

The complaint

Miss W complains that Telefonica UK Limited trading as O2 ('Telefonica') incorrectly cancelled her direct debit leading to missed payments and adverse credit markers.

What happened

Miss W entered into a fixed sum loan agreement with Telefonica for the provision of an electronic watch in October 2022. One direct debit payment was made but the mandate was subsequently cancelled so no payments were made for November and December 2022. Telefonica restricted the use of Miss W's watch on 26 December 2022.

Miss W contacted Telefonica on 11 January 2023. She said that Telefonica had incorrectly cancelled her direct debit and she asked for any late payment markers recorded with credit reference agencies to be removed – and it seems that Telefonica agreed to do that. Miss W also made the payments which had been missed and set up another direct debit.

As Miss W's credit file had not been updated by April 2023, she raised a complaint with Telefonica. It responded on 18 May 2023, saying that it didn't believe it had made any errors or cancelled Miss W's direct debit. It accepted it had incorrectly told Miss W it would remove late payment markers and was now declining to do so as it didn't consider it an accurate reflection of what had happened. In recognition of the trouble and upset Telefonica had caused Miss W by misinforming her, it offered to make a £40 credit to her account.

Miss W referred a complaint to this service in August 2023. She said Telefonica ought to remove the late payment markers from her credit file because it said it would. She also asked to be compensated for the trouble she'd been caused by Telefonica's poor service.

During the course of the investigation it came to light that the original direct debit on Miss W's agreement had been set up against a bank account owned by a family member. Miss W disputed that she would've given those details to Telefonica and suggested it had made an error in using those details – something it might have had access to as a result of that family member also being a customer.

Our investigator made enquiries with Telefonica about its processes and systems to determine how plausible this was. Ultimately, they didn't think it was most likely to have been what happened. They were also persuaded that Telefonica had not cancelled the direct debit.

However, they didn't think that Telefonica had done enough to make Miss W aware of the missed payments at the time, so they recommended that one of the late payment markers was removed on the basis that Miss W likely would've set up another direct debit if she'd been made reasonably aware of the situation. They accepted that Telefonica misinformed Miss W that the late payment markers would be removed, but thought that the £40 credit it offered to pay Miss W was sufficient compensation for the poor service it had provided.

Telefonica agreed. Miss W disagreed. She maintained that Telefonica ought to remove the late payment markers in question on the basis that it initially said it would.

Later, whilst the case was waiting allocation to an ombudsman for review, Miss W told this service that her direct debit had been cancelled again. Whilst our investigator made some enquiries with Telefonica as to what might have happened, ultimately, they said that because this had happened after Telefonica's final response to this matter it ought to be considered as a separate issue.

The case was passed to me to make a final decision on it. I asked our investigator to make some enquiries as to whether Telefonica was actually reporting late payment markers in respect of missed payments in November and December 2022. Telefonica said that those markers had been removed already.

Our investigator made Miss W aware of this – suggesting that it seemed Telefonica had done enough to resolve matters even if there was some ambiguity about direct debits being setup/ cancelled or misinformation being given.

Miss W disagreed Telefonica had done enough. She said that she ought to receive further compensation for the time it had taken for Telefonica to have removed the markers and in recognition of the poor service she's received.

It's for me to make a final decision on what should happen.

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.

Miss W complains about issues relating to her fixed some loan with Telefonica. That's a regulated agreement and one which this service has the power to consider a complaint about.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory – as it is in this case – I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

In my view the issue which prompted this complaint is the cancellation of Miss W's original direct debit. Telefonica has provided this service with what I consider to be sufficient evidence to show that it likely didn't set up a direct debit mandate incorrectly using someone else's account details, by way of a system error for example. I don't know why that direct debit was subsequently cancelled, leading to missed payments, but I'm not persuaded it was cancelled by Telefonica.

Telefonica has shown that it sent messages to Miss W's Telefonica account to make her aware of missed payments. It's also said that it wrote to Miss W and sent emails to her personal email address, although I've not seen evidence of either of those things. Our investigator asked Miss W why she didn't act on notifications of missed payments. Miss W suggested that the postal address used belonged to a family member, and she accepts that family member told her about having received letters from Telefonica regarding missed payments. But she's also said she first realised payments had been missed when the use of her watch was restricted, in December 2022. In any case, I accept there's some ambiguity about whether Telefonica took sufficient steps to make Miss W aware of missed payments, and at which point she ought reasonably to have become aware.

From what it's said I think that Telefonica accepts that it could've handled the situation better and provided poor service by telling Miss W that it would remove the late payment markers, only to change its mind. I understand why it thought that recording the late payments was an accurate representation of what happened. I don't think it ought to have removed the markers simply because it had incorrectly said it would.

Nonetheless, Telefonica has told this service that it subsequently removed the late payment markers in question showing a clear payment history, and it seems that it did so shortly after the complaint was referred to this service. Given the ambiguity here, I think that's a fair thing for it to have done.

Miss W has asked for compensation for the trouble and upset she's been caused as a result of how Telefonica handled matters. But taking into account the ambiguity of the circumstances which led to this complaint, the only error I can be confident in saying that Telefonica made was to misinform Miss W that the late payment markers would be removed. Whilst I'm sure that was frustrating for Miss W, overall, I don't think there's justification to make any award greater than the £40 credit Telefonica has already offered.

Lastly, as our investigator explained, the issue Miss W now seeks to raise about another direct debit being erroneously cancelled isn't something that Telefonica has had the opportunity to investigate and respond to. As such it should be treated as a separate issue and subject to a new complaint. So, I make no finding on this point.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require Telefonica UK Limited trading as O2 to remove the late payment markers Miss W complains about and to pay her £40 compensation by way of an account credit, to the extent it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 24 July 2024.

Stephen Trapp
Ombudsman