

- ii. A Defence dated 1 August 2008 by the Respondents.

The Dispute

5. The complaint of the Claimant concerns a cashback deal which was not honoured and a refusal by the Respondents to release her from her contract. She encloses a Witness Statement and a copy of a standardised document entitled, 'Before the Adjudicator (CISAS)'.
6. In the Application the Claimant seeks an apology, an explanation, action to, 'Cancel the disproportionately high sum in compensation for early termination of contract, remove default payment information shared with credit reference agencies', and pay compensation of £1,099.00.
7. The Respondents make no admission as to liability.

Reasons for Decision

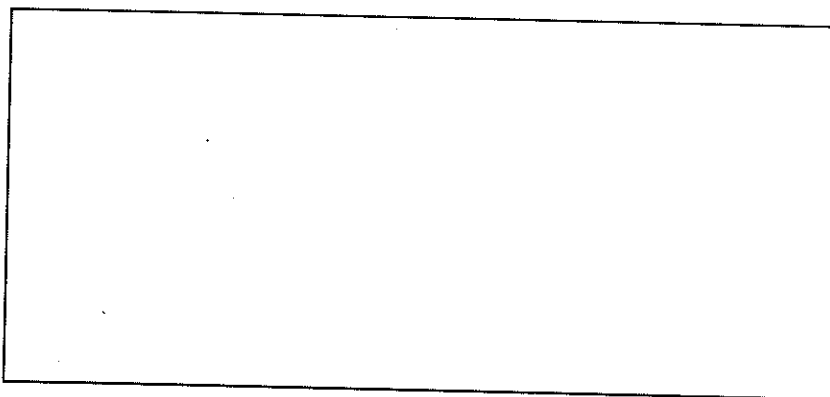
8. The reasons upon which this Decision is based are set out and annexed to the Decision and form part of the Decision.

Decision

9. **I NOW** having considered the submissions of the parties and the documents provided to me **HEREBY DECIDE AND DIRECT** that:
 - i. The Claimant has failed to prove her claim and it is dismissed.

Dated 16 August 2008

at CISAS, 24 Angel Gate, City Road, London, EC1V 2PT



IN THE MATTER OF AN ADJUDICATION
UNDER THE RULES OF
THE COMMUNICATIONS AND INTERNET SERVICES ADJUDICATION SCHEME

BETWEEN:

[REDACTED]

Claimant

and

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Respondents

REASONS

1. These reasons are given with and form part of this Decision.

Generally

2. In order to succeed in a claim against the Respondents the Claimant must prove on a balance of probabilities that the Respondents have broken some term express or implied of the contract which existed between them, or failed in the duty of care which they owed to the Claimant, and that as a result of this breach the Claimant has suffered loss. If no such breach or loss is proved the Respondents will not be liable to pay compensation however disappointed or upset the Claimant is.

The Contract

3. [REDACTED] entered into an agreement with Orange Personal Communications Services Ltd for telecommunication services. She has set out her claim fully on the, 'Application to Use the Communications and Internet Services Adjudication Scheme', dated 11 June 2008. Orange Personal Communications Services Ltd deal with the allegations in their Defence dated 1 August 2008.

The Complaint

4. The complaint of [REDACTED] concerns a cashback deal which was not honoured and a refusal by Orange Personal Communications Services Ltd to release her from her

contract. She encloses a Witness Statement and a copy of a standardised document entitled, 'Before the Adjudicator (CISAS)'.

Defence

5. Orange Personal Communications Services Ltd state in their Defence that:

- i. They believe that the application of [] involves arguments relating to complex points of law, as such the dispute falls outside the scope of the scheme pursuant to CISAS rule 2(j) and no defence to the claim should be required. CISAS administration disagreed and directed Orange Personal Communications Services Ltd to proceed. As members of staff employed by Orange Personal Communications Services Ltd to reply to CISAS claims have no legal training, they have not addressed the legal arguments of []
[] They object to CISAS ruling on the document of [] entitled 'Before the Adjudicator (CISAS)'
- ii. They entered into contract with [] on 20 April 2007 for the supply of network services to two mobile phones.
- iii. Details are provided of the terms and conditions of the contract. They deny that [] would not have received their terms and conditions. Details of how they were communicated to her are given.
- iv. Orange Personal Communications Services Ltd deny that it was a term of their agreement that [] would receive any refund in the form of cashback. The cashback contract was entered into separately with the retailer, Mobile Connections, to the agreement for network services. Mobile Connections were not acting on behalf of Orange Personal Communications Services Ltd in connection with the cashback offer. Any liability for cashback rests with Mobile Connections not with Orange Personal Communications Services Ltd. Details are provided of how the cashback might have operated until Mobile Connections entered administration on 17 September 2007.
- v. [] has not substantiated her claim for compensation. Orange Personal Communications Services Ltd refers to paragraph 18 of the contract regarding sums claimed by [].

Findings

6. The views of Orange Personal Communications Services Ltd on CISAS administration is a matter which is outside this Decision.
7. [] has provided a copy of the agreement that she originally took out with Mobile Connections. It is clear from this document that Mobile Connections were responsible for cashback. [] has not established any link between Mobile Connections and Orange Personal Communications Services Ltd or provided any documentation that Orange Personal Communications Services Ltd were liable for any cashback arrangement. In the absence of any such proof I accept the submissions of Orange Personal Communications Services Ltd and I find there was in existence two quite separate and distinct contracts being one for network services with Orange Personal Communications Services Ltd and one with Mobile Connections for cashback.
8. []ms accepts that she used the services of Orange Personal Communications Services Ltd. I find that [] was bound by the terms of her contract with Orange Personal Communications Services Ltd and that they were not in breach of contract nor have they failed in their duty of care to [].
9. The problem and I have great sympathy with [] is that she along with many other is left having signed up to an expensive minimum term contract.
10. I find nothing in the standardised document of [] giving legal argument that changes the basic fact that there were separate contracts for network services and a cashback agreement. The terms of the Orange Personal Communications Services Ltd are standardised terms generally accepted throughout the industry so cannot be termed unfair. It is open only to speculation and supposition as to the extent to which Orange Personal Communications Services Ltd were aware of the cashback deal and what action they took or did not take in respect of minimising any loss to their customers or that retailers acted fairly and reasonably. [] has not been able to document any such link between Orange Personal Communications Services Ltd and Mobile Connections.
11. Therefore, I find the claim [] fails.