

The complaint

Mr G complains about a mobile telephone device he acquired using a fixed sum loan from Telefonica UK Limited trading as O2.

What happened

In May 2023, Mr G took out a fixed sum loan with Telefonica to pay for a brand new mobile telephone device. Shortly afterwards, Mr G says he noticed problems with network coverage and the amount of data available to him. So, Mr G took the device to one of Telefonica's retail stores to try and get it repaired or replaced.

Telefonica swapped Mr G's Subscriber Identity Module (SIM) card, but refused to replace the device. They said the device showed signs of damage, so Mr G couldn't return it. Telefonica also gave Mr G a quote to replace the screen.

A few days later Mr G took the device to be looked at by the manufacturer. They agreed the device had a fault and gave Mr G a diagnostic report, for him to show to Telefonica. However, Telefonica didn't agree to take any further action. So, Mr G complained and said he had a right to return the device.

In their final response to Mr G's complaint, Telefonica said they couldn't allow Mr G to return a damaged device. They said Mr G remained responsible for the repayments due under the fixed sum loan agreement. Mr G didn't accept Telefonica's response and brought his complaint to our service.

One of our investigators looked into Mr G's complaint and found that Telefonica hadn't treated Mr G fairly. She was satisfied the manufacturer had confirmed a fault with the device and the damage wasn't significant, or related to the fault. The investigator also found that Mr G hadn't used the device and had instead bought a replacement.

To put things right, the investigator asked Telefonica to take the device back, allow Mr G to exit the agreement and remove any adverse information from Mr G's credit file. She also asked Telefonica to refund all the repayments Mr G had made under the agreement and to pay him £100 for the distress and inconvenience he had experienced.

Telefonica agreed to some of the investigator's findings. But, they said they would only refund some of the repayments Mr G had made, because they could see the device was being used.

The investigator wasn't persuaded by Telefonica's opinion and didn't change her findings. So, Mr G's complaint has now been referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr G paid for the mobile telephone device using a fixed sum loan agreement. This is a

regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of contracts.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. By satisfactory quality, the CRA says this is what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within that period, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Mr G to show that the goods were not of satisfactory quality.

Mr G was provided with a brand new mobile telephone device, so I think it was reasonable for him to expect it to be free from faults for a considerable period of time. However, Mr G says he noticed a fault with the device when he first got it. So, on the face of it, this would place the onus on Telefonica to arrange an inspection of the device at the very least.

I can see that a few days after taking out the agreement, Mr G was told by Telefonica that although they could see a fault and possibly a concern with coverage, they were not prepared to repair or replace the device as it was damaged. Other than Telefonica's records of Mr G's visit to the store, there aren't any other inspection notes.

The evidence Mr G has provided is made up of images of the device and from the manufacturer's diagnostic report. The report was carried out less than two weeks after Mr G got the device. It says:

"Verified Cellular issues in store, intense inspection performed and concluded Cellular RF Baseband fails in MRI.

Cosmetic Condition: Small amounts of marking (scratches to display) these would be considered Cosmetic and would not affect Warranty level of Service.

Proposed Resolution: Due to age of product have recommended customer return to point of purchase for a Sale based solution."

Having thought carefully about all the evidence, I think the device had a fault from the point of sale. But, Telefonica have intimated that the device was damaged, to such an extent where they cannot take it back and replace it.

I've looked at images of the device and the manufacturer's report. Having done so, I'm more persuaded by what Mr G says to support his argument. On balance, I think the damage was minimal and didn't cause the fault that the manufacturer had found with the device.

I've found that Mr G could expect the device to be fault free given its age, price and description. In light of my findings with the fault at the point of sale, I think this means a reasonable person would not say the device was of satisfactory quality. So, I think Telefonica breached their contract with Mr G.

Where there's been a breach of contract, the CRA says that a customer has the right to ask for a price reduction or to reject the goods and claim a refund, if a repair or replacement doesn't work. I've concluded that Telefonica breached their contract with Mr G and that a repair or replacement wasn't offered. It then follows that Mr G is now entitled to reject the goods and claim a refund.

So, I've gone on to consider a fair way to settle Mr G's complaint

Because I think Mr G is able to reject the device, I think Telefonica should allow Mr G to exit the fixed sum loan agreement with nothing further for him to pay. I also think Telefonica should arrange for Mr G to return the device at no extra cost to him.

We have been provided with evidence from Mr G, which shows he took out an agreement for a different device, which he's diverted calls to and from, using the service provided by Telefonica. Taking this into consideration, I'm persuaded that Mr G has demonstrated where he hasn't used the device he acquired under the agreement with Telefonica. So, I think it's fair and reasonable for Telefonica to refund all the repayments made by Mr G towards the fixed sum loan agreement.

Mr G has been without the use of the funds from the repayments he has made towards the fixed sum loan agreement. So, I also think it's fair for Telefonica to add interest at 8% a year simple to the refund of repayments, from the date they were paid, to the date of settlement of this complaint.

In light of my conclusions about the ending of the agreement and the refund of repayments, I don't think it would be fair for Mr G to suffer from any adverse information Telefonica may have recorded with credit reference agencies. So, I think Telefonica should remove any adverse information they may have passed on to those agencies, about the fixed sum loan agreement in Mr G's name.

After Mr G first took the device back to Telefonica, he went to the trouble of taking it to the manufacturer for a diagnostic report. I've also found that Mr G hasn't used the device and needed to take out an agreement with a different provider. This means Mr G needed to maintain payments to both the agreement with Telefonica and his subsequent alternative agreement.

I think this means Mr G has experienced distress and inconvenience due to the way Telefonica has treated him. So, I think it's fair for Telefonica to make a payment to Mr G to reflect that. In all the circumstances, I think Telefonica should pay Mr G £100 for the distress and inconvenience he's experienced.

Putting things right

For the reasons I've explained, Telefonica UK Limited trading as O2 should:

1. Allow Mr G to exit the fixed sum loan agreement with nothing further to pay;
2. Allow and arrange for Mr G to return the device at no extra cost to him;
3. Refund all the repayments Mr G has made under the fixed sum loan agreement from the start of the fixed sum loan agreement, to the date of settlement of this complaint;
4. Add interest at a rate of 8% a year simple to part three of this settlement, from the dates the repayments were made, to the date of settlement of this complaint;
5. Remove any adverse information in relation to the fixed sum loan agreement from Mr G's records with credit reference agencies; and
6. Pay Mr G £100 for the distress and inconvenience caused.

Telefonica must pay these amounts within 28 days of the date on which we tell them Mr G

accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Telefonica deducts tax from any interest they pay to Mr G, they should provide Mr G with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Telefonica UK Limited trading as O2 to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 July 2024.

Sam Wedderburn
Ombudsman