

The complaint

Ms T complains about a number of errors she says Telefonica UK Limited ('Telefonica') made in relation to a number of agreements she entered into with it in November 2021, including a fixed sum loan.

What happened

After attending a retail store on 7 November 2021 Ms T entered into a fixed sum loan with Telefonica to fund the purchase of a mobile phone. I understand that she entered into an associated insurance policy to cover the device and also asked to move her existing telephone number from another network provider, to use her new device with Telefonica's mobile network.

It seems that subsequent errors were made whereby duplicate agreements had been set up in Ms T's name. Ms T says she had to visit the same retail store on a number of occasions during November 2021 regarding the products she'd purchased. At this point the erroneous agreements had been identified.

In January 2022 Ms T raised a complaint with Telefonica about payments being collected from her back account in respect of the duplicated agreements. Telefonica accepted that payments had been collected in error as a result of the duplicated agreements. It agreed to cancel the agreement and offered to pay Ms T £50 compensation for what had happened.

On 4 February 2022 Ms T pursued the matter with Telefonica. She said that further payments had been taken from her account. On 15 February Ms T told Telefonica that she had been the victim of a burglary. She asked Telefonica to expedite its investigations into what had happened in light of recent events as well as concerns she had about potentially having been the victim of fraud.

Telefonica wrote to Miss T on 17 February 2022. It agreed it had made errors relating to the agreements which had been incorrectly set up. It said it would refund all of the associated payments which had been taken from Ms T, and offered to pay her £150 compensation for what had happened.

Ms T subsequently told Telefonica that she had lost confidence in the service it had provided. She said that the compensation offered was insufficient, and she wanted Telefonica to end her agreement (as well as others in her family) with Telefonica. At this point Ms T raised the issues she'd experienced with Ofcom and made a Subject Access Request (SAR) to Telefonica.

Telefonica subsequently contacted Miss T by telephone and followed up that conversation with an email dated 25 March 2022. In summary, it agreed to refund Ms T with the payments which had been taken incorrectly and made arrangements for all of her agreements to be ended and for her mobile phone to be returned.

Ms T subsequently received a SAR response from Telefonica. It seems there was some difficulty accessing that information initially, but Ms T had done so by 15 May 2022. At that

point she told Telefonica she believed that the SAR was incomplete.

Ms T referred a complaint about everything that had happened to this service on 7 July 2022. In doing so she mentioned that she was aware that Telefonica has been investigated by the Serious Fraud Office and had been fined by Ofcom for failing to disclose information. She said her complaint was about poor service, poor complaint handling, the financial loss she'd been caused as well as trouble and upset and also about Telefonica's poor practices from a regulatory perspective.

The next day Telefonica issued a follow up letter. It apologised for how matters had been handled. It said that it was satisfied that no fraud had happened, rather, it had simply made a mess of something that ought to have been straightforward. It noted that it had already paid Ms T a total of £265.96 in respect of payments taken under duplicated agreements as well as £60 for costs Ms T said she'd incurred. Telefonica acknowledged that Ms T had asked to be paid £300 compensation and have additional costs covered.

Taking all of that into account, as well as having considered that Ms T had returned the goods under the correct agreement, Telefonica also offered to pay a further £87.40 for payments made under the correct fixed sum loan agreement, as well as £400 for the trouble and upset Ms T had been caused. Telefonica explained that its offer was intended to meet what Ms T had asked it to do to put things right.

Ms T remained unhappy with Telefonica's offer to resolve things, so she asked this service to look into what had happened.

Our investigator agreed that this was, broadly speaking, a complaint this service had the power to consider. They accepted we could determine whether Telefonica had done enough to put things right in respect of errors it made relating to Ms T's fixed sum loan with it. They also said that we could consider whether Telefonica had treated Ms T fairly relating to these matters, taking into account guidance such as the Financial Conduct Authority ('FCA') principles for treating customers fairly.

That being said, our investigator thought there were limits to the extent we comment on Ms T's concerns. For example, they said that any issues relating to Telefonica's activities as a telecommunications provider wasn't for this service to comment on. They also said that Ms T had mentioned the potential of fraudulent activity having taken place, specifically in relation to additional agreements being set up in her name. They said that if Ms T had any concerns about a that then she ought to report those concerns to the police and it wouldn't be appropriate for this service to get involved.

Lastly, with reference to our remit, our investigator said that this service was limited to commenting on Ms T's agreements with Telefonica only – not any others in her family she might have raised issue with.

Our investigator said that it seemed Telefonica had responded to Miss T's SAR in the timeframe it was required to. Whilst they accepted that Telefonica might not have supplied all of the information it could have at the first possible opportunity, it subsequently followed up with more. Our investigator said that they were aware Ms T had referred her concerns to the Information Commissioner's office ('ICO') and that was the appropriate body to consider her concerns, so it wasn't appropriate for this service to consider that matter further.

Overall, our investigator agreed that Telefonica had made errors and handled the situation poorly. They agreed with the steps Telefonica had taken to cover expenses Ms T said she had incurred, refund the costs of payments Ms T had made but ought not to have, as well as compensate her for the trouble and upset caused.

Having considered everything that Ms T had said, in addition to the refunds already made by Telefonica, our investigator asked it to pay Ms T;

- Pay Ms T £87.40 (made up of five payments of £17.48) in respect of payments taken for a fixed sum loan which ought not to have been set up, along with simple interest at 8% per annum.
- Pay Ms T £20 in respect of a deposit paid, along with simple interest at 8% per annum.
- Pay Ms T £400 compensation in respect of distress and inconvenience caused to her.
- Remove any information which had been recorded with credit reference agencies ('CRAs') in relation to the erroneous agreements.

Telefonica agreed but Ms T didn't. She said that our investigator's assessment didn't cover all of the aspects of the complaint she'd raised. Ms T subsequently raised issue about what she considered to be conflicting information in the SAR she'd received, particularly in relation to some of the specifics of the agreements that should and should not have been set up. Ms T asked for an ombudsman's decision, commenting that Telefonica ought to change its practices so that other customers don't have the same experience.

Ms T made a number of subsequent submissions which broadly focused on the additional devices which had been added to her profile with Telefonica. She raised questions as to how and why that had happened, suggesting that she could've been the victim of fraud.

Our investigator made enquiries with Telefonica but said that they didn't think there was sufficient evidence to show that some kind of fraudulent activity had taken place. They explained the various agreements which had been attributed to Ms T, correctly as well as incorrectly. They also said that they'd been told that some of the devices Ms T had identified were added as a result of the retail store having used the profile for administrative/demonstrative purposes. They accepted that might be concerning for Ms T, but noted that no further finance agreements had been attributed to her profile nor had she been sought for repayment of any additional agreements or devices.

Overall, our investigator maintained that a genuine error had been made which resulted in duplicated accounts being set up, but that Telefonica had done enough to put that right.

Ms T sent further submissions about why this service ought to investigate the additional devices she'd found having been added to her profile.

Our investigator explained that this service was set up to investigate complaints quickly, informally and with minimum formality. They said that our role is to investigate the specific issue Ms T raised in relation to her agreements with Telefonica that fall within our jurisdiction. They didn't think that further investigation was necessary.

The case was passed to me to decide what should happen. I issued a provisional decision on the case. In summary, I said;

"Ms T has made a number of very detailed submissions to support her complaint. It's clear she feels very strongly about everything that's happened. I don't intend to mirror that level of detail and there might be points Ms T made that I don't mention. That's because the purpose of my decision is simply to set out what I consider to be a fair and reasonable outcome and in doing so I'll refer to what I consider to be the main points. I can assure Ms T that I've

carefully considered all of her submissions, nonetheless.

As our investigator explained, Ms T's complaint spans a number of issues across a variety of different types of agreements. Our power to investigate the issues Ms T has raised aren't without limit – there are some points that we simply don't have the power to consider, and there are some which wouldn't be appropriate for us to consider. I'll explain why.

This service can only investigate complaints that our rules allow us to. Those rules are set out in the FCA handbook under DISP. A copy of the handbook can be found online. We don't have power to investigate complaints that fall outside our jurisdiction.

Those rules, specifically DISP 2.3.1, cover the complaints we can look at – broadly speaking, we can look into complaints about regulated activities as well as others specified in DISP 2.3.1. Regulated activities are set out in the Financial Services and Markets Act 2000 ('FSMA')

As I understand it, Ms T's complaint relates to three different types of agreements. Fixed sum loans, insurance contracts and unregulated service agreements for the provision of network services (commonly known as 'airtime' agreements). Broadly speaking, we have the power to consider complaints about the provision of as well as administration of fixed sum loans as well as insurance contracts. We don't, however, have the power to consider complaints relating to airtime agreements – they're not covered by our rules.

Our rules also cover situations in which it wouldn't be appropriate for this service to consider. I think our investigator correctly identified those elements – specifically, Ms T's concerns about Telefonica's handling of her SAR as well as any concerns about fraud having occurred. Those issues would be better dealt with by the ICO and perhaps the police and/ or courts, respectively.

As our investigator explained, this service was set up to investigate cases quickly and informally, with minimum formality. Taking that, as well as what I've said above into account, I think that what this service can give a perspective on is whether or not Telefonica correctly set up a fixed sum loan and an insurance policy for Ms T. It seems that all parties agree that it did not, and we have the power to say how things should be put right. We can also say whether Telefonica handled Ms T's subsequent complaint fairly. We cannot, however, investigate Telefonica's wider practices, policies, processes and conduct. We also cannot fine or punish Telefonica – this service does not have a regulatory function. It's generally for this service to determine whether something has gone wrong, and if it has, say how it should be put right.

It seems that everyone agrees – including Telefonica – that things went wrong at the outset. Specifically, it accepts that it incorrectly duplicated the agreements that Ms T entered into which led to Ms T being charged more than she ought to.

It's understandable that Ms T wants to know exactly why this happened. Particularly in light of her concerns about the security of her personal information and unfortunate events such as the burglary she experienced. It's not always possible though, sometimes things go wrong and it's not clear why. When the evidence is incomplete, inconclusive or contradictory I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

I've carefully considered what all parties have said about what happened. And from what I've seen I'm persuaded that the errors happened as a result of Telefonica having attempted a workaround due to what it described as a 'porting issue', which I understand was a system issue relating to the switch of Ms T's mobile phone number. I've not been supplied with

sufficient evidence which persuades me that that the agreements which were incorrectly set up were done so fraudulently in some way.

It's understandable that Ms T is concerned with additional devices having been added to her profile – something I understand she found having received a SAR from Telefonica. I've not seen any evidence to suggest that any regulated loans were associated with those devices, nor that Ms T has been sought for payment in relation to those. So, it seems that these issues relate to Telefonica's actions as a telecommunications provider, and it's not something that this service has the power to make a finding on.

From what's been said I think that both parties agree that Telefonica has already refunded Ms T with the additional costs she was charged as a result of its error – on the fixed sum loan, insurance policy as well as unregulated service agreement. So, I don't require Telefonica to do anymore in respect of that issue.

Telefonica has accepted that it didn't handle Ms T's complaint well. I agree. The issues Ms T raised about the duplicated agreements were straightforward and despite those issues having been identified in November 2021, it seems to have taken several attempts over several months for Telefonica to put right. Telefonica has also accepted that it let Ms T down in the way it handled her complaint – it accepts that it promised to but failed to call Ms T back, make payments/ refunds to her, and that some of its correspondence failed to address the issues she'd raised.

I agree that Ms T ought to be compensated for the trouble and upset she's been caused. Telefonica has offered to pay Ms T £400 compensation. Taking into account everything that's been said about the impact of what's happened, the trouble, upset and worry Ms T was caused, as well as having regard for awards we've made in cases of a similar nature, I think that's a fair amount.

Telefonica allowed Ms T to return the mobile phone it had provided her under her fixed sum loan and agreed to cancel the associated agreements. I wouldn't have necessarily required her to do that – she'd been provided with the goods she'd been required to under the agreement. However, Telefonica accepted that Ms T could end the agreement. It also decided that it should refund Ms T with a further £87.40 in respect of payments she'd made towards that agreement since she no longer had the goods. Our investigator concluded that if Telefonica is to do that, by the same logic it should refund the £20 deposit Ms T paid towards the agreement, and it agreed. I find no reason to conclude that the offer Telefonica has made here is insufficient in terms of putting things right for Ms T.

Lastly, Ms T has outlined a number of consequential costs she says she's incurred as a result of how Telefonica's handled matters. I accept that Ms T might have incurred some unnecessary costs as a result of Telefonica's poor handling, such as postage costs. She's not articulated what I consider to be other direct costs caused as a result of what's happened. So, I don't intend to require Telefonica to cover anything further. In any case, I'm aware Telefonica has already paid £60 for costs and a portion of the £400 compensation it offered was to include some costs. I think that's reasonable in the circumstances."

My provisional decision was that I intended to require Telefonica to;

- Pay Ms T £87.40 (made up of five payments of £17.48) in respect of payments taken for a fixed sum loan which ought not to have been set up, along with simple interest at 8% per annum from the date of payment until the date of settlement*.
- Pay Ms T £20 in respect of a deposit paid, along with simple interest at 8% per annum from the date of payment until the date of settlement*.

- Pay Ms T £400 compensation in respect of distress and inconvenience caused to her.
- Remove any information which had been recorded with credit reference agencies ('CRAs') in relation to the erroneous fixed sum loan.

Telefonica accepted my provisional decision. Ms T asked for further time to provide comments. However, Ms T didn't provide any further comments by the subsequent deadline set.

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.

Neither party has provided what I consider to be materially new evidence in response to my provisional decision. That being the case, I find no reason to change my mind on matters and I've therefore reached the same conclusion as I did in my provisional decision, as set out below.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. In addition to the payments already made to Ms T, to the extent that it hasn't already done so, I require Telefonica UK Limited to;

- Pay Ms T £87.40 (made up of five payments of £17.48) in respect of payments taken for a fixed sum loan which ought not to have been set up, along with simple interest at 8% per annum from the date of payment until the date of settlement*.
- Pay Ms T £20 in respect of a deposit paid, along with simple interest at 8% per annum from the date of payment until the date of settlement*.
- Pay Ms T £400 compensation in respect of distress and inconvenience caused to her.
- Remove any information which had been recorded with credit reference agencies ('CRAs') in relation to the erroneous fixed sum loan.
- *If Telefonica UK Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Ms T how much it's taken off. It should also give Ms T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 1 October 2024.

Stephen Trapp
Ombudsman