCP Code confers upon the TIO the functions and powers of receiving, investigating, facilitating resolutions of, making determinations or directions about and reporting on complaints made to the TIO where these relate to services provided by members of the TIO Scheme.

The TIO uses the TCP Code on a daily basis to investigate and resolve complaints. The inherent value of the TCP Code is recognised across the TIO, from Enquiry Officers who use the TCP Code to provide information to consumers about good industry practice, to Investigations Officers who have regard to the TCP Code when determining fair and reasonable outcomes to complaints. The TIO also promotes the TCP Code as a benchmark for good industry practice, by providing information to members of the TIO Scheme about their obligations under the TCP Code.

Given this experience, the TIO is well placed to outline a number of opportunities for improvement that the Steering Group may wish to consider in the Review. We have also set out, where relevant, examples we have drawn from the complaints we commonly receive to clarify our comments on these areas.

Structural Gaps in the TCP Code

Although the TCP Code currently provides guidance for many of the different types of interaction that a consumer has with their service provider, the end-to-end consumer experience is not fully reflected in the provisions of the TCP Code. In our view, the TCP Code does not address, or does not address sufficiently, the following:

- minimum standards for customer service
- the need for ‘action’ rather than the creation of a ‘process’
- the needs of disadvantaged and vulnerable consumers
- informed consent
- service connections and fault rectification.

In addition, we note that there is an opportunity to consolidate consumer protections within a single code, and to incorporate references to external standards.

These issues are discussed in more detail below.

Customer Service

From the TIO’s perspective, a significant gap in the TCP Code is the lack of guidance for industry about the minimum standards of customer service that service providers should offer to their customers. The TIO’s **connect.resolve** campaign has highlighted a number of customer service issues present in TIO complaints that are not sufficiently addressed by the TCP Code. Consumers complain to the TIO about:

- their inability to easily access clear and accurate advice from their service providers
- the failure of their service providers to action their requests, at all or within a timely manner
- their inability to get in contact with their service provider when they have a query or a problem
- the failure of service providers to give all the information they require, or to keep them updated of changes that may affect their services.

We take the view that the TCP Code could set out the minimum standards of customer service in the telecommunications industry. Such a step could reduce the number of complaints made by consumers and increase their satisfaction with service providers.

In stating this, we recognise that customer service is an area where a telecommunications supplier may choose to distinguish itself from its competitors, by offering an exemplary standard of service. However, it is also important that there is not a 'race to the bottom' when it comes to customer service. The inclusion of minimum standards on customer service within the TCP Code will ensure that legitimate community expectations about minimum customer service for essential telecommunication services are met.

Require 'Actions' rather than 'Processes'

An objective of the TCP Code is to enhance consumer confidence in the service they can legitimately expect to receive from service providers.

However, although the TCP Code places a number of obligations upon service providers to have processes in place for the protection of consumers, there is currently a lack of obligation in the TCP Code for service providers to actually comply with those processes. We note, as an example, Clause 9.1.1(f) of the TCP Code which requires service providers to have a complaint handling process that provides for the recording, actioning and monitoring of the undertakings made to consumers to resolve complaints. Despite this important consumer protection, the existence of a process without effective implementation may render the protection largely illusory.

Making the obligations to act in the TCP Code clearer will, in our view, increase consumer protection.

Disadvantaged and Vulnerable Consumers

Any consumer protection framework must ensure that those who are most vulnerable are afforded appropriate safeguards. The TIO acknowledges that the TCP Code contains provisions for the protection of consumers experiencing financial hardship and for providers to use reasonable efforts to communicate with consumers in a way that suits each consumer's communication needs.

However, the protections are limited in a number of ways:

- the TCP Code does not provide sufficient guidance about which groups of consumers might fall into the category of vulnerable or disadvantaged (other than persons experiencing financial hardship, the only other reference to people with special needs is made in relation to the elderly and people with disabilities)
- the TCP Code does not provide guidance about how, or the extent to which a provider should modify their processes to accommodate the needs of a vulnerable or disadvantaged consumer
- the TCP Code provides that its complaint handling requirements do not apply to consumers who choose to pay third parties (other than legal practitioners) to handle complaints on their behalf if they are unable to advocate for themselves.

The effect of the above is that the TCP Code may not deliver appropriate safeguards for vulnerable and disadvantaged consumers. For example:

- consumers from non-English speaking backgrounds may be limited in their ability to access services, give informed consent or obtain assistance where they cannot afford to pay for translation and interpreter services

- consumers who are institutionalised and do not have access to a telephone or the internet may find themselves negatively impacted if a provider has a preference for verbal/online interaction over written correspondence
- consumers who have a disability may choose to pay a credit repair agency to handle a complaint about a default listing that they believe is unfair, but because the credit repair agency charges fees for its services the TCP Code protections may not apply
- persons who have power of attorney conferred upon them by someone who is now incapacitated might be unable to make changes to the account or services of the person they act for because they do not know the account password.

These examples point to a need to closely consider the requirements of disadvantaged and vulnerable consumers during the Review.

Informed Consent

Properly informed consent is a critical element in fair contracts. It protects consumers by ensuring they have knowledge of what they have agreed to. Informed consent also reduces the likelihood of future complaints about services.

The TCP Code currently offers guidance on what a consumer must be told before they enter into a contractual agreement with a provider. However, these requirements in themselves do not automatically give rise to ‘informed consent’. A greater emphasis on the need for informed consent is something that should be reviewed in the TCP Code. This could include:

- clearly defining informed consent within the TCP Code (not just in the Transfer chapter)
- placing an onus on the provider to ensure that all reasonable steps are taken to ensure that the consent given by the consumer when agreeing to or changing a service is informed
- including examples of good industry practice in obtaining informed consent within the TCP Guideline.

A particular barrier to informed consent is the accessibility (including the availability and complexity) of some contracts and the terms and conditions which accompany them. Despite the presence of requirements in the TCP Code regarding the legibility and consistency of these documents, these requirements have not, in a number of instances evidenced by some complaints, always resulted in consumers understanding the contractual arrangements applicable to their service. The TCP Code does not assist consumers in a number of respects:

- the TCP Code does not currently require the provision of contractual documents to a consumer at a particular time prior to or at the point the point of sale, unless expressly requested by the consumer
- consumers may not be given time to fully read and understand these documents before agreeing to the service – for example, during a verbal transaction, the consumer is referred to the provider’s website for the full terms and conditions, yet is asked to agree or not agree to these terms.

The Review provides the industry with a valuable opportunity to examine these and other issues affecting informed consent.

Service Connections and Fault Rectification

The timely connection and repair of telecommunications services is clearly central to their usefulness for consumers. The Customer Service Guarantee (CSG) Standard reflects this, and provides minimum performance standards about the connection and repair of standard telephone services. There is, however, little guidance in the TCP Code or elsewhere on the minimum standards for the connection or repair of other types of services or the equipment that is bundled with these services.

The TIO receives a significant number of complaints about faults and connections issues on services that are not CSG eligible. Examples include complaints about the following:

- the consumer has agreed to connect all their services with a particular provider in order to obtain a favourable internet deal, but they then find out that they were never guaranteed the internet connection, and that there is insufficient infrastructure available for this to happen
- the consumer is experiencing call drop outs on their mobile service and is told that the problem will be investigated, but this takes an unreasonable amount of time and they continue to be charged monthly access fees whilst they have limited access to their mobile service
- the consumer is not advised about delays in the repair of infrastructure that is the source of a fault, and the consumer has to follow up with the provider for an explanation about the ongoing delay
- the consumer has submitted their mobile handset for repair under warranty but does not get the handset back until weeks or months later
- the consumer is told that a technician will come to their home to connect their new internet service on a specific date but the technician changes the appointment without letting the consumer know beforehand.

With increasing numbers of consumers favouring internet, mobile and other technologies over the standard telephone service to meet their telecommunications needs, the industry could take the lead in establishing in the TCP Code, minimum performance standards for the connection and repair of non-landline services including equipment faults and equipment provisioning delays. Such an approach has the added benefit of ensuring that the industry is responsive to consumer expectations and continues to promote consumer protection.

Consumer Protection clauses in Operational Codes

The operational industry codes contain significant consumer protections. These include:

- in the Priority Assistance Code, the requirement that a provider must advise a consumer at the time of their application for a service if they do not offer Priority Assistance to persons with life threatening medical conditions
- in the Handling of Life Threatening and Unwelcome Communications Code, the requirement that a consumer should be told by their provider to call the police if they have received a life threatening telephone call
- in the Mobile Number Portability Code, the requirement that a consumer must be informed prior to the porting of their mobile number that there may be further call or usage costs which have not yet been applied to their account.

It is the TIO's view that these clauses can be overlooked by providers and consumers because they are not part of the TCP Code. The Steering Group may wish to consider, as part of the Review, whether the consumer protection clauses within the operational codes would be more effective if incorporated

into the TCP Code and any inconsistencies with the operational codes removed. It is the TIO's view that this could prove useful to both consumers and providers by enabling the creation of a 'one stop' guide for consumer protection.

Incorporate External Standards into the TCP Code

At present the TCP Code requires service providers to have complaint handling processes in place which have regard to the Australian Standard on Complaint Handling (AS ISO 10002-2006). As this Standard is not freely available, the TIO has found that providers are unlikely to be aware of the requirements in the Standard. To promote awareness of and regard to the Standard in future, the Steering Group may wish to consider the incorporation of the specific obligations of the Standard directly into the TCP Code.

Industry Awareness of and Genuine Commitment to the TCP Code

Industry Awareness

Irrespective of how all-encompassing and well written the TCP Code may be at the end of the Review, the TIO is concerned that this effort will be lost if there is a general lack of awareness among some segments of the industry about the Code.

The TIO has found that this lack of awareness is a particular issue for small and medium sized providers, who have responded to the TIO's discussion of TCP Code issues with statements like "I have never heard of it" and "where do you find the TCP Code?". Providers have also stated to the TIO that they "thought it was not a breach of the TCP Code as long as they were clear about what they would do in their terms and conditions" and that "the TCP Code does not apply to us because we are not a signatory".

The Review will only prove to be a successful exercise if it is followed up by extensive promotion of and education about the TCP Code, across the industry as a whole.

Genuine Commitment to the TCP Code

Although the TCP Code is an 'industry' code, there is some evidence that the industry has not taken full ownership of the TCP Code. This observation is supported by the fact that the TCP Code still has only one signatory after having existed for more than two years, and the fact that service providers will often not respond to or acknowledge the TCP Code issues that the TIO raises during its consideration of complaints.

It is the TIO's view that the industry as a whole needs to make a genuine commitment to the TCP Code. This requires more than just becoming a signatory to the TCP Code – the specific obligations of the TCP Code need to be incorporated into each provider's policies, procedures and processes.

Cohesiveness of TCP Code

The TIO notes from the Issues Paper for the Review that the different chapters of the TCP Code will be separated and worked on by different Working Committees.

While this will allow for a detailed consideration of each area, there is also a clear need to ensure the end-to-end consumer experience is represented within the TCP Code. The Steering Group will need to ensure that the chapters of the TCP Code form a cohesive whole when finalised.

Accessibility of the TCP Code

The TCP Code contains complex language and a complicated structure in a number of its provisions, and for this reason, is not always easily comprehensible to either consumers or members of the TIO

Scheme. There are a number of general structural matters we think should be considered throughout the Review:

- the use of plain English, short sentences and simpler structure throughout the TCP Code would make the document far more comprehensible to consumers. It would also make the Code more simple for service providers to apply
- it may be useful for the language of the TCP Code to reflect ‘what the customer has the right to expect’ as opposed to ‘this is what the industry should do’
- it may assist service providers if practical examples of good practices accompany key protections in the TCP Code
- the TCP Code provisions need to be sufficiently flexible to accommodate new and innovative technologies as they develop in coming years.

Measuring the Success of the TCP Code

The TIO notes from the Issues Paper that the success of the Review is expected to be measurable (at least in part) by a significant reduction in complaints made to the TIO.

The TIO hopes that a genuine reduction in our complaint numbers due to increased customer service and improved complaint handling, will be one result of a new and improved TCP Code. However, the TIO does not believe that its complaint data should be used as the only yard stick for measuring the TCP Code’s achievements.

This is because, in addition to increased/decreased levels of consumer satisfaction with the industry, TIO complaint data can be affected by a number of factors, including:

- the level of community awareness about the existence of the TIO at any particular time
- the indeterminable number of consumers who choose to complain ‘with their feet’ and find another service provider instead of making a formal complaint
- the levels of ‘complaint fatigue’ amongst consumers, meaning that they effectively give up on their complaint out of frustration and a lack of confidence that it can be effectively resolved
- the disincentives that some providers may put in place to discourage their customers from seeking the TIO’s assistance (we note here anecdotal accounts to the TIO by consumers who have been told by their service provider that they need to find another provider because their complaint to the TIO has rendered their patronage commercially unviable)
- the amount of advertising/promotional activity undertaken by a provider at any one time
- the effort a provider puts into resolving complaints at first contact so as to prevent escalation
- the efforts a provider makes in promoting its own complaints process, or advising consumers about the TIO for unresolved matters.

While TIO complaint data does provide broad trend information about complaints made to the TIO, there are other, more sophisticated approaches to determine whether consumers are appropriately protected in their dealings with providers. These include:

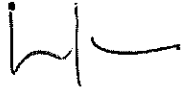
- the levels of consumer satisfaction and confidence with their service provider
- the satisfaction of consumers who have made complaints directly to service providers, about how their complaints have been handled
- the level of implementation of the TCP Code provisions by the industry.

Conclusion

We look forward to working closely with the Steering Group and the respective Working Committees on the Review. We reiterate our offer to provide detailed complaint and code data, case examples and further views at any stage of the Review.

Please contact Shobini Mahendra, Manager Policy, Research & Quality Assurance, on 03 8600 8700 if you have any questions about this submission or when seeking comments in the next stages of the Review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Cohen', with a vertical line through the middle of the name.

Simon Cohen
Ombudsman

cc
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