

The complaint

Mr J complains about the quality several mobile telephone devices, each bought using a fixed sum loan agreement with Telefonica UK Limited trading as O2.

What happened

In March 2023, Mr J contacted Telefonica to talk about some problems he had with a mobile telephone device that they had supplied to him. To try and resolve matters, Mr J took out a fixed sum loan agreement with Telefonica, for a brand new device.

However, soon after getting the device, Mr J says he began to experience problems with the services and signal, also provided by Telefonica. He says he thought the device had been 'mirrored' or 'cloned' and that was preventing the device from operating as normal. So, Mr J complained to Telefonica.

Although Telefonica didn't find any issues with the airtime services, they agreed to send Mr J a replacement Subscriber Identity Module ('SIM') card. To try and resolve Mr J's complaint, Telefonica also applied a credit of £230 to Mr J's airtime account.

Around a month later, Mr J reported similar problems. So, Telefonica cancelled Mr J's existing loan and provided him with a new fixed sum loan agreement, for another brand new device. Mr J says he continued to experience problems with the second device. So, he brought his complaint to us.

While the case was with us, Telefonica ended Mr J's second loan and provided a third fixed sum loan agreement, for a third brand new device. Telefonica subsequently offered to end the third agreement, take back the device and refund all the repayments Mr J had made towards the third loan.

One of our investigators looked into Mr J's complaint and found that Telefonica had treated Mr J fairly. She wasn't persuaded that any of the devices provided to Mr J were of unsatisfactory quality. So, she didn't think Telefonica had breached any of the contracts they had with Mr J. Overall, the investigator found that it was likely to be the airtime services, which Mr J may have been experiencing issues with.

Mr J didn't accept the investigator's conclusions and said he had now received a fourth handset from Telefonica. The investigator didn't change her findings and Mr J's case has now been referred 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.

I want to acknowledge where I've summarised the events of Mr J's complaint. I don't intend any discourtesy by this and it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality.

But, I want to assure Mr J and Telefonica that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr J's concerns about airtime services and signal

Our service was set up by Parliament under the Financial Services and Markets Act 2000 ('FSMA'). It's important to make clear that as a public body, we don't have a general, 'at large' power to investigate any complaint. We can only investigate what FSMA and rules made under FSMA say we can. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the Financial Conduct Authority ('the FCA') the power to say what complaints we can and can't consider. The FCA has set these out in the Dispute Resolution chapter of the FCA Handbook (also known as 'DISP' or 'the DISP rules').

We can consider some financial complaints against Telefonica because it falls under what is known as our compulsory jurisdiction. But that doesn't mean we can consider every complaint that is brought to us.

DISP 2.3.1 says we can consider complaints under the compulsory jurisdiction if it relates to an act or omission by a firm in carrying out certain activities. We can also look at ancillary activities in connection with them. The provision of an airtime agreement doesn't fall under the list of regulated activities.

So, I don't have the power to consider the complaints and ancillary issues relating to the airtime agreements. This means I don't have the power to look into the instances where Mr J says he experienced poor airtime services and signal.

The quality of the devices provided by Telefonica

Under the Consumer Rights Act 2015 ('CRA'), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described.

By satisfactory quality, the CRA says this is what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

With that in mind, I've looked at the information we have about the quality of the mobile telephone devices provided to Mr J, to decide if he is due a remedy from Telefonica.

On the one hand, Mr J has told us that each of the devices supplied to him by Telefonica had several problems and faults. I can see from Telefonica's records that Mr J called to raise concerns with the quality of the devices, soon after getting each of them.

Amongst other concerns, Mr J says the face recognition software didn't work, he had trouble using an online banking application and some calls were blocked by the device. He also says the device and his Telefonica account had been compromised and possibly hacked into.

During our investigation, I can see that Mr J has told us he took one of the devices to the manufacturer, to try and demonstrate where the handset had faults. I think this was a reasonable step for Mr J to have taken. But, we don't have a copy of the manufacturer's

findings and Mr J hasn't been able to show what he was told.

On the other hand, I cannot see that Telefonica have looked at any of the devices Mr J says are faulty. Telefonica haven't shown us a report of any devices returned to them, or where they have looked at a potential repair. Telefonica have also said that the problems aren't with the devices themselves.

To try and help Mr J, Telefonica have offered other solutions such as sending him a replacement SIM card, allowing him to change his device and placing £230 of credit to his airtime services account. I've also considered where Telefonica have shown us that Mr J has made regular use of his devices and where Mr J says the same problems exist with all four brand new handsets provided to him.

I've thought carefully about what Mr J has said, the evidence available about the quality of the devices and the actions taken by Telefonica. On balance, I'm not persuaded the evidence shows there are faults with the devices Mr J acquired using the fixed sum loan agreements provided by Telefonica.

Overall, I don't think the devices provided to Mr J are of unsatisfactory quality. This means I don't think Telefonica have breached the terms of the fixed sum loan agreements they have with Mr J.

Summary

In light of my finding that there hasn't been a breach of contract by Telefonica, I don't think Telefonica need to offer Mr J a remedy. In all the circumstances, I think Telefonica have treated Mr J fairly.

Mr J has explained to us that he has experienced very distressing personal circumstances over the last few years. I'd like him to know that I empathise with what he has told us and I hope things have improved for him.

While I know he'll be disappointed, I'm aware that Telefonica had offered for him to return the third device and exit that agreement. They also said they would consider a refund, depending on the condition of that device. Given that Mr J says he has swapped the third device for a fourth handset, the opportunity to accept that offer may have passed.

If Mr J finds he continues to encounter problems with his Telefonica signal and airtime service, he may still be able to refer that complaint to the relevant dispute resolution scheme. I leave it for Mr J and Telefonica engage with each other about those concerns.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 February 2025.

Sam Wedderburn
Ombudsman