

The complaint

Mr R complains that Telefonica UK Limited, trading as O2, didn't check he could afford the repayments to seven different fixed sum loan agreements he took out with them.

What happened

In November 2021, Mr R took out a fixed sum loan agreement with Telefonica to buy a brand new mobile telephone device. And in the period from January 2023 through to September 2023, Mr R took out six further similar agreements, all for similar devices.

Mr R has also shown us that around the same time, he successfully applied for ten other loan agreements with a different lender. This enabled Mr R to purchase another ten mobile telephone devices. Mr R says he planned to sell the devices, to help pay for his essential living costs. He says that at the time, he was experiencing very difficult financial and personal circumstances.

In the summer of 2023, Mr R says things came to a point where he was struggling to meet the repayments due to the fixed sum loan agreements with Telefonica. Although Mr R had sold all the devices Telefonica had supplied to him, he complained to them and said they didn't check he could afford the repayments, before they agreed to each loan.

In their response, Telefonica said that Mr R had ticked a box on the application, to say he could meet the repayments due. They also said they had performed a credit check before each loan was agreed, which didn't prompt them to decline any of the applications. Mr R didn't accept Telefonica's response and brought his complaint to us.

One of our investigators looked into Mr R's complaint and found that Telefonica hadn't treated Mr R fairly. He said Mr R's credit file showed signs of arrears and repayment arrangements in 2023, so Telefonica should have asked more questions about his financial circumstances. The investigator concluded that Telefonica should have seen that Mr R would struggle to meet the repayments to each loan agreement.

The investigator found that it was fair for Mr R to repay Telefonica for the amount borrowed for each device. But, he asked Telefonica to waive all fees and interest accrued on each loan and to remove any adverse information applied to Mr R's credit file. The investigator also asked Telefonica to engage with Mr R to talk about an affordable repayment plan.

Telefonica didn't agree and said they cannot remove all the adverse information from appearing on Mr R's credit report. Mr R accepted some of the investigator's findings, but asked him to consider a payment for the distress and inconvenience he had suffered.

The investigator didn't change his conclusions. So, Mr R's complaint has been passed to me to make a final 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.

The airtime service agreements

The provision of an airtime agreement doesn't fall under the list of activities that the Financial Ombudsman has the power to investigate. So I don't have the power to consider the complaints about the problems with the network that Mr R has mentioned.

Our investigator explained this to Mr R. I can, however, consider a complaint relating to the fixed sum loan agreements. This is because the regulated activity in question is that of exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement.

The information gathered at the lending application stage

We've explained how we consider complaints about unaffordable lending on our website. I've thought about this approach when deciding this part of Mr R's complaint.

Telefonica was required to make sure, via their lending decisions, that Mr R could sustainably repay the borrowing. The checks that Telefonica were required to carry out had to be borrower focused.

So, instead of seeing how statistically likely Mr R was to repay the borrowing, Telefonica needed to assess whether he could sustainably repay the borrowing, taking into account his personal circumstances. And Telefonica needed to base their creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors. Some of these factors include:

- the type, amount and duration of the credit;
- the frequency and size of the repayments;
- the total amount payable and total charge for credit;
- the interest rate and any other costs which may be payable; and
- any other potential adverse consequences for the customer arising from a failure to make payment.

In this case, Mr R took out seven fixed sum agreements with Telefonica and was asked to pay back a total of around over £12,000. Each agreement was due to last for three years with combined monthly payments of around £370. Given the monthly repayment amount and that six of these agreements were taking out within an eight month period, I think this was a significant commitment over a moderate term.

I've also considered that all seven fixed sum loan agreements were provided free of interest. In other words, Mr R was only required to pay back the amount the amount he had borrowed. With all this in mind, I think Telefonica had a responsibility to ask Mr R about his income and expenditure, as well as to make an assessment of his credit file, during each lending application.

Telefonica have explained to us that they looked at Mr R's credit file before each application for borrowing. But, they haven't shown us the results of their assessment, or any significant

comments about what they found. Telefonica also say they asked Mr R if he could afford the repayments due under each agreement, but haven't shown us where they asked for Mr R's complete income or expenditure details.

In all the circumstances, I'm not persuaded that Telefonica gathered proportional information, on each occasion before they agreed to lend to Mr R. So, I've thought about what information Telefonica could have asked for and what they would have found.

Mr R's financial circumstances before the lending applications

During our investigation, Mr R sent us a copy of his credit file, so we can see what it showed when Telefonica provided the first fixed sum loan agreement in November 2021.

I can see from Mr R's credit report that he had two credit card accounts and two loan accounts with other lenders, all of which were in arrears. And that he was making very low nominal payments to two of those lenders. Additionally, Mr R had arranged a reduced repayment plan on arrears owed to a utilities provider.

So, just from looking at Mr R's credit report in November 2021, I think Telefonica should have realised that Mr R was experiencing financial difficulties. I also think this should have prompted Telefonica to consider further information about Mr R's regular income and expenditure. To gather this further information, I think Telefonica could have asked to see Mr R's bank account statements or proof of his income and regular monthly bills.

Mr R has provided us with a copy of his bank statements from November 2021. I can see from those statements that he received the income he declared to Telefonica. But, I can also see where Mr R makes payments to short term, high cost lenders. It then follows that I think Telefonica would have had further evidence that Mr R was experiencing financial difficulties.

Against the background of Mr R's credit report and what I can see from his bank statements from the time, I don't think it was fair for Telefonica to provide finance to Mr R in November 2021.

Moving on to look at the six lending decisions Telefonica made from January 2023 to September 2023, I can see that Mr R's credit file and bank statements reveal worsening financial circumstances. I say this because Mr R had begun to make payments to debt collection agencies, as well as payments to more short term, high cost lenders.

Mr R had also fallen further into arrears with other companies associated with monthly essential living costs. And, like the investigator, I can see regular payments from Mr R's bank account to gambling websites.

However, perhaps more telling is that Mr R's credit report shows where he had taken out borrowing from another mobile telephone device provider in 2021 and 2022. I can see that Mr R took out ten separate, three year loans for devices over a fifteen month period. Meaning he was required to pay the other lender a total of around £350 a month.

Given the details that were available to Telefonica, I think this should have prompted them to ask further information from Mr R, before they agreed to the six additional loans in 2022. Had they done so, I don't think it would have been fair for Telefonica to have provided the further six fixed sum loan agreements to Mr R.

Overall, I don't think Telefonica treated Mr R fairly and they should now offer him a way to put matters right. So, I've thought about a fair resolution to Mr R's complaint.

Summary

I think Mr R accepts that due to the financial position he was in from 2021 to 2023, his decision to get mobile telephone devices using finance, to then sell to pay for his living costs, wasn't helpful over the long term. I empathise with the circumstances Mr R has told us about and I hope things have improved for him and his family.

We know that Mr R has since sold all the devices he was given by Telefonica. As a result, he's unable to take up Telefonica's offer to return some of the devices, to help repay some of the borrowing.

In all the circumstances, I think it's fair for Mr R to repay Telefonica for the devices he was given. But I don't think it would be fair for Telefonica to add any borrowing costs to the amounts owed under all seven fixed sum loan agreements. So, I think Telefonica should waive and refund any interest or charges applied to any of the fixed sum loan agreements in Mr R's name. I think Telefonica should ensure that Mr R only pays back what he borrowed from them, across all of the agreements.

I'm aware that this settlement will still require Mr R to continue to make repayments to Telefonica. So, I think Telefonica should engage with Mr R, or a chosen representative like a debt charity, when arranging an affordable repayment amount. In doing so, I remind Telefonica of their duty to treat Mr R's financial circumstances with due consideration and forbearance.

I've found that Telefonica should not have lent to Mr R. It follows that I don't think Mr R should suffer from any adverse information recorded with credit reference agencies, about the fixed sum loan agreements. So, I think it's fair for Telefonica to remove all adverse information about the loans, from Mr R's credit file. But, like the investigator, I think it's fair for Telefonica to record any subsequent missed payment information, should Mr R not keep up with any repayment plan put into place.

I acknowledge that Mr R would like Telefonica to make a payment to him, for the distress and inconvenience he says he suffered. But, I'm not persuaded Telefonica was responsible for Mr R's overall financial difficulties. While I understand Telefonica provided Mr R with devices he then went on sell, I think Mr R was largely responsible for his financial situation.

So, I don't think Telefonica need to make a payment to Mr R to reflect the distress inconvenience he has told us about.

Putting things right

Having considered everything, to put things right Telefonica UK Limited trading as O2 should:

1. Waive or refund all fees and interest applied to all seven of Mr R's fixed sum loan agreements;
2. Engage with Mr R to talk about suitable repayment plans for each fixed sum loan agreement; and
3. Remove any adverse information recorded about all seven fixed sum loan agreements with credit reference agencies, up to the date repayments plans are arranged.

My final decision

For these reasons, my final decision is that I uphold this complaint and require Telefonica UK Limited trading as O2 to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 January 2025.

Sam Wedderburn
Ombudsman