

## **The complaint**

Mr D has complained Telefonica UK Limited trading as O2 treated him unfairly in relation to a fixed sum loan agreement he'd taken out.

## **What happened**

Mr D bought a phone from O2 using an interest free fixed sum loan in 2018. The phone cost around £1,400 and the agreement was due to be paid back with monthly payments of around £40 for 3 years. In early 2023, Mr D complained to O2 that it charges customers different prices depending on how they acquire devices. He said customers buying the phone using the O2 credit agreement are charged more for their airtime than customers on SIM only deals. So essentially, it's misleading to say no interest had been charged. He also mentioned O2 may have received undisclosed commission.

In summary, Mr D said he'd paid more for his phone than he should have. He said this meant the agreement technically wasn't interest free and he believed it breached the regulator's rules on acceptable contracts and disclosure of fees. This was in addition to the further costs incurred through airtime price increases each year.

To resolve the complaint Mr D requested a refund of the additional costs he'd paid on his latest purchase as well as previous ones. He also requested O2 amend its practices to make them more transparent with a direct comparison to cash purchase and SIM only tariff being provided.

Mr D didn't think O2 had understood his complaint, so he referred it to the Financial Ombudsman.

O2 responded to say it was the customer's responsibility to compare prices against the deals and offers from other companies before entering into the agreement. It said as part of its process customers are required to read, agree and sign various documents to show they're happy with all aspects of the contract. It said the customers are also provided with a 14-day cooling off period allowing them to take the time to ensure they're happy. It said when a customer takes out a contract and agreement it sets out the cost of the airtime and the device plan and it's clear they are separate payments, not combined. But in recognition of Mr D's points and the delays it offered £100 compensation.

Our investigator contacted Mr D to clarify what he was unhappy about. He also spoke to O2 about how it presents prices. O2 explained to our investigator that, for an example, the price of the phone is the same if the customer buys it outright or through a credit agreement. But it was unable to provide the comparison for Mr D's 2018 phone.

Mr D responded to say as far as he could recall there was no difference in the cost of the phone. He said his issue was that O2 charged an undisclosed premium on the airtime tariff when the customer takes out associated credit for the device. He said if the phone was bought for cash, the available like for like airtime tariff would be significantly lower. He said O2 was therefore charging him a fee directly associated with the credit agreement, so it is not 0%. He said had this been made clear he'd have looked at other options to save money.

He couldn't provide evidence of the extra cost he'd paid, but he said for other examples, it showed that the airtime tariff was more expensive when buying a phone under a credit agreement alongside it.

Our investigator ultimately didn't uphold the complaint. He didn't think Mr D had done enough to show he'd lost out. Mr D didn't agree. He said there were examples showing O2 sell the same airtime tariffs for around £21 monthly with no phone but around £30 monthly when taking a phone under a credit agreement.

As things weren't resolved, the complaint has been passed to me to decide.

### **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 want to acknowledge 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 D and O2 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.

It's important to first set out that our rules say I can consider a complaint about Financial Services. Mr D bought the device using a regulated fixed sum loan agreement, and our service is able to consider complaints relating to these sorts of agreements. But it's not our role to deal with retail disputes or to tell a firm what price it should be marketing goods (or airtime tariffs) for. The provision of an airtime agreement doesn't fall under the list of activities that the Financial Ombudsman has the power to investigate. It's also important to note the regulator's Consumer Duty rules aren't retrospective and the events complained about took place before it came into effect on 31 July 2023.

Therefore, while I think I can understand why Mr D is unhappy, I'm limited in what I can consider and direct O2 to do to put things right. I'd also need to be able to quantify the loss, if any, Mr D suffered through the fixed sum loan agreement as a result of the alleged unfair actions of O2. I don't think either party has been able to demonstrate that sufficiently.

While I know Mr D said he's bought previous devices from O2, I'm focussing on the phone I've seen he bought in 2018 under a credit agreement because, as I've said, we can consider complaints about those sorts of agreements. In simple terms, Mr D agreed to buy the phone at the price stated on the agreement. The price of the phone is excluded from being assessed as an unfair term of the contract. The phone was supplied as agreed. And Mr D hasn't demonstrated any other terms of the credit agreement have been breached.

Mr D's unhappiness (and alleged loss) seems to stem from the fact he says his airtime tariff was higher *only* because he took out the tariff with the phone. And he says the two things are intrinsically linked. Given his evidence supplied, I can understand why he's unhappy and thinks he's suffered a loss. So I've thought about whether Mr D was misled about something when entering into the credit agreement. Mr D doesn't agree, but I don't think he was. It's not for our service to tell O2 its pricing of its airtime tariffs are unfair when customers take out credit agreements. That doesn't fall within our remit. And as far as I've seen, the price of the airtime would have been presented clearly enough for Mr D to decide if he wanted to proceed with the purchase. I think the issues Mr D says he's faced are to do with something one step too far removed from the credit agreement that I'm able to consider – even when considering the overall antecedent negotiations.

Ultimately, while I understand why Mr D is unhappy, I can't see that O2 has treated Mr D unfairly with regards to the credit agreement. I understand O2 is the supplier as well as the finance company and Mr D hasn't paid any more than the cash price of the phone towards the agreement, so there's not an undisclosed commission in relation to the credit agreement. I've not seen enough to show O2 misled Mr D before he decided to enter into the credit agreement. While Mr D says he's lost out through the airtime tariff, that's not the same as the credit agreement not being interest free. Mr D agreed to buy the goods for the price set out on the agreement. He's not paid more than that under the credit agreement. And O2 also supplied Mr D with the agreed associated airtime tariff. Therefore, while I sympathise, I don't think O2 has acted unfairly in its capacity as a financial services provider.

I agree O2 didn't properly get to grips with what Mr D was unhappy about. This must have been frustrating, and it's led to some delays. O2 offered £100, which I think is broadly fair in the circumstances and recognises the impact on Mr D. I'm not going to direct it to take any further action.

### **My final decision**

My final decision is that I uphold this complaint and, to the extent not done so already, direct Telefonica UK Limited trading as O2 to pay Mr D £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 October 2024.

Simon Wingfield  
**Ombudsman**