

The complaint

Mr L has complained about the delivery of a mobile phone supplied under a fixed sum loan agreement with Telefonica UK Limited (trading as O2).

What happened

Mr L entered into a fixed sum loan agreement with Telefonica. He bought a phone which cost around £800 and agreed to make 36 payments of around £22.

As he was an existing customer of Telefonica, he updated his billing address before he bought the phone to ensure it was delivered to the right place.

When the order was completed, he noticed the tracking information said it would be delivered to his old address. He said he went to his old address, but the courier refused to give him the parcel.

Mr L said the courier advised him to update the tracking to get the order delivered to a neighbour. The courier tracking then showed the order as being delivered, but Mr L said it wasn't received.

Mr L said he contacted Telefonica on multiple occasions but didn't get a response. He said he'd been given conflicting information at the outset about his change of address and the order. He felt that he had been accused of taking the goods and the customer service from Telefonica was extremely poor.

Mr L said that when Telefonica finally responded they directed him to another dispute resolution scheme incorrectly. Mr L referred his complaint to our service.

Telefonica offered to end the agreement with nothing further to pay, refund the three repayments made, and to pay £150 compensation for his experience. Our investigator thought that was fair. Mr L didn't agree and said he was due more.

I've contacted both parties and let them know my provisional findings are to increase the compensation and award interest on the refunded payments. I've not received any objections, so I'll go on to make my 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.

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Telefonica is also the supplier of the goods under this type of agreement, and responsible for a complaint about their delivery.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It includes an implied term of the contract that the goods should be delivered to the consumer.

Both parties have agreed that the goods weren't delivered to Mr L. That's a fundamental breach of contract. Telefonica have agreed to end the agreement with nothing further to pay and have refunded the three payments made under the agreement. I think that broadly matches the requirements of the CRA, and it puts Mr L back in the position he should be in but for the breach.

The breach of contract is no longer in dispute, so I won't discuss it further here. But it's left for me to decide whether the refund is enough to cover Mr L's losses for the breach of contract, and whether the compensation offered fairly reflects the impact on Mr L.

Mr L said he should get a refund of everything he paid including what was paid towards the separate service agreement. I asked Telefonica about Mr L's service agreement. This is often referred to as "airtime". Mr L was an existing customer of Telefonica before he entered into the loan to supply the phone. He had an existing agreement to supply airtime, and this continued on a slightly amended basis, although at a broadly similar cost, when he took out the new loan.

If Mr L took out a new service agreement at the same time as he entered into the fixed sum loan agreement, and then he wasn't able to use that because of the breach of contract, then I might have been able to award a sum to reflect that. But I'm not persuaded that is what happened here, the evidence shows the service agreement was a separate agreement that hasn't been impacted by the breach of contract, because it was already in existence before Mr L applied for the loan. And he was able to use it despite the goods not being delivered. It should be noted that Telefonica said it also refunded two months' payments for the service agreement even though it continued to be used.

Telefonica have refunded the three loan payments Mr L made, but I would usually expect interest to be added as he's been deprived of those funds. So, I think Telefonica also need to pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.

Telefonica have accepted that Mr L contacted them on multiple occasions and didn't get a response. Mr L said that he contacted them several times, he was put on hold, he was made to feel like he had stolen the phone, and then he was directed incorrectly to another dispute resolution service. Mr L first reported the problem in April 2024 and Telefonica made an offer in August 2024. I can understand that Mr L felt frustrated, worried, and not listened to. Telefonica didn't really get to grips with the complaint, and I don't think £150 fairly reflects the upset and inconvenience that Mr L has experienced. He's spent more than a reasonable amount of time trying to sort things out himself when this was something which was reasonably within Telefonica's gift to resolve at an earlier stage.

Given all the circumstances here and the refunds already in place, I think compensation of £250 more fairly reflects what has happened. I've been in touch with both parties, and I've set out why I think this is a fair and reasonable way to resolve the complaint. Both parties have agreed, so I see no reason to depart from my provisional findings. I'm making a final decision to give Mr L the certainty of a legally binding decision.

My final decision

My final decision is that I uphold this complaint and direct Telefonica UK Limited (trading as O2) to do the following:

- Pay £250 in compensation
- Pay 8% simple annual interest on the loan monthly payments refunded from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 April 2025.

Caroline Kirby
Ombudsman