

The complaint

Mr M complains that Telefonica UK Limited didn't cancel a fixed sum loan he'd asked it to and that it subsequently acted unfairly in asking him to repay the lending.

What happened

Mr M entered into a fixed sum loan with Telefonica to cover the cost of a mobile phone in October 2021. He was initially told the device was out of stock, but it would be sent when it became available again. Mr M subsequently moved to a new address and says he told Telefonica.

Ten days after entering into the agreement, Mr M asked Telefonica to cancel it. Mr M says he was told it wasn't possible to do that whilst the device was out of stock, but a note about his request would be left.

Mr M says the device was subsequently sent to his old address, where a former partner lived. I understand that Mr M had asked his former partner to return the device but he was unsuccessful. He says that after a number of attempts to obtain the device in order to return it, he became aware that his former partner had been using it.

Mr M raised a complaint with Telefonica as he didn't think it would be fair, given what had happened, to expect him to repay the lending. Telefonica issued an answer to the complaint in late March 2022. It said that it believed the issue was a civil matter between Mr M and his former partner. It wouldn't end the agreement without the device being returned.

Mr M referred the matter to this service. He asked for Telefonica to cancel the agreement, remove adverse information recorded with credit reference agencies and compensate him for the distress he'd been caused.

In its submission to this service, Telefonica accepted that it ought to have cancelled Mr M's agreement at the first point he'd asked it to. In recognition of this, it offered to clear the outstanding balance of the agreement, remove record of it from Mr M's credit file and apply a £50 credit to an unrelated airtime agreement he was using.

Our investigator initially concluded that Telefonica's offer was enough to put things right in the circumstances. Mr M subsequently made a number of points about the impact things had on him. Specifically he said;

- he'd been caused severe anxiety as a result of Telefonica's reluctance to remedy the situation sooner, as well as having to contact his former partner as a result;
- he'd been caused a financial loss as a result of petrol costs visiting his former partner twice;
- his credit worthiness had been affected as a result of information recorded by Telefonica regarding missed payments; and

- he spent an unnecessary amount of time trying to resolve the issue and had to take time away from work.

Our investigator discussed those issues further with Telefonica. Ultimately it increased the level of compensation it had offered to £150.

Mr M didn't think that was enough compensation. He said that he'd had to stop a mortgage application and had a credit facility withdrawn as a result of the information recorded on his credit file. Mr M said he should be paid £500 compensation as well as £100 to cover his costs. He asked for an ombudsman's decision, so the case was passed to me.

I issued a provisional decision on it. In summary I said;

Mr M's complaint is about a whether or not Telefonica has acted fairly in relation to a fixed sum loan. That's a regulated agreement, and one which this service has the power to consider a complaint about.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory, I make 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.

From what's been said I think all parties broadly agree on the events which led to this complaint. And it seems that Telefonica agrees that it needs to do something to put things right by ending the agreement without cost to Mr M and removing record of it from his credit file. I think Mr M agrees with this too. What's left for me to decide is whether or not the compensation Telefonica has offered is appropriate.

I've carefully considered everything that's been provided. Mr M might find that I've represented his submissions in less detail than he gave them – I don't find it necessary to go into that level of detail in explaining what a fair outcome is, but I can nonetheless ensure Mr M I've taken into account everything he's said.

I accept that Telefonica ought to have cancelled Mr M's agreement at the first point he'd asked it to. Had it done so, the impact on Mr M would've been mitigated. Mr M has given a plausible, persuasive and consistent version of events in relation the impact events have had on him.

I accept that the situation which arose as a result of Telefonica's error would've caused Mr M a lot of worry, as he's suggested. Particularly given what he's said about the nature of his relationship with his former partner. I also accept that worry was likely – and unnecessarily – exacerbated as a result of Telefonica's inaction of putting things right. The several months it took Telefonica to recognise its error must've been a very worrying time for Mr M.

I understand why Mr M chose not to make payments towards the agreement. It seems that he had initially made an arrangement with his former partner insofar as payments as he's said they stopped making payments when the device was blocked. I understand that ultimately led to adverse information being recorded about the account with credit reference agencies.

It's difficult to say to what extent the associated information recorded by Telefonica would've affected Mr M's credit worthiness in the eyes of other lenders. Nonetheless, I accept that Mr M would've been worried about the presence of adverse information Telefonica had recorded with credit reference agencies and how it might be interpreted.

I agree that Mr M likely incurred some travel costs in trying to retrieve the device from his former partner. It's fair to say that Mr M incurred those costs reasonably in light of what he'd been told by Telefonica. It's difficult to say exactly what those costs were, but I've taken into account what Mr M has said in concluding what a reasonable amount of compensation would be.

Lastly, I agree that Mr M has spent longer than should've been necessary for him to rectify matters with Telefonica – he raised a complaint about the matter in November 2021 and it took until April 2022 for Telefonica to accept its error. I'm not persuaded that matters effectively prevented Mr M from working, or caused him a financial loss in that respect. But I accept that he's been caused a lot of trouble and upset in trying to resolve the situation.

Overall, taking everything Mr M has said about the impact of the events which led to this complaint had on him, costs he likely incurred and with specific regard for our approach to compensatory awards, I think a reasonable amount of compensation for Telefonica to pay Mr M would be £300.

I said that I intended to require Telefonica to;

- *End the agreement at no cost to Mr M, cease pursuit of any sums owing under the agreement from Mr M and remove record of it with credit reference agencies;*
- *Pay Mr M £300 compensation for the distress and inconvenience he's been caused.*

Both parties responded to the provisional decision and said they had nothing further to add.

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 comments or evidence which I consider materially new for my consideration. Given that, I find no reason to depart from my provisional findings and now make them final.

My final decision

For the reasons explained above, my final decision is that I require Telefonica UK Limited to;

- End Mr M's agreement at no cost to him, cease pursuit of any sums owing under the agreement from Mr M and remove record of it with credit reference agencies;
- Pay Mr M £300 compensation for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 October 2022.

Stephen Trapp
Ombudsman