

The complaint

Ms H's complaint relates to the sale of a mobile phone insurance policy by Telefonica UK Limited trading as O2.

What happened

Ms H says she found out on visiting an O2 store in March 2023 that she had been paying £6pm for an insurance policy covering a mobile phone. Ms H says the store representative told her that she had been paying for the insurance since 2010. Ms H says she did not know this had been added to her account and cancelled it immediately.

Ms H complained to Telefonica and asked it to refund the payments she'd made for the insurance, as she did not want it and didn't know she'd been paying for it. I understand the policy was to cover a phone used by Ms H's daughter and she says she has paid for her daughter's phone to be repaired four times, which could have been covered by the policy if she had known about it.

Telefonica does not agree that the policy premiums should be refunded. Telefonica says the policy was sold to Ms H in store at the same time as the phone in June 2020. It says there is no record of any previous policy. Telefonica says Ms H would have been asked at each stage of the digital sales process to accept the terms, the representative does not do it for the customer, and a copy of the agreement is sent to the customer by email and a paper copy can also be provided if required.

Ms H brought her complaint to this service.

One of our Investigators looked into the matter. Initially she did not think the complaint should be upheld but she reviewed her findings and concluded that Telefonica should refund Ms H all the premiums paid for the policy started in June 2020, with interest, and pay £100 compensation.

Ms H has accepted the Investigator's assessment but Telefonica does not accept it.

Telefonica says that the insurance documents would have been given to Ms H at the point of sale and also emailed to Ms H. It also says the insurance premium is clearly recorded on every bill and it is not unreasonable to expect the customer to take responsibility for this and monitor their own bills. Telefonica does not therefore agree it should refund the premiums but said it would consider paying the £100 compensation as a goodwill gesture only.

As the Investigator was unable to resolve the matter, it has been passed to me.

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.

Those selling insurance are required to provide customers with clear information about any

policy they are selling, which would include how long it will last for and the price. If the policy is being recommended, they would also have to try and ensure it was suitable for the customer.

It is for Telefonica to prove the sale was conducted properly and in accordance with the relevant regulations.

As this policy was sold to Ms H at the same time as the phone it covered, it would appear it was recommended as being suitable for Ms H's needs.

From what Telefonica has said, the order for the phone and insurance is placed on a handheld device, with the store representative entering the details on the device. Telefonica says the customer is asked to digitally tick a box on each page of the order, for it to proceed to the next page.

I have seen the screenshots of the sales process provided by Telefonica. The first page says

"Gateway bundle with device plan ...with plan...yes..."

Gateway Insurance bundle ... with plan ... no".

This suggests to me that no insurance had been opted for.

The second page says "*package details*" and gives details of the phone and things included with the phone contract, such as data limit and call limits and TV streaming subscription.

The third page says:

"Package details ...mobile insure £6.00 monthly add insurance".

There is no signature or anything else from Ms H, on any of the pages, to confirm she consented to the insurance at £6pm. And I can't see any tick box either.

It seems to me that for most customers their main focus at the time would have been the purchase of the phone and they may not read data on a screen carefully, especially if it is hurried and often the device is not handed over. However, even if Ms H was given the opportunity to read carefully each page of the order process, I do not think the information that would have been available to her is sufficiently clear, given the first page suggested that insurance was not included.

Telefonica has not said that there would have been any verbal discussion of the insurance.

Telefonica initially told us that the order confirmation would have been emailed to Ms H and she could have asked for a paper copy. It later said she would have been given a copy of the insurance agreement at the point of sale but this contradicts what it said initially and there is no persuasive evidence that anything was handed over to Ms H during the sale.

I note Telefonica says the documents would have been emailed to Ms H later but it is not for a customer to point out an error by a business. And in any case, Telefonica has not provided a copy of what was sent to Ms H.

Telefonica says it doesn't know what we'd expect as evidence that it sold this properly. It is simple, it needs to evidence that it discussed the insurance with Ms H, informed her of the cost and main terms and obtained her consent to add it to her account. It has not provided sufficient evidence about the sale to establish this.

I've also considered the screenshots of the text messages sent to Ms H from the airtime provider and the bills, which Telefonica says would have alerted Ms H to the existence of the insurance. They say:

"your airtime plan this month is £51.58 GBP and your Device Plan payment comes to 13.21 GBP".

The Device Plan payment varies each month. There is then a link with each message to see the bill. The first page of the bills say:

*"My tariffs 33.06
My monthly extras 6.00"*

The monthly extras is the insurance but it does not say insurance on the first page.

On the next page there is more information about the tariff and then a list of what is included in the *"my monthly extras"*. It says:

<i>"O2 travel</i>	<i>13 Jan 23- 12 Feb 23</i>	<i>0.00</i>
<i>10% Airtime Discount</i>	<i>13 Jan 23 – 12 Feb 23</i>	<i>0.00</i>
<i>O2 Insure Full Cover</i>	<i>13 Jan 23 – 12 Feb 23</i>	<i>6.00".</i>

I do not agree that this is as clear as Telefonica says it is. The first page does not set out that the £6.00 charge is for insurance. In fact, it seems to me the insurance payment is obscured by calling it *"my monthly extras"* which implies it is for additional call charges, or part of the airtime plan.

While the mention of *"O2 Insure Full Cover"* is clearer, its lack of prominence in the document means it is not sufficient to mean that Ms H should have realised she had been sold an insurance policy.

Again, while there is some responsibility on consumers to check their bills, I do not think it is reasonable to place all responsibility on Ms H to have checked she was not being charged for something she did not want and did not expressly agree to.

I have also taken account of the fact that Ms H cancelled the policy the same day she says she found out she had it; and that if she had known about it she could have made claims for her daughter's phone.

Having considered everything, I do not think Ms H was provided with sufficiently clear information that she was paying for insurance policy, and there is not enough evidence that she consented to it in 2020.

Ms H says she was told she's been paying for the insurance since 2010, however, there is no convincing evidence that she has been paying for it before the start of this contract in 2020. I therefore consider Telefonica should refund the payments Ms H has made to this policy starting in June 2020, together with interest at our usual rate. I also consider that the sum of £100 compensation is appropriate for the trouble this matter has caused Ms H.

My final decision

I uphold this complaint against Telefonica UK Limited trading as O2 and require it to do the following:

1. refund all premiums for this plan, together with interest at 8% simple per annum from the date Ms H made each payment to the date of reimbursement; and
2. pay Ms H £100 compensation for the distress and inconvenience caused by this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 5 January 2024.

Harriet McCarthy
Ombudsman