

The complaint

Mrs C complains that Telefonica UK Limited trading as O2 (“Telefonica”) failed to provide the goods in relation to two fixed sum loans she entered into and treated her unfairly in relation to another.

What happened

Mrs C entered into three fixed sum loans with Telefonica whilst in a retail store in May 2023, I’ll refer to them as agreements one, two and three. Each agreement was to finance the purchase of mobile telephones. It’s my understanding that only one of the phones was in stock (agreement one), so it was agreed that the others (agreements two and three) would be posted to Mrs C.

On 22 May 2023 Mrs C told Telefonica she’d received a parcel with phone boxes, but no phones. She said the packaging was torn when it was passed to her.

Telefonica didn’t accept Mrs C’s assertion; it said that its courier had told it a picture of the delivery showed that the package had been in satisfactory condition.

Mrs C contacted Telefonica about the issue on a number of subsequent occasions. Ultimately it considered a complaint about what had happened but declined to take further action. It wrote to Mrs C with its final response in October 2023.

Mrs C referred the matter to this service later that month.

In its submission to this service Telefonica accepted that it hadn’t handled matters well. It offered to clear the loans relating to agreements two and three, as well as remove trace of them with credit reference agencies. It said that no payments had been made to agreement one, for which the goods had been supplied to Mrs C. It said that all three agreements had been “disconnected” due to non-payment in November 2023. Nonetheless, it offered to clear the loan and remove credit reference information for that loan too, on the basis that Mrs C returned the goods. Lastly, it offered to Pay Mrs C £250 compensation for the poor service she’d received.

Our investigator put this offer to Mrs C but she didn’t think it was enough to put things right. She said that the compensation offered was insufficient and that she wanted to be provided with the goods in relation to her agreements.

Our investigator looked into what had happened and found that the delivery picture Telefonica had referred to clearly showed a large cut in the packaging, which persuaded them of Mrs C’s version of events. They thought that ought to have been clear to Telefonica at the outset.

They made enquiries with Telefonica about whether it could provide the goods under the agreements to Mrs C, but Telefonica said it wasn’t possible. It also pointed out that because all three of the agreements had been terminated due to non-payment (including the agreement for which Mrs C accepts she was provided the goods), it wasn’t possible to allow

Mrs C to keep any goods she had been provided and restart the loan.

Taking the above into account, our investigator concluded that the offer Telefonica had made was enough to put things right in the circumstances, other than the compensation offered. They didn't think that £250 was enough considering the trouble and upset Mrs C had been caused. They recommended Telefonica pay Mrs C £400 compensation.

Telefonica agreed. Mrs C didn't.

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.

Mrs C complains about how Telefonica treated her in relation to three fixed sum loan agreements. They're regulated agreements and ones which this service has the power to consider a complaint about.

Like our investigator, I agree there's strong evidence to show that the parcel Mrs C received – which contained two of the devices Telefonica was to supply under agreement two and three – featured a large cut in the side of it. It's therefore plausible that it had been accessed before being passed to Mrs C and, taking into account that Mrs C reported the problem straight away, it persuades me that the goods likely weren't in the package that Mrs C received.

Telefonica has now taken steps to put that right offering to clear loans two and three and remove trace of them. As Mrs C has asserted, I think the evidence I refer to above – in the form of a delivery picture from Telefonica's courier – ought to have been clear to Telefonica if it had made reasonable enquiries about what had happened. It seems to me that didn't happen initially, and Mrs C found it necessary to chase the matter with Telefonica on a number of occasions over several months. It's fair to say that ought not to have been necessary, and Mrs C has therefore been caused unnecessary trouble and upset as a result of how matters were handled.

Taking into account everything that's happened, I think that the £400 compensation recommended by our investigation is reasonable in the circumstances. And I note that Telefonica has agreed to pay that sum too. So, overall, I think that what Telefonica has now offered to do to put things right in respect of agreements two and three is reasonable in the circumstances.

Mrs C also complains about how Telefonica treated her in relation to agreement one for a mobile phone which she accepts she was supplied with. It seems to me that Mrs C chose not to make any payments towards that agreement because of the issues she encountered with the other agreements. I think it's understandable that Telefonica therefore chose to end that agreement after a number of payments weren't made. I don't think it acted unreasonably in doing so because the goods under that agreement had been supplied to Mrs C.

Telefonica has offered to clear the balance of that loan and remove trace of it on the basis that Mrs C returns the goods. It's clear that Mrs C feels strongly that Telefonica ought to allow her to keep the goods. But taking into account the goods cost in the region of £1,500 and Mrs C has not made any payments towards the agreement, I don't think that'd be fair.

I also understand why Telefonica is unwilling to restart or restructure the agreement given that Mrs C chose not to make payments towards it. Had Telefonica not made the offer it has in respect of this agreement, I might not have required it to take further action. However,

given that it's now made an offer which would effectively put Mrs C back in the position she would've been but for any of the agreements having been provided, and taking into account the overall circumstances of the complaint, I think that's a fair thing to do in the circumstances.

My final decision

For the reasons explained above, my final decision is that Telefonica UK Limited trading as O2 must carry out the following to the extent that it has not already done so;

- Clear the balance of agreements two and three, cancel them and remove trace of them with credit reference agencies;
- Clear the balance of agreement one, cancel it and remove trace of it with credit reference agencies on the basis that the goods are returned. Telefonica should arrange the return/ collection of the goods at no cost to Mrs C within 28 days of Mrs C's acceptance of this decision; and
- Pay Mrs C £400 compensation directly in respect of trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 November 2024.

Stephen Trapp
Ombudsman