

## The complaint

Mrs D complains about how Telefonica UK Limited trading as O2 has treated her since she advised it, and then complained to it, that a fixed sum loan agreement ("agreement") taken out in her name in December 2020 (for a phone) wasn't taken out by her, or by a third party with her authority.

## What happened

In April 2019 Mrs D entered into an agreement with O2, on behalf of a third party, for a phone and airtime. Mrs D did this because the third party, in April 2109, was under the age of eighteen.

In December 2020 O2 agreed to a new agreement being taken out (in Mrs D's name) for a phone costing £799.00. Under the terms of this agreement, everything else being equal, 35 monthly payments of £22.20 and 1 monthly payment of £22.00 were required to be made, making a total repayable of £799.00 at an APR of 0%.

In August 2023, and after Mrs D had been in contact with O2 for several months advising it and then complaining to it that the December 2020 agreement (in her name) hadn't been taken out by her or by a third party with her authority, O2 sent her a 'final' bill for £175.24 broken down as follows:

• payments outstanding and due in respect of phone (5 x £22.20)	£111.00
• payments outstanding and due in respect of phone (1 x £22.00)	£22.00
• total outstanding and due in respect of phone	£133.00
• plan	(£5.16)
• charges	£6.00
• extras	(£2.08)
• airtime charges	£43.48
• total (other)	£42.24
• total	£175.24

In April 2024, and after Mrs D had complained to our service, O2 confirmed that as a gesture of goodwill it was prepared to write off the outstanding balance on the account, in Mrs D's name, of £175.24 and which it had sought payment of (from her) in August 2023.

Mrs D's complaint was considered by one of our investigators who came to the view that O2's offer of an outstanding account balance write off of £175.24 didn't go far enough to fairly and reasonably compensate Mrs D. She concluded that to fairly and reasonably compensate Mrs D O2 should:

1. buy back the December 2020 agreement debt if it has been sold on to a third party
2. write off (in full) the December 2020 agreement debt

3. pay Mrs D £200 to reflect the distress and inconvenience this whole matter has caused her
4. remove all reference to the December 2020 agreement from Mrs D's credit file

She then went on to say that although she couldn't make an award or recommendation for any associated airtime contracts linked to the December 2020 agreement, if there was any debt remaining on any such contracts then O2 should consider if it would be fair to hold Mrs D liable for this debt.

Mrs D agreed with the investigator's view but O2 didn't. O2 said it was prepared to do 1,2 and 3, as recommended by the investigator, but not 4.

In respect of 4 O2 said it's "*obliged to provide an accurate representation of a customer's history with [it] therefore the credit agreement can't be removed from Mrs [D's] credit file. However, [it would] be happy to arrange for any late payments markers [on Mrs D's credit file] to be replaced with a Q [query]*".

Because O2 didn't accept the investigator's view Mrs D's complaint has been passed to me for review and 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.

Having done so I can confirm that I've come to the same overall outcome as the investigator and for broadly the same reasons.

First thing I would like to say is that I'm somewhat surprised at O2's decision, following the investigator's view, to not remove all reference to the December 2020 agreement from Mrs D's credit file. I say this given that O2 accepted all other aspects of the investigator's view, that in its submissions to our service it said; "*I'm sorry Mrs [D's] account was upgraded by a third party...without her knowledge or consent*" and given that our approach to cases such as this is well known to it and to the industry more widely.

Mrs D accepted the investigator's view in its entirety and O2 accepted it except her finding that it should remove all reference to the December 2020 agreement from Mrs D's credit file. So other than confirming that I agree with the investigator (and for the same reasons) that O2 must do what it has agreed to do, I will now just consider whether O2, as found by the investigator, should have to remove all reference to the December 2020 agreement from Mrs D's credit file.

Like our investigator I'm satisfied that Mrs D didn't take out the December 2020 agreement herself or provide actual authority for a third party to do so. I say this for a number of reasons including, but not restricted to, the following:

- Mrs D's consistent testimony which I find to be both plausible and persuasive
- the fact that the December 2020 agreement phone wasn't delivered to Mrs D's address
- the fact that the agreement payments weren't collected from a bank account in Mrs D's name
- when and how quickly Mrs D contacted O2 to say that she didn't take out the December 2020 agreement herself

- when and how quickly Mrs D contacted O2 to say that she hadn't given (actual) authority to a third party to take out the December 2020 agreement
- when and how quickly Mrs D contacted O2 to say she didn't want agreements taken out in her name

Although I'm satisfied that the December 2020 agreement wasn't taken out by Mrs D and she didn't give a third party (actual) authority to do so, O2 could still hold Mrs D liable for it if it can be shown that the third party entered into the agreement with apparent authority from Mrs D.

But I'm not persuaded this has been established given that I've seen:

- insufficient evidence that O2 ever advised Mrs D, at least in a clear and unequivocal manner, the importance of keeping certain account information confidential, which on balance everybody seems to accept was probably used by the third party in question to enter into the December 2020 agreement
- what account information Mrs D probably did share was done so in good faith and for the purposes of account management, bill checking and data usage, not for the purposes of credit, at a future point in time, being taken out

So I'm satisfied it would be unfair and unreasonable to say that O2 can hold Mrs D liable for the December 2020 agreement on the grounds that the third party acted with apparent authority.

So overall, I'm satisfied that Mrs D didn't enter in the December 2020 agreement herself and she didn't give authority for a third party to do so. And because of my view in this respect it follows, and without question in my view, that any reference to this agreement should be removed from her credit file.

### **My final decision**

My final decision is that Telefonica UK Limited trading as O2, as it has already agreed to do, must:

- buy back the December 2020 agreement debt if it had been sold on to a third party
- write off (in full) the December 2020 agreement debt
- pay Mrs D £200 to reflect the distress and inconvenience this whole matter has caused her

and in addition it must

- remove all reference to the December 2020 agreement from Mrs D's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 9 July 2024.

Peter Cook  
**Ombudsman**