

The complaint

Miss P complains about a fixed sum loan agreement, taken out in her name with Telefonica UK Limited, trading as O2.

What happened

In October 2018, a fixed sum loan agreement with Telefonica was taken out in Miss P's name, to finance the purchase of a brand new mobile telephone handset. I'll call this borrowing 'Loan One'. At the same time, Telefonica started an airtime contract in Miss P's name, with payments made separately to the loan.

Telefonica say the application for the loan was completed in one of their stores and that Miss P's bank account details and identification were used as part of the process.

A few days after the loan was agreed, the telephone number associated with the handset was changed, along with the email address used for the account. The email address used a first and surname, that were different to Miss P's. And in the following months, the postal address was changed twice. The address was changed for a third time in June 2020, to that of a family member of Miss P.

In August 2021, Telefonica processed a new application for a fixed sum loan, which I'll call 'Loan Two'. Telefonica say Loan Two was taken out by Miss P to upgrade the handset and repay any balance owed under Loan One. Similar to before, Miss P's name shows in the application, but a different address, bank account and an email address using a different name to Miss P was included.

A repayment to the fixed sum loan was missed in March 2023 and an arrears letter was sent to Miss P's family member's address. Miss P says this is when she became aware that an agreement had been taken out in her name. After trying to sort things out, Miss P complained to Telefonica and asked them to remove her from the loan. She also asked Telefonica to remove any adverse information from her credit file.

In their response, Telefonica said they thought Miss P had allowed her former partner to use the account and upgrade the handset. They said it was a civil matter that Miss P and her former partner would need to put right themselves. So, Telefonica continued to hold Miss P responsible for the repayments due under the loan agreement. Miss P didn't accept Telefonica's response and brought her complaint to us.

One of our investigator's looked into Miss P's case and found that Telefonica hadn't treated Miss P fairly. She wasn't persuaded that Miss P had given her authority for Loan One or Loan Two to be opened and that it was likely a third party had fraudulently applied for the borrowing. So, the investigator said it was unfair to ask Miss P to repay the outstanding balance of the loan or for any information to be recorded on Miss P's credit file. The investigator also said Telefonica had caused Miss P distress and inconvenience and asked them to pay her £100.

Miss P accepted the investigator's findings, but Telefonica didn't. Telefonica agreed to

remove Miss P from the outstanding debt owed under Loan Two and to pay her £100. But, they weren't prepared to remove all of the information about both loans from the records held with credit reference agencies. Telefonica remained of the view, that Miss P had initially given her authority for Loan One to go ahead.

The investigator didn't change her conclusions. So, Miss P's complaint 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.

This case is about a fixed sum loan agreement with Telefonica, used to pay for a mobile telephone handset in Miss P's name. This is a regulated financial product. As such, we are able to consider complaints about it.

During my review, I've also thought about the regulated agreement Miss P signed for Loan One. I've done this because I think what happened when Loan One was opened and subsequently ended is relevant, when trying to decide if Telefonica have treated Miss P fairly.

There are a few possibilities that might give Telefonica a proper basis for holding Miss P responsible for Loan One and Loan Two. They are:

- Miss P took out the loan agreements herself.
- A third party took out the loan agreements on Miss P's behalf, with her actual or apparent authority.

Loan One

I can understand Telefonica's position that even if Miss P didn't set up Loan One in 2018, she ought to have known about it by October 2019, when a statement was posted to her address. They also say Miss P should have been aware because the details about Loan One were added to her credit file.

However, Miss P has told us she didn't take delivery of either device and she didn't realise that either loan account was on her credit file until March 2023. Miss P also says she's not made any payments towards either agreement.

Having looked at the application for Loan One, I can see the correct postal address, email address and telephone number that Miss P used in October 2018 were included. Additionally, the correct bank account details for Miss P were used to set up the Direct Debit to make payments towards the agreement.

But, Telefonica's records show that the contact details for the account changed twice, within a few days of the agreement for Loan One starting. Specifically, the telephone number and email address were very quickly changed, to details which on the face of it, Miss P doesn't have a connection to. Around a month after the opening of Loan One, I can also see that the postal address was changed to an address where Miss P says she doesn't have a connection.

The records Telefonica have sent to us, also show that while Miss P's bank account details were used in the application, they were changed around a month after the opening of Loan

One. Furthermore, the payment history of the airtime contract taken out in 2018, shows that a debit card was predominantly used to make the payments. Miss P says she didn't make those payments and this is supported, when looking at her bank account statements from the time.

After considering all the evidence Miss P has provided, I'm not persuaded she's ever made any payments to Telefonica. On balance, I don't think Miss P has made payments to the airtime contract, or towards Loan One.

Telefonica say that the SIM card associated with the airtime contract was used in the devices financed under Loan One and Loan Two. And this shows that Miss P had access to both of those devices.

Although I accept the same person is likely to have used both devices, I don't think it necessarily follows that this person was Miss P. Or, that Miss P had given her authority to a third party. Telefonica haven't provided any information to show where either device was collected or delivered. They have explained the device under Loan One was collected in a store. But, Telefonica haven't demonstrated who collected it and what identification was taken by the staff, before handing to the collecting party.

Against this background, I don't think Telefonica's records show that Miss P was aware that Loan One had been taken out in her name. However, Telefonica have explained to Miss P that they believe she allowed a former partner to operate the account. And it was that person who changed Miss P's contact details.

We've asked Miss P about her personal circumstances from October 2018 to March 2023 and I find what she has told us consistent and credible. Miss P has provided us with evidence to support what she says about her residential addresses and her employment status. She's also shown where the name of the person who made the changes to Loan One, is very different to that of her former partner.

I empathise with Telefonica's position. But, based on the evidence available, I'm persuaded that it's likely a third party used some information about Miss P, to start an account for borrowing for a new handset.

On balance, I think the evidence shows that the agreement for Loan One was taken out by a third party, unknown to Miss P. And because of the changes made by the third party, the account was concealed from Miss P. I also think the third party maintained payments, until the agreement came to an end in August 2021.

Having considered everything I'm persuaded that Miss P didn't open the agreement with Telefonica for Loan One in October 2018. And I don't think Miss P gave a third party her authority to open the account in her name. So, I don't think it's fair for Telefonica to hold Miss P responsible for the repayments due under the fixed sum loan agreement.

I've concluded that the balance of Loan One was repaid by a third party. Consequently, Miss P didn't suffer a loss here and isn't owed a refund of any repayments from Telefonica, from that borrowing. However, in light of my findings that Miss P didn't authorise the opening of Loan One, I think Telefonica should remove all the information about the loan from the details held about Miss P with credit reference agencies.

Loan Two

Loan Two was taken out in August 2021. Miss P has provided documents to show that she had moved abroad, around eighteen months earlier. Telefonica's records show that by the

time of the application for Loan Two, the postal address on the account had changed to an address for a family member of Miss P.

Additionally, the email address, contact telephone number and the account used for the Direct Debit, remained the same. In other words, the third party's details were included in a large part of the application for Loan Two.

Miss P has told us that at some point during her complaint to Telefonica, they explained to her that the device financed by Loan Two, was sent to address she doesn't have a connection to. Telefonica haven't provided any delivery or collection records for the device taken out with Loan Two. So, there isn't any evidence to show who took delivery of the device, or where it was sent.

I've thought about the similarities with Loan One and my conclusions about that agreement. Having done so, on balance, I'm not persuaded that Miss P gave her authority to Telefonica for them to start Loan Two. It then follows that I don't think it would be fair for Telefonica to hold Miss P responsible for the fixed sum loan agreement taken out in August 2021.

However, during our investigation Telefonica agreed to end their pursuit of Miss P for the outstanding balance of Loan Two. They have also agreed to remove any details about Loan Two for Miss P's credit file. So, I don't think Telefonica needs to take any further steps with Loan Two, to resolve this part of Miss P's complaint.

The airtime contract

I'm aware that there's an associated airtime contract, taken out in Miss P's name. From the evidence I've seen, the airtime contract has been paid by the same third party who has made payments towards Loan One and Loan Two.

To be clear, we don't have the power to make a finding about the performance of the airtime contract. But, I've found that Miss P didn't give her authority for the opening of the fixed sum loan agreements with Telefonica. And for similar reasons, I don't think Miss P gave Telefonica her authority to start the airtime contract.

So, I don't think it would be fair to hold Miss P responsible for the payments due under that airtime contract. And I think it's fair that any information about the airtime contract is removed from Miss P's credit file.

Distress and inconvenience

Miss P has told us that due to the third party's actions in settling up the account with Telefonica and their continued access to make changes, that it has caused her distress. This is in addition to the impact on her financial circumstances and her credit file.

I accept that nearly all of Miss P's worry over the account was caused by the third party. However, I agree with the investigator and think Miss P was caused additional trouble, when Telefonica demanded payment from her. And where Telefonica declined to talk to her, when she wasn't able to pass their security questions.

So, I think the distress Miss P experienced was exacerbated by the way Telefonica treated her. It follows that I think it's fair for Telefonica to make a payment to Miss P to reflect the distress they caused. Having considered everything, I think it's fair for Telefonica to pay Miss P £100 for the distress and inconvenience she experienced. And this payment should be made direct to Miss P, to an account of her choosing.

Putting things right

For these reasons, Telefonica UK Limited trading as O2 should:

1. Allow Miss P to exit the fixed sum loan agreement and the associated airtime contract, at no additional cost to her;
2. Remove all information about both fixed sum loan agreements and the associated airtime contract, from the details held with credit reference agencies; and
3. Pay Miss P £100 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and require Telefonica UK Limited trading as O2 to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 22 February 2024.

Sam Wedderburn
Ombudsman