DRN-5212811

The complaint

Mr L complains about the balance of a fixed sum loan agreement he has with Telefonica UK Limited trading as O2.

What happened

In July 2023, Mr L took out a fixed sum loan agreement with Telefonica to pay for a brand new mobile telephone device. The cash price of the device was around £1,100 and Mr L was scheduled to make monthly payments of about £30, over a three year period.

Around ten months later, Mr L says he was looking at his account online and noticed he was eligible for an upgrade. He says Telefonica's website explained he could get a brand new device and complete the upgrade free of charge. So, Mr L entered a new fixed sum loan agreement for a subsequent brand new device. He says he thought his previous loan would end with nothing further to pay.

However, after receiving his monthly bill from Telefonica, Mr L says his initial loan agreement remained in place. This meant Telefonica were now holding Mr L responsible for two monthly payments, under two separate loan agreements. Mr L raised his concerns with Telefonica and said he had been misled. He asked Telefonica to allow him to exit the initial loan agreement and remove any responsibility for him to make further payments to it.

In their final response to Mr L's complaint, Telefonica said that taking out a new loan agreement didn't mean Mr L's previous borrowing would be settled. Telefonica also said that Mr L didn't trade in his previous device, which may have settled or reduced the amount owed. So, they said it was reasonable to expect Mr L to make payments to both loan accounts. Mr L didn't agree with Telefonica's response and brought his complaint to us.

One of our investigators looked into Mr L's case and found that Telefonica had treated Mr L fairly. She wasn't persuaded that Telefonica misled Mr L into taking out the subsequent loan agreement. The investigator thought Mr L ought to have been aware that his previous loan was still due to be paid.

Mr L didn't accept the investigator's findings and said Telefonica had told him he could upgrade his device without further costs. He said Telefonica gave him incorrect information, which induced him into the subsequent loan agreement.

The investigator didn't change her conclusions and Mr L's case 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 Mr L took out with Telefonica. This is a regulated financial product, so we are able to consider complaints about it.

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. The CRA then sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

A misrepresentation is, in very broad terms, a statement of law or of fact made by one party to a contract to the other, which is untrue. And which induces the other party into the contract.

In Mr L's case, he says he entered into the more recent fixed sum loan agreement for the device, because he was told the upgrade was free of any other charge. To support what he says, Mr L has told us that Telefonica's website had details specific to his account, which showed he could upgrade his device without further cost.

Telefonica have explained that they are unable to provide screen shots of what Mr L saw, when he applied for the fixed sum loan in 2024. They say each device on offer to Mr L at the time of the upgrade, would have shown details about the upfront cost to the customer of the new handset. And it's likely Mr L is referring to the upfront cost of the device he chose. Telefonica say the upfront cost is separate to any borrowing Mr L already had with them.

Having looked at the terms of Mr L's fixed sum loan agreement, I can see he didn't have to make an upfront payment for the device he chose in 2024. So, on balance I'm more persuaded by Telefonica's argument that Mr L is likely to have looked at the upfront cost of the device being described as zero.

On the face of it, I'm not persuaded Telefonica gave Mr L incorrect information about the costs involved with upgrading his device. But, I think there are other circumstances to consider, to help decide if Mr L was misled by Telefonica.

I can see from Telefonica's records that in May 2024, Mr L had made monthly payments to his initial fixed sum loan agreement for nearly a year. This means the loan term had around two years remaining and a balance of around £800 for Mr L to repay. I don't think this is an insignificant figure, compared to the total amount borrowed under that agreement.

Furthermore, I can see where Telefonica sent Mr L regular correspondence about his initial fixed sum loan and the direct debits which were due. Telefonica have also sent us a copy of an email they sent to Mr L in July 2023. In the email Telefonica told Mr L that he'd need to continue to repay the balance of his existing loan, or trade in his device, before he could complete the process for an upgrade.

Telefonica's records show where Mr L had started to talk to them about a trade in, shortly before he completed the upgrade. They say they declined to accept the trade in, because Mr L's device was damaged. Mr L says his device wasn't damaged and he simply chose not to trade it in with Telefonica. Either way, I think Telefonica's records show Mr L was aware that we still had commitments to Telefonica for his existing loan.

I've thought carefully about the outstanding balance, the correspondence from Telefonica and Mr L's discussions about a trading his previous device. Having done so, I'm persuaded Mr L had an awareness of the need to either use the proceeds of the trade to repay his existing borrowing, or that the loan would still need to be repaid despite the upgrade.

Overall, I'm not persuaded Telefonica gave Mr L some incorrect information, which induced him into taking out the more recent fixed sum loan agreement. On balance, I think it was likely Mr L was aware that his previous agreement still needed to be repaid. So, I think it's fair for Telefonica to continue to hold Mr L responsible for the repayments due under his fixed sum loan agreements.

That said, I empathise with Mr L, where he says he donated his previous device to charity. This means he doesn’t now have a device to trade against the first fixed sum loan agreement. I also acknowledge the difficult financial circumstances Mr L has told us about, particularly in view of changes in his personal life.

I’m aware that following my findings, Telefonica may start to contact Mr L to arrange for the repayment of the balance of the loans. In doing so, I remind Telefonica of their responsibility to treat Mr L’s financial circumstances with due consideration and forbearance. This may mean amongst other things, Telefonica carefully considering Mr L’s income and expenditure to put together an affordable repayment plan, if he needs such an arrangement.

My final decision

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 7 July 2025.

Sam Wedderburn
Ombudsman