

The complaint

Mr G complains that Telefonica UK Limited treated him unfairly in relation to his fixed sum loan with it.

What happened

Mr G entered into a fixed sum loan with Telefonica to finance the purchase of an electronic device in March 2020. I understand he was also provided with an unregulated service agreement for “airtime”. A short time later, both agreements were terminated due to non-payment.

In June 2021 Mr G raised a complaint with Telefonica. He said that defaults had been recorded in relation to the matter in December 2020, but he hadn’t received a default notice. He also said that Telefonica hadn’t supported him to come to a payment arrangement whilst going through a difficult period. He said that the defaults ought to be removed.

Telefonica said that the last payment received from Mr G had been in May 2020, and it had written to him regarding the matter each month from June to August 2020 without response. Telefonica considered the information it had recorded with credit reference agencies (CRAs) was accurate.

Mr G disagreed. He said that the date the defaults had been recorded with CRAs was inaccurate and thought they should’ve been recorded in July 2020 when a default notice was first sent, instead of December 2020. He said Telefonica ought to remove the defaults due to their inaccuracy.

Telefonica told Mr G that the default notice sent in July 2020 was to inform him that action could be taken and that it usually applies defaults between three to six months after repayment.

Mr G referred the matter to this service. He reiterated that he hadn’t received Telefonica’s default notice sent in July 2020 and in the default had been recoded too late in any case. He said that he hadn’t been given sufficient time to remedy the arrears on the account and that despite being told by the Information Commissioner’s Office (ICO) that Telefonica needs to do more to put things right, he hadn’t heard further from it.

Our investigator didn’t uphold the complaint. They said, in summary, that Mr G had failed to make the repayments required of him after May 2020 and it was therefore fair for Telefonica to send a notice of enforcement and termination in June 2020. They noted that Telefonica had subsequently written to Mr G a number of times, without response, and considered it had acted in line with relevant guidance by defaulting his agreements around six months from the date of the last payment.

Mr G said that his agreements were in default by 1 August 2020 and he was told that the associated debts would be passed to a debt collection agent on 23 August 2020. He said that Telefonica had terminated the agreements too quickly and then waited to register defaults when it realised it had made a mistake. He said that Telefonica hadn’t follow

guidelines on when a default should be registered set out by the ICO.

The case was passed to me, and I issued a provisional decision on it. In summary, I said:

The activities this service can consider complaints about is set out in the Financial Conduct Authority (FCA) handbook. The rules we must follow, known as DISP, broadly set out that we can consider complaints about regulated activities, as well as a few others specified.

One of the agreements Mr G complains about is a fixed sum loan. That's a regulated agreement and one which this service has the power to consider a complaint about.

The other agreement Mr G complains about is an unregulated service agreement for airtime. That's not something this service has the jurisdiction to consider a complaint about because it's not a regulated activity, nor is it another specified under our rules. So, whilst our investigator made a finding on matters relating to that agreement, I won't, simply because I can't.

I'm aware that Mr G disputes having received some, if not all, of the correspondence Telefonica sent about his requirement to make repayments towards his fixed sum loan. Nonetheless, the copies of those letters I've been provided are correctly addressed and I've not been provided with a plausible reason as to why Mr G might not have received them. In any case, I think Mr G ought reasonably to have been aware of his requirements under the agreement.

Mr G has said that ICO guidance suggests an account should be defaulted when it's between three to six months in arrears. He says that's what Telefonica should've done. It's not necessarily for me to say exactly when Telefonica ought to have decided to terminate Mr G's agreement and record a default. But I can determine whether Telefonica has treated Mr G fairly by doing what it has.

I accept the points Mr G has made about how Telefonica has handled the situation in part. In the most part I agree that the correspondence Telefonica sent to Mr G was somewhat misleading. For example, it told him in June 2020 that it had terminated his fixed sum loan and he was required to repay the total outstanding balance. And then it subsequently wrote to him about arrears. It also seems that Telefonica had given Mr G the impression that his agreement had been defaulted, when it doesn't seem to have been the case until a number of months later.

Overall, it seems to me that it was most likely Telefonica's intention to allow Mr G a reasonable opportunity to bring his account up to date and repay his agreement. I say this in the most part because it wrote to Mr G about his requirements for a number of months, and ultimately only defaulted the account six months from the date of the last payments. But, I accept that Telefonica's correspondence wasn't clear regarding the status of Mr G's agreement.

That doesn't mean that it ought to remove the default it recorded. Even if I were to accept Mr G's argument that the steps Telefonica took to terminate the account and issue demands for repayment had been premature, ultimately Mr G failed to make payments towards the account for at least six months. From what I've seen, Mr G made no effort to engage with Telefonica during that time, so even if Telefonica had waited between three and six months to issue a default notice, I think it highly unlikely that Mr G would've taken steps to prevent the default being applied.

Taking the above into account, I'm satisfied that it was fair for Telefonica to report information with CRAs which accurately represent how the account was maintained. I'm

satisfied that Telefonica has done so by representing that no payments were made towards the agreement after May 2020. I'm also satisfied that it was fair for Telefonica to have recorded a default in December 2020, given that it had been around six months from the last payment Mr G had made and it hadn't heard from him.

Mr G has also said that Telefonica didn't do enough to help during a difficult time. He's suggested that it could've written to its customers to offer support. However, I'm satisfied that Telefonica did enough by writing to Mr G about his requirements under the agreement a number of times. I think Mr G ought reasonably to have known that he wasn't meeting his requirements under his agreement and could've engaged with Telefonica about it. I don't find that Telefonica ought to have done more.

Lastly, Mr G says that Telefonica failed to respond to him following a recommendation from the ICO to review what had happened in February 2022. However, Telefonica has demonstrated that it emailed Mr G in April 2022 at the address he'd provided when he raised a complaint. Its email specifically referred to the ICO recommendation and clarified that it was satisfied a default had been recorded accurately, six months from the date of the last payment.

In conclusion, I accept that Telefonica could've handled matters better. However, I'm satisfied that it was fair for it to have recorded a default in relation to Mr G's fixed sum loan when it did. So, I don't intend to require it to take any further action.

Telefonica made no further points. Mr G made a number of detailed points about whether or not Telefonica had followed the relevant guidance in applying a default. In summary he said;

- His complaint isn't about the fairness of the default, rather, it's about Telefonica not following the relevant process.
- He was in financial difficulty and didn't make the payments he was required to, but by not following the correct process Telefonica had not allowed him sufficient time to catch up on payments.
- He suggested that if Telefonica had given him the time it ought to have, it might have avoided the events which subsequently followed.

Mr G went into detail about ICO guidance relating to the registration of a default and why he didn't think that Telefonica had followed it. Particularly by taking action prematurely, not giving him enough time to make payments and giving the impression a default had been recorded when it hadn't, and wasn't, until a number of months later.

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.

I think it's fair to say that the majority of the points Mr G has now made are about whether Telefonica followed industry guidance in recording a default, specifically guidance issued by the ICO. But it's not my sole consideration in this case. It's for me to say whether Telefonica has acted fairly and reasonably in the circumstances. So, whilst Mr G might not want a perspective on whether the default was applied fairly, that's what I can offer here.

As my provisional decision explained, I accept that Telefonica's correspondence was perhaps premature and could've been ambiguous about the payments required and when. It's worth noting that Mr G said that he didn't receive any default notice from Telefonica. If

that was the case, then I think what Telefonica said in its letters is unlikely to have caused Mr G to act differently in some way.

Nonetheless I've seen that the correspondence Telefonica sent to Mr G was correctly addressed, so I've no reason to believe they weren't delivered to Mr G successfully. Given that, as well as the wider situation, I think Mr G ought reasonably to have been aware of the need to make the payments he was required to and the potential consequences of not doing so.

Despite this, I Mr G think he accepts that he failed to make the required payments under his agreement and made no contact with Telefonica for in excess of six months. I also think it's clear that Telefonica's intention was to allow Mr G a reasonable opportunity to make payments towards the account and avoid a default being recorded. I'm satisfied of that by the fact that it waited six months before recording a default with CRAs.

Taking all of the above into account, I think it was fair for Telefonica to have recorded a default around six months after Mr G stopped making payments. In my view it would not be fair, nor representative of how the account was handled, to require Telefonica to remove that default on the basis of a technicality of not having followed industry guidance.

Overall, whilst I accept that Telefonica could've handled things better, I maintain the view that the default Telefonica recorded is a fair representation of how Mr G's account was handled. I find it unlikely that any ambiguous information in Telefonica's correspondence had an impact on Mr G's ability or will to make the repayments he was required to, so, I find no reason to ask Telefonica to remove the default it recorded.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 March 2023.

Stephen Trapp
Ombudsman