

The complaint

Mrs D complains about a faulty mobile phone device she acquired through a fixed sum loan agreement with Telefonica UK Limited trading as O2.

Mrs D is represented in this complaint. But for ease, I'll mainly refer to Mrs D throughout my decision.

What happened

In November 2022, Mrs D acquired a mobile phone device through a fixed sum loan agreement for credit of £969. The agreement was to be repaid in 28 monthly instalments of around £34.

Mrs D also had an airtime agreement in place which had monthly repayments of around £24 a month, for the first 24 months of the device plan term.

Mrs D complained to O2 in November 2023 about an issue with the phone screen which flickered. Shortly after Mrs D reported this issue, her phone was sent off for inspection where it was confirmed there was a fault with the phone screen. When the phone was returned to her, Mrs D noticed the back of it had stickers on it, the phone screen failed to turn on even when connecting to a phone charger and that the phone was bent.

Mrs D says O2 offered to give her a new phone, but that it couldn't be ordered on the same day. So, Mrs D didn't agree to this.

Mrs D says she would like a new phone as it couldn't be repaired under the warranty cover she had in place. Mrs D has also asked for compensation for the inconvenience caused to her as a result of O2's customer service failings when dealing with this matter.

O2 say Mrs D's phone was sent off for repairs on two occasions, for different issues, but that both times the phone was returned as the warranty didn't cover the reported issues. However, O2 recognised that there was some damage to the phone as Mrs D mentioned. O2 said as the phone had been out of stock for a substantial amount of time and was marked as end of life, unfortunately, they weren't able to provide a replacement of the same device. Instead, in September 2024, O2 offered to resolve things by refunding Mrs D the repayments she made towards the agreement from the point she reported the issue with the phone which was 10 months. O2 said this amounted to around £346 and that they'd also clear the remaining balance due under the fixed sum loan agreement as a gesture of goodwill.

In relation to the customer service issues Mrs D complained about, O2 said Mrs D referred her concerns to another ADR scheme who had decided that the £50 credit O2 offered to apply to Mrs D's account was a fair way to resolve her customer service concerns. O2 provided evidence to show they credited Mrs D's account with the £50 in July 2024. So O2 didn't offer to do anything more on this point.

Our Investigator considered Mrs D's complaint. In summary, she said it had been established Mrs D's phone cannot be replaced with a like for like. So, she went on to consider O2's offer and said as Mrs D had use of the phone for a year before it was sent off to be repaired and further damage caused, our Investigator didn't think it was fair to ask O2 to refund all of Mrs D's monthly repayments. Instead, our Investigator said it was fair for O2 to reimburse Mrs D with the 10 monthly repayments they offered from the point she complained about the quality of the phone and to also write off the outstanding balance.

Mrs D's representative responded and disagreed with our Investigator's view. In summary, they said Mrs D has now bought a new phone and wanted Mrs D's complaint considered by an Ombudsman. So, the complaint has been passed to me to decide.

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.

What I can and can't consider

I'm mindful Mrs D referred this complaint to another ADR scheme who reached a decision. I've read a copy of the decision and while this scheme said they couldn't make any comment or determinations in relation to the mobile phone device or the agreement, they considered the wider customer service issues Mrs D experienced when dealing with this matter. In summary, they said O2's offer of crediting Mrs D's account with £50 was fair and the decision also asked O2 to send Mrs D a written apology. As this decision has been reached, it's not appropriate for me to comment on any customer service concerns Mrs D had when O2 dealt with this issue.

This complaint concerns a fixed sum loan agreement which is a regulated activity and one I'm able to consider. I'm not able to consider any concerns about airtime as our service doesn't have the power to do so.

The issue with Mrs D's phone being faulty

It's not in dispute here that something went wrong with Mrs D's phone and that it was faulty. O2 acknowledged that following their inspection of the phone, it was returned to Mrs D faulty and offered Mrs D a refund of 10 repayments made since she first raised her concerns about the faulty phone. O2 have also offered to clear the outstanding balance due under the agreement. With that in mind, I'll go on to consider whether this is fair or whether O2 need to do anything more to resolve things.

I can appreciate Mrs D said she wanted a new phone, but O2 have explained why they couldn't provide a like for like replacement. In January 2024, O2 offered Mrs D to either wait for the phone to be in stock, opt to have the phone repaired or to have the agreement cleared – allowing her to start again with a new agreement and a new phone. O2's notes show Mrs D expressed dissatisfaction with all of the proposed options and she didn't go ahead with any of them. With that in mind, I don't think O2 could have done more at that point as I don't think the options they proposed were unreasonable.

I can appreciate this situation was frustrating for Mrs D, especially as she went to source another mobile phone herself so that she wasn't without one. I don't think it would be fair for O2 to refund Mrs D all of the monthly repayments she made towards the fixed sum loan agreement as she had the phone for around a year before she experienced issues with the phone screen flickering in November 2023. I haven't seen any evidence to persuade me Mrs

D wasn't able to use her phone before this point, so, I think it's fair Mrs D pays for the usage she had of the phone before there were any reported issues.

O2 told our service in September 2024 they were prepared to refund Mrs D the ten monthly repayments she had made from November 2023 – when she first reported an issue with the phone. O2 also said they'd clear the remaining outstanding balance on the fixed sum loan agreement. All in all, I think it's fair to say O2 have effectively agreed to refund the ten payments from November 2023, amounting to around £340 and then any other payments Mrs D may have made after they made this proposal in September 2024 – I say this because O2 agreed to clear the remaining balance under the agreement. Given Mrs D's use of the phone has been impacted and she says it's not been usable, I think this is a fair way to resolve Mrs D's complaint.

Mrs D hasn't mentioned anything about her credit file being impacted in any way by this issue. But for the avoidance of doubt, I'd also recommend O2 remove any adverse information that may be reporting about this agreement from November 2023.

I appreciate Mrs D's representative told us he experienced inconvenience and incurred costs, like travel costs, as a result of dealing with this issue for Mrs D. But it's not Mrs D's representative's complaint, so he's not an eligible complainant in the circumstances here. It follows that I can't make an award for any impact experienced by Mrs D's representative.

Putting things right

To put things right for Mrs D, I require Telefonica UK Limited trading as O2 to:

- Reimburse Mrs D with the ten monthly repayments she made from November 2023 and any other subsequent payment she may have made under the agreement from when O2 proposed their offer in September 2024 onward,
- If the agreement is still in place and if Mrs D didn't make any further payments towards the agreement from when O2 proposed their offer in September 2024, O2 should clear the remaining outstanding balance due under the fixed sum loan agreement, bringing the loan agreement to an end,
- Remove any adverse information that may be reported about this fixed sum loan agreement from November 2023.

My final decision

For reasons explained above, I uphold this complaint and I require Telefonica UK Limited trading as O2 to carry out the actions I've set out under the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 21 May 2025.

Leanne McEvoy
Ombudsman