

Mr. Gus Hussain

xxxxx

Thursday 21 August 2008

CISAS

Dear cccccc

RE: ADJUDICATION REFERENCE: 21208xx9

ADJUDICATION REFERENCE: 21208xxx4

ADJUDICATION REFERENCE: 21208xxx1

### **Formal Complaint against Neutral Person**

I am aware that it is unusual that a complaint against a neutral person will be upheld. The reason for this maybe the excellent training they receive and the fact they have no fear in making a decision.

Amongst the claims I have assisted into Adjudication that have failed I have not found a good reason to issue a complaint. In fact I avoid this as I am aware of the process and feel that adequate measures are in place to prevent any errors from doing any harm. On this occasion I feel that the Adjudicator may have significantly compromised her integrity and impartiality.

The Claimants with whom I am in complete agreement expect that the Cisas rules to have been applied in the Adjudication proceedings and a decision to be fair, based on the evidence and information of the claim and defence before the Adjudicator. This we believe did not happen.

Claimant A (ADJUDICATION REFERENCE: 21208xxxx ) had provided me with a further witness statement and intended to respond to defence by the provided date of 20 August 2008 from Cisas Administration complying with the rules. The Decision in her case was made on 16 August 2008. [Adjudicators are not allowing for the Claimant to file response to Defence.](#)

All cases:

The Adjudicators finding at point 10 state:

*The terms of the Orange Personal Communications Services Ltd are standardised terms generally accepted throughout the industry so cannot be termed unfair.*

The point was never submitted by the Respondent in any Defence I am aware of. Had it been raised by the Respondent the Claimant would have had the opportunity to respond to it. Ofcom has numerous findings of unfair standard terms that have been accepted by the industry for years. The Court of Appeal has also a finding of unfair terms in non-negotiated standard contracts which had been accepted by the industry (the suppliers). It is therefore unfair and unreasonable that the neutral person should assist one party by introducing a point of Defence not submitted or relied upon by the Respondent. It is further unfair to state that the terms being accepted by the suppliers of a industry cannot be termed unfair. The Adjudicator is aware that the terms in dispute are those that had not been negotiated and therefore the Claimant is in a weaker position. It is further unfair non of the related evidence provided uniquely for [Claimant A](#) by myself, and others by myself, is not considered at all in what the Adjudicator assumed standardised document.

It is plain from Cisas rules, Adjudicators when possible should uphold the law. The decision of the High Court, submitted in the claim, of M & J Polymers Ltd and Imerys Minerals Ltd, provided good assistance to the Adjudicator in upholding this rule. This is the most updated ruling of the High Court and held that as a matter of principle the rules against penalties could apply to a "take or pay" clause. The Adjudicators finding are contrary to this principle in law. The Respondent in previous claims submitted that the principle held by the court is that rules against penalties did not apply to the contracts take it or leave it terms. At the time the respondent did not state it was a complex point of law neither did the Adjudicator find that the issues raised complex points of law. I believe that the Respondent relied on a ill-founded statement in his defence and I have therefore submitted the most recent Judgement. It is further unfair to state that the terms being accepted by the suppliers of a industry cannot be termed unfair for the reason that they have always been accepted. It is unfair that the [court judgement](#) is not considered and dismissed for no apparent reason.

The part headed 'The effect on the Claimant' was discussed in detail between [Claimant A](#) and myself, and others and myself. It is unfair that because Mobile Connections customers had similar experiences that this should be labelled as a standardised document and dismissed. It is not the fault of [Claimant A](#) that she like many others felt that the Respondent was a party to the agreement.

The test in civil case or in adjudication is of probabilities. I have opinions of other impartial non related experienced people who believe the case is in favour of the claimant in excess of 55%. I believe a true neutral person would come to the same conclusion.

The test set by the Adjudicator in the above cases was of, beyond reasonable doubt.

We would kindly request a independent investigation into the allegations raised. Due to the seriousness of the allegations we invite Cisas to withhold appointing [xxxxxxxxxxxxxxxxxxxxxxxxxxxx](#) as a Adjudicator until the investigation has reached a conclusion.

Representative for the Claimants