

The complaint

Mr E complains that Telefonica UK Limited (trading as O2) allowed a third party to take out more than one fixed sum loan agreement in his name.

What happened

Mr E contacted O2 in late 2018 as he believed it had allowed someone to acquire a mobile phone using a fixed sum loan in his name. He told it that he had an account with O2 – as well as a loan – which he took out in 2014 and subsequently asked for it to be closed in 2015. He asked it to freeze the account and investigate what had happened.

O2 responded to Mr E's concerns by saying that he ought to contact its fraud department to discuss further, but ultimately it didn't think it had done anything wrong. The account was subsequently un-frozen when requested by someone that Mr E says wasn't him, over a webchat with O2. The loan was then terminated due to non-payment in September 2018.

Mr E referred the matter to our service. He reiterated that he'd asked for his account to be closed some time around 2015 and had no knowledge of any subsequent loans taken out in his name. He also said that he'd been contacted by a third party attempting to recover a debt of around £3,000 which O2 had passed it in relation to this matter.

O2 said that it thought Mr E was aware of who the third party in the circumstances of the complaint was – his ex-wife – so it was a civil matter, and it had not done anything wrong. It said it couldn't find any evidence of Mr E requesting the account to be closed.

Our investigator disagreed. Overall, she was persuaded that the most recent loan taken out in Mr E's name was not taken out with his consent. She said that O2 should cancel his agreement without further liability to him and remove adverse information from his credit file.

O2 disagreed and made a number of points. In summary, it said it was a civil matter as Mr E knew the person using the account and he hadn't given specific instructions to allow that person to take the account over, nor disconnect it. It also said that payment details varied between Mr E and the third party to whom Mr E had given access to his account, and that because he gave a third party access to his account, he was responsible for it under the account's terms and conditions which he'd agreed to. It asked for an ombudsman's review, so the case was passed to me.

I issued a provisional decision on the case. In summary, I said;

Mr E accepts that he initially took out a loan for a mobile phone with O2 in 2014. I understand that he had a fixed sum loan agreement with O2 to cover the cost of the handset and a separate agreement for airtime. From what's been said it also appears that Mr E accepts that the phone was to be used by his ex-wife.

The fixed sum loans which Mr E says O2 gave to a third party in his name and subsequently asked him to repay were regulated credit agreements. Our service has the jurisdiction to look into complaints about these. Mr E's complaint is also about a debt in relation to an

associated airtime contract. We don't have the power to decide on complaints specifically about any separate contracts for airtime, unless that is, the debt accrued a result or consequence of the mis-sale of a regulated credit agreement.

Mr E says that he asked for his original loan to be cancelled around 2015 and didn't have any further contact with O2 until 2018. O2 told us that it doesn't have any call recordings at all, or any other relevant records of contact that relate to events before 2017. The handset in relation to Mr E's account was upgraded twice after 2014; in 2016 and 2018. But before either of those events happened, Mr E says that he'd already asked to cancel his loan.

Mr E's request to cancel his original agreement

Given that there's limited evidence available I'll need to base my decision, in part, on the balance of probability. Or, in other words, on what most likely happened in the absence of specific evidence.

O2's shown that Mr E had a direct debit set up to make payments towards his credit agreement from 2014 until 2015. If I were to accept that Mr E asked O2 to cancel his agreement in 2015, it would've left a significant portion of the loan outstanding, and I expect he would've needed to repay it in full to cancel the loan. That wasn't the case; O2 has shown that after the direct debit was cancelled, manual monthly payments were made until the loan was repaid in 2016 in line with the repayment schedule.

Given this, I'm not persuaded that Mr E requested the account was cancelled or closed in 2015. Rather, I expect that one of two other scenarios are likely; either Mr E asked for the agreement to be cancelled at a later date or he agreed for his ex-wife to take over repayments in 2015 thinking that the account would close when the loan was repaid.

Mr E says that O2 told him that it accepted he asked for the account to be closed but a woman subsequently called and asked for it to be reactivated. O2 hasn't commented on this or provided any evidence in relation to it. However, I've seen in Mr E's initial email to O2 in 2018 to tell it he hadn't requested a new handset or loan, that he said the contract had not been renewed so should've been cancelled. He also made reference to not having had any contact with O2 for a number of years. So, I think it most likely that Mr E expected his agreement to end but didn't explicitly ask for O2 to cancel it.

Whether or not Mr E explicitly asked O2 to cancel his loan in 2015 doesn't mean that he took out the further loans, nor that he gave actual or apparent authority for subsequent credit agreements to be provided in his name. I'll explain why in relation to each loan.

2016 loan

From what it's said I don't think that O2 disputes that the loans granted in 2016 and 2018 were not taken by Mr E himself. It's defended the complaint on the basis that they appear to have been taken by a third party to whom Mr E had allowed access to his account. I'll address this for the avoidance of doubt though.

The first request to upgrade the handset on Mr E's account was made in 2016 and financed via a fixed sum loan agreement. Whilst O2 has no records in relation to the sale of this agreement, it has suggested that the upgrade was made by telephone and the call's not available.

O2 has shown that it held Mr E's email address on file at the time. But it hasn't shown, or told us, that it emailed confirmation or any other information about the upgrade to Mr E. Even if it had, it's possible that Mr E may not have seen it, especially as he thought the account

had been closed. It also seems that the handset and bills were sent to an address Mr E says he no longer lived at and that a direct debit was set up in a third party's name from the start of the agreement. So, in the absence of evidence to persuade me otherwise, I find it plausible that Mr E was unaware that a fixed sum loan had been taken out in his name, and had therefore not given actual authority for it.

I also need to consider whether Mr E had given a third-party apparent authority to contract on his behalf. O2 has argued that Mr E should be held responsible for the loans because he allowed a third-party access to his account. It's referenced the terms and conditions Mr E agreed to in 2014.

From what's been said I find it likely that Mr E had given a third-party access to his account in 2014 as it appears he had not intended to make use of the telephone himself. But I think it's reasonable to suggest that Mr E had given the third-party access to the account to make full use of the benefits on offer and to manage any necessary administration, such as checking bills and usage. I'm not satisfied though, that Mr E had intended for any third party to take a loan out on his behalf. I've also not been presented with any terms and conditions that Mr E has agreed to which say that if he gave a third-party access to his account he'd also be giving authority for them to apply for loans in his name.

As I've mentioned above, I'm not satisfied based on what O2 has said, or any of the evidence it's provided, that Mr E had given actual or apparent authority for a third party to take out a fixed sum loan in his name in 2016. Nor am I satisfied that any O2 terms and conditions that Mr E may have been provided in 2014 made it clear that by sharing access to his account he'd be giving permission for a third-party to take out a loan on his behalf. So, although this particular loan doesn't appear to have had a detrimental impact on Mr E – it was repaid in full – I think O2 should remove any remaining record of it with credit reference agencies (CRAs) because I don't think it'd be accurate or fair to record information about a loan Mr E ultimately didn't have knowledge of or give authority for.

2018 loan

The second upgrade on Mr E's account was made in 2018. O2 has given us transcripts of the webchats in relation to the upgrade and acquisition of another fixed sum loan. It hasn't supplied any telephone calls in relation to the sale of the loan.

Like our investigator, I'm persuaded that the person who communicated with O2 and agreed to the loan was not Mr E. I say this for a number of reasons – it's clear that person struggled to recall account details and security passwords and it was only through prompting that they were able to pass O2's checks. More significantly however, Mr E contacted O2 very quickly after he was emailed confirmation of his order to ask it to freeze the account and investigate what had happened. Significantly, O2 has shown that by this stage it didn't hold Mr E's email address. Rather, it held a third party's email address.

Nonetheless, I've seen that O2 sent confirmation of the order to Mr E, which causes me to question the reliability of O2's records.

Mr E wasn't able to pass O2's security measures when he contacted O2 by webchat – even with prompts – which suggested that he was not the person who'd asked to upgrade the handset and that had not used the account for some time, which is consistent with his version of events. Overall, I think it's clear that the person who agreed to the new loan was not Mr E and he was unaware of it, so it follows that I'm also satisfied that he didn't given actual authority for the loan.

O2 has pointed out that when the loan was agreed to in 2018, a direct debit was set up on

Mr E's account. However, I'm also aware that Mr E cancelled this immediately and complained to O2 that he had not given permission for it. And that another direct debit was also set up in someone else's name a few days later. O2 hasn't shown that Mr E gave authority for this. I don't know how or why O2 was able to set this direct debit up, but it's evidence that I would have expected O2 to be able to provide. In any case, even if the person who upgraded the handset provided those details, I'm satisfied that person wasn't Mr E.

Overall, I'm not persuaded that Mr E gave authority – actual or apparent – for a third party to take out this loan, for broadly the same reasons I explained in relation to the loan given in 2016. So, I think O2 should therefore remove the entry from Mr E's credit file. It should also recall the debt it passed to a debt collection agent and not pursue Mr E for any sums in relation to it.

Other considerations

I understand that only a portion of the debt O2 has passed to a debt collection agent relates to the fixed sum loan taken out in Mr E's name in 2018, and the remainder is in relation to an associated agreement for airtime.

I think it's clear that Mr E took reasonable steps to make O2 aware that he hadn't agreed to the loan nor the associated airtime contract. When O2 wouldn't freeze the account via webchats, it asked Mr E to attend a store with ID to free the account, which he did.

By that point O2 ought reasonably to have been aware that the person it'd corresponded with regarding the account was not Mr E. Despite this, days later it unfroze the account after being contacted by a third party via webchats. A significant airtime bill was subsequently accrued before the account was closed. I think it's fair to say that bill would not have accrued if O2 had not allowed, clearly by this stage, a third party to unfreeze the account.

Moreover, the debt in relation to the airtime contract was sold ancillary to a regulated loan which I'm satisfied should not have been given, so it follows that I don't think Mr E should be held responsible for the airtime debt either.

I provisionally concluded that O2 should;

- remove information relating to the point of sale loans taken out in Mr E's name in 2016 and 2018 from his credit file.
- recall the entire debt it passed to a debt recovery agent and not pursue Mr E for any sums in relation to it.
- refund any payments Mr E has made towards the debt including simple interest at 8% per year from the date of payment to the date of settlement.

Mr E didn't respond, but O2 did. It provided evidence to show that it held Mr E's current email address at the time the second loan was taken out in 2016. It said that various documents relating to the contract, as well as the contract itself was sent to that email address. It said it was necessary for Mr E to authorise those documents before the loan went ahead. It maintained that Mr E had shared his personal account details with a third party but made an offer to recall and clear £924 of the debt it passed to a collection agent, in respect of the loan taken out in June 2018.

In light of the additional comments received, I issued a further provisional decision. I summary, I said;

Having considered the further evidence and comments I've been provided, and reflected on my provisional findings, I've decided to change my position on the case. I'll explain why.

I'm persuaded by the evidence which O2 provided about Mr E likely being aware of the loan given in 2016. Whilst it hasn't been able to give us a copy of the email it sent, I'm satisfied that it held Mr E's email address and I think it more likely than not that contractual information was sent there – particularly because it was sent there subsequently in 2018.

As a result, I'm persuaded that Mr E was either aware of the loan given in 2016, or at the very least had given permission for it. So, I don't think that O2 needs to remove any information about this loan from Mr E's credit file.

I remain of the opinion that Mr E did not give actual or apparent authority for the loan given in 2018. In any case, O2 has offered to recall and clear the debt in relation to that loan, which I think fair, as long as it also removes the associated entry from Mr E's credit file.

My provisional decision said that O2 ought to clear the debt in relation to an airtime contract which was also passed to a collection agent because the airtime agreement was sold ancillary to a regulated loan, and the debt accrued as a result of 2018's loan being given without authority. However, in light of O2's comments I've changed my mind.

I say this because I think O2's shown that at some point Mr E gave a third party authority to make use of his account with O2. I'm also not satisfied that Mr E requested O2 to subsequently close his account. So, it seems that a third party had use of an airtime facility in Mr E's name with his knowledge and/ or permission. It appears that had been the case since 2014. So, any debt which accrued as a result of airtime use would've likely accrued irrespective of whether 2018's loan had been given.

As a result, I'm not persuaded the remainder of the debt O2 passed to a collection agent accrued as a result of the mis-sale of a regulated loan. That's what our rules limit me to consider - I cannot ask O2 to take further action in relation to the administration of an airtime contract in isolation.

Should Mr E wish to pursue a complaint about O2's (or a collection agent's) pursuit of an airtime related debt, or it's administration of his airtime contract, he may wish to seek independent advice about how he might be able to do that with an alternative dispute resolution service.

I concluded that O2's offer to recall and clear the debt in relation to the loan given in 2018 was fair in all the circumstances, as long as it removes the entry from Mr E's credit file.

Mr E didn't respond but O2 did. It reiterated some of the points it had made to my first provisional decision, but otherwise acknowledged the 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.

Having done so, I think neither party has presented me with any further evidence which has caused me to change my mind. As a result, I find no reason to depart from my last provisional decision, and now make the conclusion I reached final.

My final decision

For the reasons explained above, my final decision that Telefonica UK Limited's (trading as O2) offer to recall and clear a debt in relation to a loan granted in 2018 in Mr E's name is fair. It must carry this out, as well as remove the record of the loan with credit reference agencies, on Mr E's acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 21 February 2022.

Stephen Trapp
Ombudsman