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DE [REDACTED] ON

by [REDACTED]

An adjudicator appointed by [REDACTED]
under the [REDACTED] Adjudication Scheme.

Decision date: [REDACTED]

Adjudication Reference: [REDACTED]

Between [REDACTED]

- The claim is made by [REDACTED] against a telecommunication and internet services company, [REDACTED]
 - The claim made on [REDACTED] is for the company to: provide an apology; to recalculate the customer's bills and refund [REDACTED]; and pay compensation of [REDACTED]
 - The position of the company is explained in its [REDACTED] defence, which is disputed by the customer in his further comments of [REDACTED]
 - The customer's claim is that the company overcharged him, and that he has received a poor level of service from the company in responding to his complaints.
 - The company denies liability.
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Decision

1. The claim succeeds in part.
2. I direct that the company sends a written apology and pays the customer the sum of [REDACTED].

Main issues

3. I consider that the main issues in this adjudication are:
 - a. Whether the company failed in its duty of care or breached a term of the contract.

Customer's address for correspondence: [REDACTED]

Company's address for correspondence: [REDACTED]
[REDACTED]

- b. Whether the reasons given by the customer are sufficient to justify the compensation requested.

Background information

4. In order to succeed in a claim against the company the customer must prove on a balance of probabilities that the company has broken some term express or implied of the agreement which existed between them, or failed in the duty of care which the company owed to the customer and that as a result of this breach the customer has suffered loss. (A duty of care is a responsibility or a legal obligation of the company to avoid acts or omissions which can be reasonably foreseen to be likely to cause harm to others). If no such breach or loss is proved the company will not be liable to pay compensation however disappointed or upset the customer is.
5. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

6. The customer says that when his contract expired on 26 August 2011, he requested from the company a switch to a pay-as-you-go contract with no commitment. He was offered two options, and chose a rolling SIM only monthly contract for £15.31, which among other things, gave unlimited calls to landline numbers starting 01, 02 and 03, plus unlimited Blackberry Email and Blackberry Messenger services. However, he subsequently discovered that he had been charged for calls to 01, 02 and 03 numbers between October 2011 and June 2012. He did not discover this until May 2012, when he phoned the company to complain. The company said that it would recalculate his bills and it would also add the unlimited landline call booster to his contract from June 2012. Since he had not yet received the expected refund, he officially complained to the company on 21 November 2013. The company replied on 5 December 2013 to say that there was no evidence that an unlimited booster had been added to his agreement in 2011, and therefore the bills were accurate. The customer emailed the company again on several occasions, without reply, until he wrote a letter on 8 February 2014. The company replied on 20 February 2014 to say that the only free landline calls he had received were the ones included in his monthly allowance of 600 minutes. Also, since the customer was now out of contract, loyalty rewards, such as the free Blackberry booster, were chargeable. The customer says he has been unlawfully charged for landline calls made between October 2011

and June 2012, and for Blackberry services from August 2012 to date. He has calculated that he should be refunded £552.00 of monies paid, plus £150.00 in compensation.

7. The company says that the customer first opened an account with it on 28 February 2010. On 28 June 2011 he phoned the company to say that he wanted to close his account, and enquired about a cheaper price plan. On 24 August 2011, the customer entered into an upgrade agreement, and he was sent a 12 month contract renewal letter, together with terms and conditions, and a Distance Selling Regulations letter. There are no records indicating that the customer was offered a rolling one month contract for life. The agreement that the customer chose, and which started on 24 August 2011, included 600 minutes to UK mobile networks and landline numbers beginning with 01, 02 and 03. The company has supplied a copy of the customer's bill dated 27 August 2011, which shows these changes in the price plan. Furthermore, there are no records indicating that the Blackberry Booster was free – the bills enclosed with the defence show this has always been charged at £4.25 (ex VAT) or £5.10 (inc VAT). The copy bills show that the customer has incurred out of allowance charges by exceeding the 600 minute allowance, and therefore that these charges were correctly billed. The customer was issued with monthly bills, and since they make clear that no unlimited landline booster had been applied from the beginning of his agreement on 24 August 2011, he could have raised this with the company earlier. However, there is no record that he did so until May 2012.
8. The customer provides a number of further comments on the company's defence. In particular, he draws attention to the fact that the monthly bills show no landline calls whatsoever between 25 August and 24 November 2011 – that is exactly the same as the period from 27 June 2012 to date, when the unlimited landline booster was added. That is in stark contrast to the period between those two sets of dates, which show significant numbers of landline calls. He would have raised the issue earlier than May 2012, but before then, he had stopped receiving text messages telling him how much his bills were. Furthermore, he did not consider he was in dispute at that stage, because he had been told not to worry, as his bills were being recalculated and the monies would be refunded. The customer says that according to the company's terms and conditions, he should have received written notice when the company started charging him extra for the Blackberry booster. The customer has also invited the Adjudicator to order the company to disclose all unmonitored calls between 28 June 2011 and 24 November 2011. The customer has provided further evidence to support his claim for compensation.

Adjudicator's findings and reasons

9. I find that:

- a. Concerning the calls to landline numbers, the bill statements enclosed with the company's defence indicated no recorded landline calls between 25 August and 24 November 2011. Entry 28 of the customer's account notes spreadsheet shows that once the customer had been provided with the unlimited landline booster in June 2012, landline calls would no longer be recorded on the monthly bills. That is clear from the bill statements from June 2012 onwards. Since the period of 25 November 2011 and 7 June 2012, shows calls to landline numbers recorded on most days, I find that the effects of an unlimited landline booster had been applied to the customer's account from 25 August 2011 to 24 November 2011. I accept that the bills in question do not state that the unlimited landline booster was part of the account, but I find that it must have been in operation at that time. This is further evidenced by the screenshots that the customer has supplied. In particular, he provides evidence of calls that he made to landline numbers in October 2011, that do not appear on the bills, as well as screen shots of his handset on 27 August 2011 stating "unlimited landline calls". It may have been an error to include that particular booster, but I am inclined to accept what the customer has stated, in that he was expecting it as part of the package to which he had agreed. The company says it would have sent the customer a copy of the contract that would have shown that the unlimited landline booster was not part of the deal. However, the customer has no recollection of having received it, and I find that had he done so, he would have questioned it at that time.
- b. Concerning the monitoring of the account, I agree with the company, that it was the customer's responsibility to monitor his account. Even if he was no longer receiving texts telling him how much his bills were, he should have noted that the sums being taken from his bank account by direct debit, were higher than he might have expected. Had he been monitoring his account, he could have raised the matter earlier than May 2012. It would have followed, therefore that the unlimited landline booster would probably have been added, as a gesture of goodwill, as it had in June 2012. He could therefore have mitigated the loss caused by the out of allowance charges.
- c. Concerning the Blackberry booster, those charges would also have been apparent, had the customer been monitoring his bill statements. The first statement of 27 August 2011 clearly shows a charge of £4.25 (plus VAT) for the Blackberry booster. That charge remains constant in all the bills, up to the last copy enclosed, dated 27 August 2012. However, for that 12 month period, that £4.25 charge was offset by a loyalty discount of £4.26. Consequently, the customer would have been unaware of the charge. He only became aware that he was being charged, when, after 12 months, the loyalty bonus was removed. I disagree therefore, that the company should have provided written notice that it would begin charging for the Blackberry booster, since it had been charging him for it all the time. Since the customer said that he had signed up to an agreement costing

him £15.31 per month, and the basic monthly agreement was £15.31, I do not consider that he has been overcharged for Blackberry services.

- d. Concerning the customer's request that I order the company to disclose all unmonitored calls between 28 June 2011 and 24 November 2011, I remind the parties that it is not within my remit to seek out evidence to bolster the case of either party. My role requires that I act impartially and independently, making a decision on the evidence before me. I acknowledge that the customer asks that I obtain details of all unmonitored calls. However, I note that the customer has not provided these; nor, is there evidence that he has requested these from the company. In the circumstances, I find that it would not be appropriate for me to request details of unmonitored calls from the company at this stage in the adjudication process.
- e. Concerning the customer's request [REDACTED]
[REDACTED] If the customer is arguing that he has been overcharged because the unlimited landline booster was not applied to his account, that would only affect the period from 25 November 2011 to 7 June 2012, when calls to landlines are recorded on the bill statements. Over that period, there are recorded charges outside the price plan of: [REDACTED] (December 2011); [REDACTED] (January 2012); [REDACTED] (February 2012); [REDACTED] (March 2012); [REDACTED] (April 2012); [REDACTED] (May 2012; and [REDACTED] (June 2012); making a total of [REDACTED]. I do not consider that the customer has been overcharged for the Blackberry booster.
- f. Concerning the company's duty of care, I find that the company was slow in responding to the customer's email complaints after 5 December 2013; not replying until 20 February 2014. Also, when the customer queried his bill in May 2012, the company said it would check to see if the customer was eligible for a refund, and then requested a recalculation. However, the company failed to get back to the customer. Nevertheless, it did add the unlimited landline booster to his account on 8 June 2012.
- g. Concerning the request for compensation, in addition to the [REDACTED] requested in his claim, the customer says he has also spent a significant number of hours putting together his further comments. Whether all this time and effort was necessary is unclear. However, it is clear that it was necessary for him to sift through all the evidence that the company provided with its defence, and using other evidence in support of his claim. He says this has taken him 40 hours altogether. Whether or not that is the case, I accept that he has been seriously inconvenienced by this issue. In the circumstances, I consider an appropriate compensation payment, in respect of the inconvenience incurred is [REDACTED].

- h. In the light of my observations above, the customer has supplied sufficient evidence to show when he took out the £15.31 per month contract, it was with the understanding that he would be receiving unlimited landline calls as part of the package. Since it appears that the unlimited landline booster was first added to his account and then removed, and that it was not added back as a gesture of goodwill until almost 8 months had elapsed, the customer incurred out of hours charges over that period amounting to [REDACTED] (plus VAT). I find though that the customer should have been monitoring his account and monthly statements. Had he done so, this would have been spotted earlier, and the resolution that was reached in June 2012 could have been reached in January or February 2012. It is clear from the monthly statements that the majority of the out of allowances charges occurred in the bill statements of December 2011 and January 2012. Therefore, even if the issue had been rectified by January or February 2012, the customer would still have incurred overcharges amounting to some £[REDACTED] plus VAT, or [REDACTED] including VAT. I do not consider that the customer has been overcharged for Blackberry services. Overall, therefore, I consider that the company should pay the customer [REDACTED] in respect of overpayments made, plus £250.00 compensation, making a total of £[REDACTED]

Conclusion

10. My conclusion on the main issues is that:

- a. The company has failed in its duty of care to the customer.
- b. The reasons given by the customer are sufficient to justify a refund of £180.00 plus [REDACTED] in compensation.

11. Therefore, my decision is for the company to send a written apology to the customer and pay the customer the sum of [REDACTED]


Adjudicator