

## **The complaint**

Miss W complains about a fixed sum loan agreement with Telefonica UK Limited trading as O2.

Throughout this complaint, Miss W has been represented by her partner. But, to make things easier, I'll just refer to Miss W.

## **What happened**

In August 2021, Miss W took out a fixed sum loan with Telefonica to get a brand new smart watch device. The device cost £288 and under the agreement, Miss W was required to make 36 monthly repayments of £8. As part of the agreement, Miss W also took out an airtime services contract with Telefonica.

Around two years later, Miss W cancelled the airtime contract, but says she told Telefonica she wanted the loan to remain in place. Telefonica say that Miss W didn't make that clear, so when the airtime contract was ended, they also cancelled the agreement for the device. This meant Telefonica sent Miss W an enforcement notice, asking her to pay the remaining balance of the loan in one lump sum.

Once Miss W received the enforcement notice, she called Telefonica to raise her concerns. Miss W also complained that the smart watch had a fault and that she didn't need the airtime contract when she took out the loan for the device.

In their response to Miss W's concerns, Telefonica said Miss W had the option to choose if she wanted the airtime contract. They also said Miss W hadn't told them she wanted the loan for the device to continue. Although Telefonica didn't have a record of the fault with the smart watch, they offered to replace the device as a gesture of goodwill. Miss W didn't accept Telefonica's response and brought her concerns to our service.

One of our investigators looked into Miss W's complaint and found that Telefonica had treated Miss W fairly. She couldn't see where Miss W was given incorrect information when the loan started and ended. Or, where Miss W had shown there was a fault with the device. So, the investigator said Telefonica's offer to replace the device was fair.

Miss W didn't agree with those findings and asked the investigator to consider awarding compensation for the delay Telefonica had caused when looking into her concerns. The investigator didn't change her conclusions and Miss W's complaint has now 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.

This case is about a fixed sum loan agreement which Miss W took out with Telefonica. These types of loans are regulated financial products, so we are able to consider complaints

about them.

### *The start of the fixed sum loan agreement*

Part of Miss W's complaint is that Telefonica didn't tell her she didn't need to take out the airtime services contract. She says she didn't need it, and that Telefonica should have realised that.

I've looked at Telefonica's records and I've thought about what Miss W has told us. Having done so, I cannot see anything in Telefonica's notes which explains the sales process and what was discussed with Miss W. Furthermore Telefonica say they dispose of any call recordings after around six months. So, I cannot listen to how the airtime service contract was sold.

But, we do have the fixed sum loan agreement. Section 3.2 of the agreement says:

*"In order to obtain the credit, you must also enter into a Pay Monthly Mobile Agreement (including the Equipment Agreement) which covers the terms and conditions relating to the provision of airtime services".*

After considering the terms and conditions of the fixed sum loan agreement, I think Telefonica explained to Miss W, that she was required to take out the airtime services contract. I think Miss W was made aware this would sit alongside her borrowing for the device. So, I think Miss W had the option to accept the deal being offered by Telefonica, or walk away to find a different provider.

However, Miss W says she didn't understand the terms of the agreement and was taking medication at the time of the sale. And these things made her vulnerable.

Although I acknowledge what Miss W has explained and I empathise with her circumstances, I've not seen where it should have been clear to Telefonica that they should have treated Miss W differently. I think Telefonica's responsibility extended to explaining the need to take out an airtime services contract to get the deal for the smart watch. It was then for Miss W to choose whether or not to accept that deal.

In all the circumstances, I think Telefonica treated Miss W fairly, when she offered her the fixed sum loan agreement for the device.

### *The quality of the device*

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. 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. The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within that period, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Miss W to show that the goods were not of satisfactory quality.

Miss W was provided with a brand new smart watch device, costing nearly £300. So, I think it was reasonable for her to expect it to be free from faults for a considerable period of time.

Within her complaint to Telefonica, Miss W says the device developed a fault whereby it overheated and turned itself off. She says she made Telefonica aware of the faults in December 2023, but she started to experience problems around six months after she bought the device. To support what Miss W says, she has sent us links to online articles, which tell of similar problems. Miss W has also said she would provide video evidence of the fault happening to her device.

Telefonica have provided us with their records of contact with Miss W. I cannot see where Miss W raised her concerns about the quality of the device before December 2023, or where she has shown that those problems exist. And we don't have a video of the fault, or a report from repairing engineer.

I acknowledge what Miss W has said about the faults and her strength of feeling about what has happened. But, overall, I don't think there is evidence to support Miss W's argument that the device wasn't of satisfactory quality when it was supplied. So, I don't think there's been a breach of contract between Miss W and Telefonica. Other than inspecting the device, I don't think there were any further steps Telefonica should have taken, when they became aware of Miss W's concerns.

However, in an attempt to settle Miss W's complaint, Telefonica have offered to replace Miss W's smart watch. I've found that Telefonica didn't need to provide a remedy to Miss W, as she hasn't shown that the device has a fault. So, by making an offer to replace the device as a gesture of goodwill, I think Telefonica have treated Miss W fairly.

#### *The ending of the fixed sum loan agreement*

Miss W also complains that she told Telefonica that she wanted her loan agreement to remain in place, after the cancellation of the airtime services contract.

I've looked at Telefonica's records and although I can see Miss W spoke to them in to cancel the airtime services contract in October 2023, Telefonica doesn't have a copy of that call. So, I've thought again about what each side to the dispute have said.

Telefonica's records say that in December 2023, they told Miss W that she couldn't have cancelled the airtime services contract, without cancelling the loan agreement. But, in their final response to Miss W's complaint, Telefonica say Miss W could have cancelled the airtime services contract independently.

I agree with Miss W, in that Telefonica have created confusion here and I can see why this was frustrating for her. But, I think the cancellation of either agreement is covered in the terms and conditions of the fixed sum loan. Section 17 of the loan agreement says:

*"If a Lead Device Credit Agreement or your Pay Monthly Mobile Agreement is terminated.....we will treat that as notice to terminate this Credit Agreement (subject to serving a notice on you) and.....we will have the right to require immediate repayment of the Amount of Credit..... We will give you notice of our intention to do this and will notify you of the remainder of the Amount of Credit you owe."*

While I cannot be sure what was said by Miss W or Telefonica during the call in October 2023, I think the terms of Miss W's agreement covers the question she may have had about the consequences of ending her airtime services contract. I say this because I think those terms explain that both agreements will end, if one of them is terminated.

Having thought more widely about what happened, I can see that Miss W went on to repay the remaining £72 of the loan agreement. And I cannot see that Telefonica recorded any

adverse information with credit reference agencies.

Overall, I understand that Miss W experienced worry when the repayment to Telefonica was larger than usual. But based on all the evidence and what Telefonica have since made available to Miss W, I think Telefonica have treated Miss W fairly.

### *Summary*

I've concluded that Telefonica didn't provide incorrect information, when Miss W applied for the fixed sum loan agreement in August 2021. I've also said that Telefonica treated Miss W fairly when she chose to end the airtime services contract in October 2023. Additionally, I've not seen where Telefonica provided Miss W with a device that a reasonable person would say is of unsatisfactory quality.

But, I acknowledge where Telefonica took an unreasonable amount of time to address her concerns about the quality of the device. Telefonica have apologised for this and gone on to offer to replace Miss W's device as a gesture of goodwill, to resolve the whole of her complaint.

I empathise where Miss W would like Telefonica to pay her some compensation for the delay. But, in all the circumstances I think Telefonica's offer means they have treated Miss W fairly.

### **Putting things right**

Having considered everything, to put things right Telefonica UK Limited trading as O2 should replace the device Miss W bought using the fixed sum loan agreement.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 24 June 2025.

Sam Wedderburn  
**Ombudsman**