

## **The complaint**

Mrs B complains about a fixed sum loan agreement with Telefonica UK Limited trading as O2, which she says was taken out in her name by somebody else.

Throughout this complaint, Mrs B has been represented by her son. But, to make things easier, I'll just refer to Mrs B.

## **What happened**

In January 2016, Mrs B took out a Pay As You Go (PAYG) agreement with Telefonica and was given a handset by a separate supplier. Towards the end of that agreement, Mrs B says a third party, who I'll call 'A', contacted Telefonica to try and change the agreement on Mrs B's behalf and upgrade to a new handset. The upgrade wasn't completed and Telefonica wrote to Mrs B to explain what had happened.

At the start of 2018, Mrs B's personal circumstances were such that she was receiving help from family members with her day to day life. Around the same time, Mrs B says a second attempt was made by A to upgrade the handset with Telefonica. On this occasion it was successful, and Telefonica agreed to a fixed sum loan on Mrs B's account, where she would pay £49 a month over two years for a brand new handset.

Mrs B says she didn't authorise the upgrade and that she was the victim of fraud by A. She says she found out what had happened, once Telefonica started debt recovery proceedings against her. Mrs B has explained A was found guilty of committing fraud by a court shortly after the fixed sum loan was agreed with Telefonica. Mrs B also says the police kept the handset as evidence, so she hasn't ever had possession of it.

After bringing her concerns to Telefonica in May 2018, they said they would cancel Mrs B's agreement, if she could return the handset and provide further evidence about the difficulties she has with her health. Mrs B replied and complained that Telefonica were ignoring her personal circumstances and hadn't considered how the handset was collected from their store.

Telefonica didn't change their approach to Mrs B's concerns, so she brought her complaint to us. One of our investigator's looked into the case and found that Telefonica hadn't treated Mrs B and her personal circumstances fairly. She concluded that Mrs B hadn't authorised the application for the fixed sum loan and couldn't return the handset as it was still with the police.

The investigator said Telefonica should cancel the fixed sum loan agreement with nothing further to pay, refund any repayments Mrs B has made and add interest to those amounts. And to remove any adverse information recorded with credit reference agencies. The investigator also said Telefonica should pay Mrs B £250 for the distress and inconvenience she had experienced.

Telefonica accepted the investigator's conclusions, but Mrs B didn't. She said the missed payment information on her credit file had caused her to miss out on a house purchase.

Mrs B also said that when she took out personal loans, she was given a higher interest rate than normal.

The investigator didn't change her conclusions and said there were other factors involved with any potential mortgage or loan application Mrs B may have made. So, Mrs B's case has now 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.

#### *The application*

In the months prior to the fixed sum loan application, Telefonica's records show that Mrs B gave A and another person authorisation to speak to them on her behalf. This authorisation didn't extend to making changes on Mrs B's account with Telefonica.

From the information we have, I can see A tried to make changes on Mrs B's account in November 2017. Telefonica's notes from the time show that they wrote directly to Mrs B and told her about an attempted upgrade. So, I think Telefonica was aware that A had tried to make unauthorised changes to Mrs B's account before the fixed sum loan was agreed.

Mrs B has told us about her health concerns and her difficult personal circumstances. I've said that Telefonica had Mrs B's permission to talk about the account with the two people she had appointed. So, I think A was able to have access to and operate large parts of Mrs B's day to day life. And given what Mrs B says about her circumstances, I think it was reasonable for her to allow someone else to help with her affairs.

In all the circumstances, I don't think Mrs B was careless by allowing A access to her various accounts and information.

Mrs B says she became aware of the fixed sum loan agreement when she started to receive letters from Telefonica about the missed payments and some contact from a debt recovery agent. But, it wasn't until 2019, where she realised what A had done.

Telefonica has pointed to a telephone call they had with Mrs B, in April 2018 where they spoke about a contract. They say Mrs B was aware of the fixed sum loan agreement at this time and this supports their opinion that she authorised the upgrade.

Telefonica don't have a recording of that call. And I don't think the very brief notes show that Mrs B was aware at this stage what A had done, or that she authorised the loan agreement.

On balance, I think Mrs B became aware of this agreement and others made by A throughout 2018. And given her personal circumstances, I think it's reasonable that she was able to start tackling the result of A's actions, over the following months into 2019.

In August 2020, Mrs B received a letter from A, in which he admits to taking out the fixed sum loan agreement in Mrs B's name, without her authorisation. The letter has details of A's own difficult circumstances, in so far as where it was sent from and what's happened to him since.

I think this evidence is persuasive and shows that Mrs B didn't allow A to make any borrowing applications in her name. So, I think this has consequences for the agreement taken out with Telefonica.

Having considered everything, I don't think Mrs B authorised the fixed sum loan agreement with Telefonica. I think it was reasonable for A to have access to Mrs B's information and I think Telefonica knew that A had tried previously to upgrade the handset on the account, where he wasn't authorised to do so.

Mrs B has also provided the letter from A admitting to what he had done. So, I don't think it's fair for Telefonica to hold Mrs B responsible for the agreement or the repayments due under it.

In light of my conclusions, I think it's fair for Telefonica to allow Mrs B to exit the fixed sum loan agreement with nothing further to pay. I also think it's fair for Telefonica to refund any repayments Mrs B has made towards the agreement since it was taken out in January 2018. Mrs B hasn't had the use of the funds taken by Telefonica, towards the agreement.

So, I think it's fair for Telefonica to pay interest at an annual rate of 8% on any repayment made, from the date the direct debit was taken, to the date of settlement of this complaint.

Additionally, I think it's fair for Telefonica to remove any adverse information related to the fixed sum loan agreement from the information held by credit reference agencies.

#### *The handset*

I've found that we've seen persuasive evidence that A was given a prison sentence. I've also concluded that Mrs B didn't authorise the fixed sum loan agreement used to buy the mobile telephone handset. So, I've considered what Mrs B has told us about the whereabouts of the handset.

Mrs B says she didn't have possession of the handset, as it was collected from a Telefonica store. But, she says she is unable to leave her house. Mrs B also says the handset has been retained by the police, as part of the evidence used in the case against A.

Having thought about all the circumstances, on balance, I don't think Mrs B collected the handset from the Telefonica store. I think it's likely the handset was collected by A, as the letter outlines A's actions towards the application for the fixed sum loan. I'm also not persuaded that Mrs B has the handset now and that it's likely the police have kept it.

In their initial review of Mrs B's case, Telefonica asked her to return the handset, to allow them to end the agreement. Given my findings, I don't think Mrs B is able to do that and Telefonica have accepted that now, when they agreed with the investigator's conclusions.

Overall, I don't think Telefonica treated Mrs B fairly when they first asked her to return the handset, in order to end the agreement.

But I think their subsequent offer to allow Mrs B to exit the loan without returning the handset is fair. Should Telefonica want the handset returned, then they should contact the police force currently holding the device, to see if there is a way of getting it back.

#### *The distress and inconvenience experienced by Mrs B*

I can see from the correspondence between Mrs B and Telefonica that she told them about her health difficulties in April 2018, a couple of months after the fixed sum loan was agreed. Mrs B told Telefonica that she was unwell and wanted to talk about the arrangements for a different account she has with them.

Telefonica's records show they tried to help Mrs B, following what she told them. I can see

that Telefonica offered to cancel the agreement and allow her to return the handset. But, I can also see where Telefonica continued to contact Mrs B about the fixed sum loan agreement. And this resulted in Mrs B receiving contact from debt collections agencies.

I think Telefonica had a duty to treat Mrs B's personal and financial difficulties with forbearance and due consideration. Although I agree Telefonica made some attempt to help Mrs B in May 2018, I cannot see that further effective engagement or assistance followed. And I think this caused unnecessary upset to Mrs B.

By April 2019, Telefonica's records show that Mrs B had informed them that she didn't authorise the fixed sum loan agreement. Telefonica reiterated their offer to cancel the agreement if the handset returned. Mrs B told Telefonica that the handset had been taken by the police, so she didn't have it. However, Telefonica continued to pursue Mrs B for the loan repayments.

I think Telefonica had enough information at this point to look to cancel the agreement and accept that the handset couldn't be returned by Mrs B. I think Telefonica's pursuit of Mrs B added to her worry of what she had experienced over the previous year. So, I think it's fair for Telefonica to make a payment to Mrs B for the distress and inconvenience they caused to her.

Mrs B says the missed payment information recorded by Telefonica with credit reference agencies, meant she missed out on getting a mortgage and the limit for her credit card account was reduced. She also says any loans that she applied for, were offered to her at a higher interest rate.

It's true that lenders may base a part of their lending decisions on the information they collect from credit reference agencies. But, I agree with the investigator, in that there may be other factors involved here, which mean Mrs B didn't receive the outcome she wanted, from any lending applications she's made since January 2018. So, I don't think it's fair to ask Telefonica to compensate Mrs B for that.

I accept and empathise with Mrs B in that the personal circumstances she has dealt with over the last four years have been very troubling. And while I can see that Telefonica could have, at times, treated her more sympathetically, I also acknowledge that the significant part of the worry she's experienced was likely caused by A's actions.

Overall though, having considered everything, I think a payment of £250 is fair for the distress and inconvenience caused to Mrs B by Telefonica.

I note that part of Mrs B's complaint is that she wants to keep the telephone number given to her when she took out the PAYG service with Telefonica in 2016. I make no finding about that here, as it falls outside of our reach. But, I'd encourage Telefonica to engage with Mrs B, to see if they are able to help further.

### **Putting things right**

Having considered everything, to put things right Telefonica UK Limited trading as O2 should:

- allow Mrs B to exit the fixed sum loan agreement with nothing further to pay;
- refund any repayments towards the fixed sum loan agreement made by Mrs B;
- pay interest at an annual rate of 8% simple on each refunded repayment from the

date it was paid to the date of settlement;

- remove any adverse information recorded about the fixed sum loan with credit reference agencies; and
- pay Mrs B £250 for the distress and inconvenience caused.

### **My final decision**

For these reasons, my final decision is that I uphold this complaint and Telefonica UK Limited trading as O2 should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 13 July 2022.

Sam Wedderburn  
**Ombudsman**