

5.20 AUSTEL then continued to work with Telecom and the *original COT Cases* to facilitate agreement -

- on the terms upon which assessment of Mrs Garms' and Mrs Gillan's claims might take place
- the person who might be appointed to make the assessment.

5.21 Extensive negotiation took place during which Mrs Gillan reached an initial '*settlement*' with Telecom in May 1993.

5.22 This left only Mrs Garms in a position of not having reached a settlement. Telecom had agreed that it would be bound by the independent assessor's findings of fact but it would insist upon the right to seek court intervention on any matter of law of concern to it. AUSTEL recommended that the draft terms of reference which had been produced at this time be accepted but Mrs Garms, having regard to independent legal advice, was not prepared to agree. Mrs Garms then commenced to negotiate directly with Telecom and an offer was made to her with a two week period for acceptance.

5.23 At this time Telecom found in its possession certain monitoring data which Mrs Garms had long sought to help in estimating the incidence of fault and the consequent financial impact. While the material was made available to her it was at a very late stage in the claim/negotiation period and AUSTEL wrote to Telecom stating that it would be reasonable to give Mrs Garms the opportunity to revise her claim. Before Telecom responded, AUSTEL was informed that a "*settlement*" had been reached between Telecom and Mrs Garms. This was in June 1993.

THE INITIAL SETTLEMENTS

5.24 As observed above, four of the *original COT Cases* pursuing compensation for inadequate service engaged in a process of negotiation with Telecom with AUSTEL acting as an *honest broker*.

Mr Smith, Cape Bridgewater Holiday Camp

5.25 Mr Smith was the first of the *original COT Cases* to reach an initial '*settlement*' with Telecom. It is understood that he -

- identified the type of faults which his business had experienced

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- indicated the incidence of the faults by way of -
 - statements by individuals who had sought unsuccessfully to contact him
 - demonstrating a reduced effectiveness of advertising he had undertaken.

Telecom had a knowledge of at least some of the faults impacting on Mr Smith's business as well as having access to relevant fault records and monitoring data. It was also aware of the extent of problems and difficulties at its local exchange servicing his business.

5.26 At the end of the process (December 1992) a *settlement* figure was agreed. It was a condition of the settlement that the amount paid by way of settlement was to remain confidential - a condition that applies in the other cases. Although the details of the settlement are confidential, Mr Smith has informed AUSTEL that his major concern and stipulated condition at the time of the '*settlement*' was that his service should operate, and continue to operate, at normal network standards.

Ms Hawkins, the Society Restaurant

5.27 In the case of Ms Hawkins, '*settlement*' was reached in January 1993. One of the conditions is understood to be that the business was to receive its telephone service via a modern digital exchange. The business has since been sold.

Mrs Garms and Mrs Gillan

5.28 The initial '*settlement*' process involving Mrs Gillan and Mrs Garms is outlined above. It is relevant to mention here that as a result of Telecom's stance that settlement would only be made once the service was being supplied at normal network standards, both Mrs Gillan and Mrs Garms informed AUSTEL that they ceased reporting faults in order to hasten the settlement process.

Mr Schorer, Golden Messenger

5.29 The fifth of the *original COT Cases*, Mr Schorer, had particular concerns about Telecom's limited liability and the impact that the limitation was likely to have on any claim he might make for compensation arising from an inadequate telephone service. Instead of seeking compensation in those terms, he pursued a