

## The complaint

Mr M has complained that Vodafone Limited recorded a default on his credit file in relation to a fixed sum loan agreement he'd taken out to buy a phone.

## What happened

The circumstances of the complaint are well known to both parties. So I'm not going to cover off everything again in detail. But in summary, Mr M bought a phone for around £800 using a fixed sum loan agreement (device plan) from Vodafone. This was to be paid back over three years with monthly payments of £21.

Mr M called Vodafone on 8 September 2022 to change the date of his direct debit. Vodafone told him he'd need to cancel it and call back to set up a new one. I think his normal payment was usually required by around the 13<sup>th</sup> of the month. Vodafone explained it changed his due date to the 29<sup>th</sup> of the month as per Mr M's request.

It looks like Vodafone emailed Mr M to let him know the direct debit for 13 September had been returned unpaid and that there was no direct debit in place. Presumably this was because it had already started processing when Mr M asked to change his payment date. And it contacted him on 24 September 2022 to let him know his device plan was in arrears. During this time Mr M had been in touch with Vodafone about arrears on his airtime account as well as problems he was having with data speeds.

No direct debit was set up, and so no payment was made on 29 September 2022. On 4 and 9 October, Vodafone wrote to Mr M about the arrears on the device plan. It looks like Vodafone text Mr M on 17 October 2022 to say his service had been restricted. Mr M contacted Vodafone and it looks like it told him the device plan wasn't up to date. I think he mentioned he'd changed the direct debit date. But Vodafone's notes indicate he didn't want to be put through to the device plan team.

I think Mr M spoke to Vodafone on 27 October 2022 because he was thinking of leaving the service. He wanted the early termination fee waived but didn't have time to go through troubleshooting for the service problems he was having. Vodafone sent Mr M a copy of his device plan statement and a direct debit mandate for him to complete with a payment starting in November 2022.

Vodafone tried to speak to Mr M again on 28 October 2022 but couldn't reach him so referred the account to a debt collector. No payment was made on 29 October 2022, so by this point Mr M was two payments behind on the device plan.

Vodafone sent a default notice to Mr M on 27 November 2022 saying he needed to pay £42 by 13 December 2022. I think the debt collector contacted him the following day and again on the 30 November 2022. The default notice expired on 13 December 2022. The debt collector contacted Mr M again on the 14 December 2022 asking for payment, and I believe he brought things back up to date. But on 17 December 2022 Vodafone wrote to Mr M to say it had terminated the agreement on 13 December 2022 and the full balance was due.

Mr M complained and Vodafone sent a final response. It said it had tried to contact him about the missed payments various times. And as he didn't clear the arrears by the date on the default notice it acted fairly by defaulting and terminating the agreement.

Mr M referred his complaint to our service. Our investigator said he found it unusual the debt was passed to debt collectors technically only after one missed payment. And he said the agreement gave him the impression an account would only be passed to debt collectors after it was terminated. He said the debt collector gave a conflicting date the debt needed to be paid (16 December 2022) and that Mr M had said he'd not received the default notice. Our investigator said there were postal strikes around this time which could explain why it wasn't received. So he thought the default should be removed and Mr M should be allowed to clear the arrears or pay it off in full.

Vodafone didn't agree. It said Mr M made payment after the date on the default notice, and so the default was applied correctly.

I issued a provisional decision that said:

*Vodafone is reporting information to the credit reference agencies in relation to a regulated fixed sum loan agreement and our service is able to consider complaints relating to these sorts of agreements. But, as has been pointed out, I'm not able to consider complaints that solely relate to the airtime contract Mr M has with Vodafone.*

*I can understand why Mr M is very unhappy Vodafone applied a default a day before he made payment towards the arrears. And he's highlighted that the debt collector asked for payment by the 16 December 2022. But what I have to bear in mind is that by the point Vodafone defaulted and terminated the agreement, Mr M was three payments in arrears. The guidance for reporting arrears says that, as a general guide, defaults may be recorded when the customer is three months in arrears. So I don't find I have the grounds to say that Vodafone defaulted Mr M too early.*

*I've also thought about whether there are any other reasons why the default might have been recorded unfairly. Mr M wanted to push back his payment date and Vodafone told him to cancel his direct debit and to call back and set up a new one. It's not in dispute Mr M didn't set up a new one. I think he might've implied he couldn't get through to Vodafone. But what I have to bear in mind is that the evidence I've seen indicates Vodafone wrote to Mr M with a direct debit mandate for him to complete. It also told him on the phone when he was discussing his airtime about the arrears on the device plan, but I can't see Mr M agreed to speak to the relevant team.*

*Moreover, Vodafone wrote to Mr M various times about the arrears. And it did this by email and letter. I appreciate Mr M says he didn't receive the default notice, but I think by that point he ought to have known his device plan was falling further and further into arrears. I think he had opportunity to speak to Vodafone about the device plan.*

*I've also thought about what Mr M said about the debt collector's involvement. I agree the debt collector told Mr M he needed to pay off the arrears by the 16<sup>th</sup>. But the text messages Mr M has shown us about this are dated the 14 and 15 December 2022. So these were sent after the default notice had already expired and the agreement terminated. Mr M hasn't shown us anything sent by the debt collector before the default notice expired which may have caused confusion for him. So I don't think I can say Vodafone acted unfairly on 13 December 2022 based on something its debt collector did wrong.*

*I agree Vodafone seems to have referred debt collectors early on. And it's sent a default notice sooner than other lenders might have. But ultimately it didn't record the default until*

*Mr M was three months in arrears. And based on what I've said above, I don't find I have the grounds to direct it to remove this.*

I've not received any substantive responses from either party.

### **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.

Seeing as though I've not seen any new material evidence, I see no reason to depart from the conclusions I reached in my provisional decision.

### **My final decision**

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 M to accept or reject my decision before 17 November 2023.

Simon Wingfield  
**Ombudsman**