

The complaint

Mr S has complained Telefonica UK Limited, trading as O2, is holding him liable for a credit agreement for a mobile handset. Mr S says the handset was never delivered to him.

What happened

In December 2023 after returning a handset as it was the wrong colour, Mr S took out a further credit agreement for a mobile handset. He says this was delivered to him on 26 December 2023, but the packaging was torn. On further examination Mr S noted the box within the packaging didn't hold the handset. Mr S says he immediately tried to call O2 but was put on hold.

O2 has a record of speaking to Mr S on 29 December. They told him they were continuing to hold him liable as they weren't convinced the mobile handset wasn't there when the package was opened.

Mr S brought his complaint to the ombudsman service.

Our investigator reviewed the evidence in detail. This included the photo taken by Mr S showing the empty packaging. He noted O2's evidence that their discussions with the courier showed the handset was delivered successfully and the packaging was the correct weight. He said he wasn't going to ask O2 to cancel the credit agreement.

Unhappy with this outcome, Mr S has asked an ombudsman to consider his complaint.

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've reached the same outcome as our investigator. I'll explain why.

Firstly, it's worth saying that I've reviewed the evidence in full, but I'm not going to refer to all the detail that our investigator mentioned in his two views of 20 May and 10 September 2024. I'm aware that both O2 and Mr S will be aware of the detail around this complaint.

I'm going to concentrate on the main aspects which are driving my decision. Specifically:

- In November 2023 Mr S complained to O2 that a mobile handset he'd ordered was not in the packaging that was delivered. O2 accepted what Mr S had told them and provided him with a replacement. I think it's highly unlikely that someone would be so unlucky to have two handsets not contained within their packaging almost consecutively.
- There is some dispute exactly when the mobile handset was delivered. At different times this has been stated to be 26 and 27 December. I'm not convinced the exact date matters. I say this because O2's records only show a conversation with Mr S on

29 December. I appreciate he's told us that he stayed on hold for some time before getting through successfully and I've considered his testimony.

- Regardless of the delivery date, I can see the mobile was successfully activated on 28 December which is after either delivery date and before any record of a conversation between Mr S and O2. It remains feasible this could have been done by Mr S or someone he knows.
- Unfortunately for Mr S, I'm not convinced by his photo evidence which obviously could have been constructed after the event.

I appreciate that Mr S will not agree with my outcome. However, I think it's more than likely he received the mobile handset, so O2 can continue to hold him liable for the fixed-sum loan agreement taken out on 26 December 2023.

My final decision

For the reasons given, my final decision is not to uphold Mr S's complaint against Telefonica UK Limited, trading as O2.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 February 2025.

Sandra Quinn
Ombudsman