

The complaint

Mr F complains about the balance of a fixed sum loan agreement with Telefonica UK Limited trading as O2, which he says was opened in his name without his authority.

What happened

In May 2019, Mr F took out an agreement with Telefonica to get a mobile telephone device. The device was to be used by his former partner, who I'll call A. The repayments due under the agreement came from a bank account in Mr F's name.

Around a year later, Mr F moved in to live with A. But, after the relationship broke down in February 2021, Mr F moved back to his previous address. Despite this, the repayments for the device continued to be made from Mr F's bank account until June 2021.

At this point, Mr F says A had told him she had arranged to make the repayments herself. Telefonica's records also show the change of bank account details in June 2021. This agreement ran its course and was repaid by the expected end date.

In January 2022, Mr F's online account with Telefonica was used to upgrade the mobile telephone device. Telefonica accepted an application for a fixed sum loan agreement in Mr F's name to pay for the new device. But, Telefonica's notes show the device was sent to A's address and the paperwork sent to an email address in A's name.

The repayments for the fixed sum loan agreement continued until March 2023. Mr F says he then received a notice from Telefonica asking him to repay the balance due. He says this is when he became aware of the fixed sum loan agreement and that A had completed the application without his consent. Telefonica continued to hold Mr F responsible for the arrears, so Mr F made a complaint.

In their final response to Mr F's complaint, Telefonica said that A was able to change payment and contact details on his account. But as it was a civil matter between A and Mr F, Telefonica said there was little else they could do. Mr F didn't accept Telefonica's response and brought his complaint to us.

One of our investigators looked into Mr F's complaint and found that Telefonica had treated Mr F unfairly. He agreed that although Mr F was content for A to have made payments, he didn't give his authority for a fixed sum loan agreement to be started in his name. So, the investigator asked Telefonica to remove any payment liability from Mr F and to remove any details about the agreement from Mr F's credit file.

Mr F broadly agreed with the investigator's findings, although he asked the investigator to consider additional compensation. Telefonica disagreed with those findings and said Mr F allowed A to use his account with them, so he is liable for any upgrade A applied for.

The investigator didn't think it was fair to ask Telefonica to pay compensation, as he thought it was A that had caused the distress and inconvenience. Additionally, the investigator wasn't persuaded by Telefonica's response, so didn't change his conclusions. Because of this,

Mr F's complaint has been passed 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.

Where the evidence is incomplete or inconclusive, I reach my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr F's complaint is that Telefonica have asked him to pay off a debt in relation to a fixed sum loan agreement. Our service is able to consider complaints relating to these sorts of agreements. So, I've gone on to think about the evidence submitted by all the parties.

On the one hand, I can understand Telefonica's position that even if Mr F didn't set up the agreement himself, he ought to have known about it as he allowed A to use a previous handset, taken out with a different agreement in his name. This is because they say Mr F allowed A to operate his account, so he's responsible for any upgrades she applied for.

But on the other hand, Mr F has told us he didn't realise the agreement had been taken out, as he hadn't received any documents relating to it or made any repayments towards the loan. Furthermore, Mr F says it was quite possible for A to have known the personal details needed, to be able to operate the account with Telefonica. He also says it was reasonable for him to think that A had taken responsibility for the payment of the first device and that any link to A would end, when that agreement had finished.

So, I've looked at the evidence both sides have sent us, to decide if it's fair for Telefonica to hold Mr F responsible for the outstanding balance of the agreement. There are a few possibilities that might have given Telefonica a proper basis for pursuing Mr F for the debt owed under the agreement. Namely:

- Mr F started the fixed sum loan agreement himself; or
- A operated the account and applied for the loan on Mr F's behalf, with his actual or apparent authority.

Both Mr F and Telefonica agree that the initial agreement in May 2019 was started with Mr F's authority, so the device could be used by A. But, Mr F says his relationship with A ended in February 2021 and he was content to make the repayments. This was until A told Mr F she would make the repayments herself in June 2021.

What Mr F says here is supported by Telefonica's records of his account with them. I can see from those records that the direct debit details were changed in June 2021, where a different account was used to make repayments. This is consistent with what Mr F has told us where he says he noticed the payments stopped being taken from his bank account.

Additionally, Mr F has told us that he already had another mobile telephone device and that his first contact with Telefonica about the fixed sum loan agreement, was in July 2023 when they wrote to him about the arrears.

Overall, I think Mr F has been consistent with what he's explained to Telefonica and to us during our investigation of his complaint. On balance, I'm persuaded it was reasonable for Mr F to think his involvement with the initial agreement would come to an end as planned. I don't think Mr F had reason to enter the subsequent fixed sum loan agreement, that

Telefonica is holding him responsible for. So, I'm not persuaded Mr F started the fixed sum loan agreement himself.

Telefonica's main argument is that because Mr F had previously allowed A to manage his account, he is responsible for A's actions when she took out further borrowing. I've concluded that Mr F gave his authority for the initial agreement. So, I've thought about whether the circumstances exist in this case, to mean Mr F's authority carried over to allow A to apply for further borrowing.

I've found that on balance, Mr F was reasonable to think that the link between Telefonica, himself and A would end when the initial agreement finished. So, I think this means Mr F did not want to extend that relationship further, by giving his authority for another loan to be opened in his name.

I accept that Mr F may have been aware that A had spoken to Telefonica about the initial agreement and that she may have had access to some of the details needed to operate the account. But, it's not uncommon for partners to know or to be able to guess some of the answers to pass through levels of security. Even if I were to find that Mr F gave A authority to speak to Telefonica about the initial agreement, given what we've concluded about his particular set of circumstances, I don't think it means he gave his authority for A to take out a further loan.

Additionally, Telefonica's records of the application for the fixed sum loan show an email address that does not use any of Mr F's details and a postal address that wasn't his. The email address in particular shows A's full name. The application also asked for details of Mr F's proof of identification and address verification. Neither of these details are completed on the application form, where it seems they were required.

When thinking about all the evidence for this case, I don't think it was reasonable for Telefonica to allow A to apply for borrowing, without informing Mr F in some way. I can see from Telefonica's records that there were several opportunities to question the application. Either from looking at the contact details or requesting identification and address verification. This may have resolved any query about authority from Mr F, that Telefonica may have had.

In all the circumstances of Mr F's case, I'm not persuaded Mr F's authority to operate the account extended to allow A to apply for further borrowing in Mr F's name. I think Mr F has been consistent and credible in what he's told us, so I find it persuasive that he first became aware of the fixed sum loan agreement, when Telefonica wrote to him about the arrears in the summer of 2023.

On balance, I think the evidence most likely shows that A operated the account with Telefonica without Mr F's knowledge. I'm not persuaded the most likely thing to have happened is that Mr F gave his authority, or apparent authority to A, to apply for the fixed sum loan agreement on his behalf.

Having considered everything, I don't think it's fair for Telefonica to hold Mr F responsible for the outstanding debt due under the fixed sum loan agreement. It then follows that I think Telefonica should allow Mr F to exit the agreement with nothing further to pay. Furthermore, I think Telefonica should remove all information connecting Mr F to the account, from the details held about Mr F with credit reference agencies.

I accept that throughout all that has happened, Mr F has been put to some distress and inconvenience. I empathise with what he's told us and I hope things have improved since he raised this complaint. But, I agree with the investigator in that it seems to have been A, not Telefonica who caused this distress. So, I don't think it would be fair to ask Telefonica to

make a payment to Mr A, to reflect any distress and inconvenience he may have experienced.

Putting things right

For these reasons, I require Telefonica UK Limited trading as O2 to:

1. Allow Mr F to exit the fixed sum loan agreement at no additional cost to him; and
2. Remove all information about the fixed sum loan agreement, from the details held with credit reference agencies about Mr F.

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 F to accept or reject my decision before 25 October 2024.

Sam Wedderburn
Ombudsman