

## **The complaint**

Mr H complains about the information given to him by Telefonica UK Limited, when he took out two fixed sum loans to pay for two mobile telephone devices.

## **What happened**

In January 2023, Mr H contacted Telefonica to upgrade his mobile telephone device. After looking at his options, Mr H decided to take out two fixed sum loan agreements with Telefonica, to pay for two brand new handsets. At the same time, Mr H also took out a fixed sum loan with Telefonica for a smart watch. But Mr H says he's satisfied with the watch and hasn't included it as part of this complaint.

Mr H says he spoke to Telefonica to make sure they had his chosen handsets in stock at the store that was most convenient to him. He says he took out the fixed sum loan agreements, because he was given assurances by Telefonica that he could collect the handsets on the same day as he had ordered them.

However, when Mr H went to the store, they told him he would have to wait another day for the handsets to arrive. Mr H also says he noticed that Telefonica had ordered an incorrect handset.

Because Mr H needed the handsets, he says he waited for them to be delivered to the store and then began to use them. But, Mr H complained to Telefonica and said they had given him incorrect information, which led him to take out the fixed sum loan agreements.

Telefonica replied to Mr H's complaint and accepted that Mr H had tried to withdraw from the fixed sum loan agreements, within the cancellation period. Telefonica agreed to allow Mr H to return the handsets and either order a replacement, or exit the fixed sum loan agreements and find another provider.

Mr H didn't reply to Telefonica and after some repayments to the loans were missed, he complained to them again in June 2023. Mr H also said he was unhappy that Telefonica had caused disruption to his airtime contract. Telefonica reiterated their offer to Mr H, but as the complaint couldn't be resolved, Mr H brought his case to us.

One of our investigators looked into Mr H's complaint and concluded that the majority of Telefonica's offer was fair. The investigator didn't find where Mr H says Telefonica gave him incorrect information about the stock of handsets at the store. But, she did find that Telefonica should have returned various calls to Mr H and explained things more clearly.

The investigator agreed it was reasonable for Telefonica to allow Mr H to return the handsets and exit the agreement with nothing further to pay. But, she also asked Telefonica to remove any information about the loans from Mr H's credit file and to pay Mr H £200 for the distress and inconvenience he had experienced.

Telefonica accepted the investigator's findings, but Mr H didn't. He said Telefonica should increase the payment for the distress and inconvenience he'd experienced and waive the

amount he owes under his airtime contract.

The investigator didn't change her conclusions, so Mr H's case has now been passed to me to make a decision.

I sent Mr H and Telefonica my provisional decision on this case, on 4 January 2024. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

*I'd like Mr H to know that I empathise with the difficult personal circumstances he's described to us. I can see where it must have been an extremely troubling time for him and I hope things have started to improve.*

*I also want to acknowledge where I've summarised the events of the complaint. I don't intend any discourtesy by this, it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality.*

*But, I want to assure Mr H and Telefonica that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*This case is about two fixed sum loan agreements which Mr H took out with Telefonica. These types of loans are regulated financial products, so we are able to consider complaints about them.*

*The sale of the handsets*

*Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described. The CRA then sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.*

*A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.*

*In Mr H's case, he says he entered into the fixed sum loan agreements for the handsets, because he was told they would be available to collect on the same day he ordered them. So, I've looked at the information given to Mr H at the time he took out the fixed sum loan agreements with Telefonica.*

*Mr H has provided us with screen shots from Telefonica's website which he says support his side of the argument. I've looked at the screen shots and I can see that they are from the generic 'help' section of the website, rather than from Mr H's own contract. Telefonica's website says:*

*"Find the device you want online, and we'll check the stock in your nearest stores. If it's available you can collect the same day, and could even get it in minutes. If it's not immediately available in your local store, we'll order it in for you, or you can choose a different store."*

*While I accept the website does offer customers the possibility of collecting a device from a local store soon after placing an order, I don't think Telefonica guarantees it. I think the website says the chances of picking a device up from a particular store depends on availability.*

*I've also considered the order confirmation email that was sent to Mr H by Telefonica on 7 January 2023. The email thanks Mr H for the order and says that the expected availability date is 10 January 2023. The email goes on to say that once available, Mr H is able to collect the handsets from the store he had told Telefonica was most convenient.*

*Based on the information from Telefonica's website and the email sent to Mr H, I think it was clear that the handsets weren't immediately available. And that Mr H would have to wait for them to arrive at the store.*

*However, Mr H says he called Telefonica's store, before he placed the order and that is when he was given incorrect information. To investigate this further, I've looked at Telefonica's contact records with Mr H, along with the records Mr H has provided.*

*Having done so, I cannot see where a note or a call to the store was made. It may be that direct calls to Telefonica's stores aren't recorded on Telefonica's call logging system. But, given the weight of evidence I've already considered, on balance, I don't think Mr H was told the store had stock of the devices he wanted, before he placed the orders.*

*Additionally, I've listened to the calls Mr H had with Telefonica in the days following the order. I can see that Mr H was clearly very frustrated that the devices wouldn't be at the store until 10 January 2023. But, I can also see that Mr H was prepared to wait for the stock to arrive. So, I don't think the availability of the stock was the factor that induced Mr H to enter the contract. Overall, I'm not persuaded Telefonica gave Mr H some incorrect information, which induced him into taking out the fixed sum loan agreements.*

*It would normally follow that Telefonica could reasonably expect Mr H to make the payments due under that agreement. However, Telefonica have made an offer to Mr H on the basis that he had exercised a right to end the agreements within the cancellation period. So, I've gone on to consider Telefonica's offer to see if they have treated Mr H fairly.*

#### *Telefonica's offer to Mr H*

*Telefonica's notes on Mr H's complaint suggest they made their offer because they accepted Mr H tried to withdraw from the agreement within a 14 day period, summarised in the terms and conditions of the contract.*

*I can see where Telefonica sent Mr H a heavy duty envelope, for him to return the devices. Once Telefonica had received the devices, they told Mr H they would end the fixed sum loan agreements enabling him to find another provider. After Mr H brought his complaint to us, Telefonica further offered to waive any repayments owed under the fixed sum loan agreements, remove information from Mr H's credit file and to pay him £200.*

*I think Telefonica's offer to end the fixed sum loan agreements and take back the devices, recognises where Mr H wasn't able to end the agreements, when he wanted to in January 2023. I also think it means Mr H will have only made repayments for the months where he had use of the devices, and allows him to seek another provider if he wishes to do so. After carefully considering this part of Telefonica's offer, I think their proposal is fair and reasonable.*

*From looking at the correspondence between Mr H and Telefonica, I can see where several payments owed under the agreements were missed. And while Mr H hasn't provided a copy of his credit file, I accept that it's likely the missed payments appear within the information retained by credit reference agencies.*

*Telefonica accepted the investigator's findings and are prepared to remove any information*

*about the fixed sum loan agreements, from the records held by credit reference agencies. Having considered everything, I think the steps Telefonica say they are ready to take with Mr H's credit file are reasonable.*

*Mr H has explained that he'd like Telefonica to increase the payment of £200, to compensate him for the distress he has experienced throughout this complaint. I've thought carefully about this and I can see there were occasions where Telefonica didn't return telephone calls, when Mr H had expected them to do so. So, I accept that Mr H has experienced upset and delays when dealing with his concerns.*

*But, I can also see where Mr H missed repayments to the fixed sum loans and to his airtime agreements. This means Telefonica were always likely to have paused his airtime services, or contacted him about the arrears on his accounts. In light of what happened here, I don't think it follows that Telefonica have caused all of the worry and trouble, which Mr H has told us about.*

*Against this background, I think Telefonica's offer to pay Mr H £200 for the distress and inconvenience caused is fair and reasonable.*

*In all the circumstances, I think the steps Telefonica have agreed to take are a fair resolution to Mr H's complaint. I think they allow Mr H to return both devices and end the fixed sum loan agreements at no additional cost. I also think it's fair that Telefonica are prepared to remove the agreements from Mr H's credit file and to pay him £200 for the distress and inconvenience he has experienced.*

*Finally, I'd like to be clear that I've not looked at the performance of the airtime contracts provided by Telefonica to Mr H. This isn't something we have the power to consider. So, Mr H may wish to contact a different scheme, if he has concerns about the service provided under the airtime contracts.*

Telefonica responded to the provisional decision and accepted it. Mr H responded to the provisional decision and didn't accept it. In summary, he said:

- He doesn't agree with the provisional decision, because it didn't include some of the other points he had raised throughout his complaint.
- The amount suggested for distress and inconvenience isn't inline with the guidance on our website.
- He plans to reply with more information within the timescale set in the provisional 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.

Mr H didn't make any further points, other than those raised in his initial response to my provisional findings. So, I've considered what he told us in his initial response further.

I recognise that I haven't mentioned all of the arguments raised by Mr H in his complaint to Telefonica. However, I'd like to reassure Mr H that I've read and understood everything he and Telefonica have sent to us, during the course of his complaint. If I haven't commented on all of the arguments he has raised, it's because I've tried to concentrate on the crux of his case.

I acknowledge where Mr H has questioned the level of the award in my provisional findings, for the distress and inconvenience caused by Telefonica. However, I've considered the instances where Telefonica didn't respond to his calls. I've also found that the missed payments to the fixed sum loan agreements and to the airtime contract, are likely to have caused the pauses in the service Telefonica provided.

Having thought more about all that has happened, I still think it's fair for Telefonica to make a payment to Mr H, to compensate him for the distress and inconvenience he experienced. In all the circumstances, I still think it's fair that the level of that award should be £200.

Mr H didn't make any further comments about the rest of the settlement put forward in my provisional findings. So, I see no reason to depart from those conclusions in my final decision.

### **Putting things right**

For these reasons, Telefonica UK Limited should:

1. Allow Mr H to return the two mobile telephone devices at no additional cost to him;
2. Upon the return of each mobile telephone device, allow Mr H to exit each fixed sum loan agreement with nothing further to pay;
3. Remove each of Mr H's fixed sum loan agreements from the records held with credit reference agencies; and
4. Pay Mr H £200 for the distress and inconvenience caused.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 February 2024.

Sam Wedderburn  
**Ombudsman**