

The complaint

Mr W complains about a letter sent to him by Telefonica UK Limited trading as O2, which contained an enforcement and termination notice for a fixed sum loan agreement.

What happened

In June 2022, Mr W took out a fixed sum loan agreement with Telefonica, to pay for a brand new mobile telephone handset. The agreement was scheduled to last for 36 months, with Mr W making monthly payments of about £15.

Around a year after the agreement started, Mr W decided to move his airtime service to another provider. As Mr W was part way through the term of the loan for the handset, it meant he was required to end the agreement with Telefonica and repay the outstanding balance. So, in September 2023, Telefonica wrote to Mr W with an enforcement and termination notice.

When Mr W received the notice, he says he became very concerned about the tone of the letter. He says Telefonica threatened to record adverse information on his credit file, if he didn't repay the balance of the loan within 14 days. Mr W also says that because of his job role, he needed to avoid any missed payments from being recorded with credit reference agencies.

To try and sort things out, Mr W called Telefonica and asked why he'd received the enforcement notice. He says Telefonica weren't able to answer his questions and that he called them multiple times without receiving a call back. Mr W also complained to Telefonica because he said they couldn't tell him if there would be an impact on his credit file.

Mr W says he didn't get any immediate reassurance from Telefonica, so made a payment over the telephone of £326.08 to his loan. This left an amount of £15.53 to be paid by Direct Debit. The Direct Debit was due to be taken from Mr W's bank account, before the expiry of the deadline set in the enforcement and termination notice.

In their response to Mr W's complaint, Telefonica said that the loan was fully repaid and that they hadn't recorded any missed payment information about the loan on Mr W's credit file. Telefonica also offered to pay Mr W £50 for the distress and inconvenience caused, for not returning his telephone calls after he had complained. Mr W didn't accept Telefonica's response and brought his complaint to us.

One of our investigators looked into Mr W's case and found that Telefonica had treated him fairly. She concluded that Telefonica were required to send the enforcement and termination letter. The investigator also said that Telefonica had told Mr W that he had repaid the balance of his loan within the timescales, and that they hadn't recorded any adverse or missed payment information on his credit file.

Mr W didn't agree. He said Telefonica should not have sent the enforcement notice and that the tone of the letter had caused him significant distress. Mr W also said Telefonica were unreasonable by causing a delay to his request for reassurances.

The investigator didn't change her findings and now Mr W's complaint has been passed to me to make a 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.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. Namely, did Telefonica treat Mr W fairly when they sent him the enforcement and termination notice?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

During our investigation into Mr W's complaint, he has told us about his very difficult personal circumstances, as well as the worry he's experienced over his job role. I'd like Mr W to know that I've thought very carefully about his circumstances, when reviewing his case.

The fixed sum loan agreement

Mr W's handset was supplied to him under a regulated fixed sim loan agreement. Our service is able to consider complaints about these sorts of contracts.

Within his complaint to Telefonica, Mr W says Telefonica sent the enforcement and termination notice to him in error. To think about this further, I've looked at the contract Mr W signed, when he took out the loan for the handset.

Section 17 of the terms and conditions of Mr W's loan agreement covers early repayment. I can see that the terms summarise an instance where a customer would like to move to a different provider, within the first 24 months of the agreement. It goes on to say:

"we will have the right to require immediate repayment of the remaining balance of the Amount of Credit (whether or not accrued due for payment). We will give you notice of our intention to do this and will notify you of the remainder of the Amount of Credit you owe."

Having thought carefully about the terms and conditions of Mr W's agreement with Telefonica, I think it was always the case that he would receive some sort of demand for immediate repayment. And it follows that Mr W would be required to settle things with Telefonica to end the contract.

After reading the termination notice, I accept that it may have shocked Mr W to be met with some of the wording and the tone of the letter. I say this because his loan account wasn't in arrears and he simply wanted to change provider.

However, I think Telefonica had a duty to tell Mr W how much he needed to repay and the timescale available to make that payment. I also think Telefonica had a responsibility to Mr W to tell him what may happen if a payment isn't made. I don't think the letter was a notice to say his loan account was in arrears, or that he had defaulted on any repayments.

In all the circumstances, while I understand Mr W's concern over some of the wording in the enforcement and termination notice, I don't think Telefonica sent it to him in error, or to cause him distress. So, I think Telefonica treated Mr W fairly when they notified him of what he needed to do, when he chose to end the fixed sum loan agreement.

But, Mr W says Telefonica didn't do enough to address his concerns that his credit file may show missed payment information. To look at this, I've gone on to consider the final repayments to the loan account and what Telefonica subsequently said to Mr W.

The final payments towards the loan

Telefonica's records of their contact with Mr W show that he called them shortly after receiving the termination notice. I can see from the records that Mr W arranged to pay a lump sum of £326.08, which left a payment of £15.53 to be collected by Direct Debit. The contact notes from the call suggest that Telefonica told Mr W, that after the payment of the Direct Debit, there would be nothing left for him to pay.

Furthermore, I can see Telefonica sent Mr W a statement for his loan account, on the same day as he made the lump sum payment. The statement showed Mr W that his agreement would be settled after the final Direct Debit and that it would be completed within the timescale set in the termination notice.

It seems that Mr W remained concerned about the effect on his credit file, so complained to Telefonica. And over the next seven weeks, he called Telefonica on several occasions to try and get reassurances, because he says they didn't respond to his complaint.

The records I've looked at show that on 27 October 2023, Telefonica wrote to Mr W and explained the circumstances in which missed payments would be recorded. Telefonica also asked Mr W for a copy of his credit report, if he became aware of any impact on his credit file. I can also see that on 18 November 2023, Telefonica told Mr W that his loan account was fully repaid and that they hadn't passed any adverse or missed payment information to credit reference agencies.

Having considered everything, I think Telefonica explained to Mr W, on at least four occasions, that his loan account had been settled. I think Telefonica did this from the date of the enforcement letter, to the date of their response to his complaint. I empathise with Mr W that he was very concerned about any impact on his credit file. But, I think Telefonica gave him reasonable information to allow him to see that he had repaid what he owed, within the timescale set in the termination letter.

Further to this, Mr W hasn't provided any information from his credit report to show otherwise. In other words, there isn't any evidence to support his view that Telefonica have passed on details about any missed payments to credit reference agencies.

All things considered, I think Telefonica have treated Mr W fairly. So, I don't think Telefonica need to take any further steps to put things right, or to make a payment to Mr W for the distress and inconvenience he says he experienced.

I'm aware that Telefonica offered to pay Mr W £50 for not returning his calls when he initially raised his complaint. I'd like to make it clear that I make no finding on that offer. I say this because complaint handling isn't a regulated activity. Therefore, it isn't something our service has the powers to decide on. So, I leave it to Mr W to make contact with Telefonica, should he now wish to accept that offer.

My final decision

My final decision is that I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 April 2024.

Sam Wedderburn
Ombudsman