

The complaint

Mr W has complained about how Telefonica UK Limited trading as O2 dealt with him in relation to fixed sum loan agreements he'd taken out to buy devices.

What happened

Mr W bought two devices using fixed sum loan agreements with Telefonica in August 2022. Telefonica tells us Mr W contacted it in March and May 2023 because he was having issues with Telefonica's associated network. I understand Mr W complained he'd been having issues with signal for the past few months. Telefonica said it noted a nearby mast wasn't working as expected so it asked a team to investigate. But Mr W said this didn't resolve things. I understand around July 2023 Mr W contacted Telefonica asking to cancel his contracts.

Telefonica's notes indicate Mr W also complained one of the devices (a phone) wasn't working properly. Mr W said he'd tried to get help for this with Telefonica, but it didn't resolve things. Mr W said Telefonica also sent him replacement sim cards, but this didn't resolve things either. He said it was after several calls to Telefonica and various unsuccessful attempts to sort things out that led to him wanting to cancel the contract. Mr W also said Telefonica didn't offer to repair the phone, it told him to send it to the manufacturer. But he said this would have taken several months so he didn't want to.

Telefonica's notes say Mr W contacted it in September 2023 about an outstanding bill, but he said the contract had been cancelled and he didn't have the device anymore. I understand he'd sold it, and he didn't want to have to repay the associated fixed sum loan agreement. The two agreements were passed to a debt recovery company. Mr W complained and referred his complaint to the Financial Ombudsman.

Telefonica responded to say it tried to help Mr W with the network issues. It said two replacement sims were sent out in June 2023, but neither were activated. It said a replacement sim from one of its stores was activated on 19 July 2023, but it didn't receive contact about whether this had helped. But I note Mr W contacted it a couple of days later to disconnect the devices.

Telefonica said when calling to discuss his balances in September 2023 it offered to send the phone away for repair, but Mr W explained he'd sold the phone. Telefonica said there's no record of Mr W offering to use the funds from the sale of the phone to reduce the agreement balance. And it said there was no mention of the other device and why payments weren't made for that. In summary, Telefonica said there was no evidence to say the problems Mr W faced were solely down to the phone being faulty or to say it refused to repair or replace it. It said Mr W remained liable for the balances.

Our investigator explained she was unable to consider complaints relating to the airtime as this didn't relate to a financial service. She also said there was insufficient evidence there was a fault with the phone Telefonica would be liable for, so she didn't make any recommendations.

Mr W didn't agree. He said he shouldn't have to pay for a faulty device. He said he was told he had every right to cancel the agreement. He said he'd made dozens of calls trying to resolve things.

As things weren't resolved, the complaint has been passed to me to decide.

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 W bought the devices using regulated fixed sum loan agreements, and our service is able to consider complaints relating to these sorts of agreements.

The provision of an airtime agreement doesn't fall under the list of activities that the Financial Ombudsman has the power to investigate. So I don't have the power to consider the complaints about the problems with the network that Mr W has mentioned. Our investigator explained this to Mr W.

I can, however, consider a complaint relating to the fixed sum loan agreements. This is because the regulated activity in question is that of exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.

I note the credit agreement says Mr W had the right to sue Telefonica if he received unsatisfactory goods paid for under the agreement. The agreement also set out Mr W should not dispose of the device before he'd fully repaid the agreement. It said any disposal of the device doesn't affect Mr W's obligation to repay the full amount of credit.

The Consumer Rights Act 2015 (CRA) implies terms into the purchases that the quality of goods is satisfactory. The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

As a starting point, I think it was for Mr W to demonstrate there was a fault with the phone, and that it made the phone of unsatisfactory quality. The problem in this case is that I've not seen enough evidence to determine the phone (or other device) wasn't of satisfactory quality. I understand Mr W has now sold the phone so he's not able to supply further evidence. Even if there was evidence the phone was of unsatisfactory quality, Telefonica would be unable to repair it, replace it or allow Mr W to reject it because he no longer has it. I don't find I can direct it to carry out one of those options.

Moreover, based on the evidence I've seen, I don't think Telefonica told Mr W he could sell the phone to a third party. Mr W said Telefonica told him to send the phone for repair to the manufacturer. I've not seen where it did this. But even if it did, I can't see it told Mr W he wouldn't be liable to pay off the credit agreement if he were to sell the goods. The terms I've set out above that Mr W agreed to explain he should not have disposed of the goods.

All things considered, I'm sorry to hear Mr W had problems with the network. I'm considering whether there are grounds to direct Telefonica to do anything in relation to the fixed sum loan agreements. For the reasons given above, I don't find there's evidence the phone wasn't of satisfactory quality. The phone is no longer available, so I don't have the grounds to direct Telefonica to inspect, repair, replace or allow Mr W to reject it. I've not seen enough to determine there was a problem with the second device either, so I reach the same

conclusions. This ultimately means I'm not going to direct Telefonica to take any action on either of the fixed sum loan agreements.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 May 2024.

Simon Wingfield
Ombudsman