

The complaint

Mr J complains Telefonica UK Limited trading as O2 allowed him to take out a fixed sum loan agreement for a new phone for his now ex-partner, which he says he shouldn't have been allowed to do. And that O2 allowed his ex-partner to take out a fixed sum loan agreement for a smart watch using his details. Mr J also complains about the customer service he received from Telefonica UK Limited trading as O2.

What happened

Mr J has complained about the following:

1. Fixed sum loan agreement for a mobile phone device

This was a 36-month fixed sum loan agreement, taken in November 2019, which was to be repaid in monthly instalments of £19.50.

Mr J says in November 2019, when he was purchasing his mobile phone, he was forced to take out a fixed sum loan agreement and airtime agreement for a new mobile phone, in store by an O2 advisor, for his now ex-partner. Mr J says because his ex-partner had poor credit at the time, the advisor in the store suggested Mr J take out a contract for her, using his details. Mr J says he wasn't really given a choice, which then made the situation awkward.

Although Mr J agreed to do this at the time, he said this never should have happened. I asked Mr J what made him complain about this issue in 2023 after he'd split up with his partner. Mr J's response wasn't entirely clear to me as he said he was unaware his ex-partner had later taken out an agreement for a smart watch using his details, without his consent or authority.

O2 said the agreement for the mobile phone came to an end in October 2022 and was cleared with nothing further to pay. But that the mobile phone number for the airtime agreement was still active. O2 told us they no longer use the system that Mr J's account was previously held on, so they have limited information. And that while they can't comment on what was said in store and can no longer ask the advisor, due to the passage of time, they wouldn't usually suggest customers take out a fixed sum loan agreement for someone else nor push it upon them, due to the financial commitment that comes with the monthly repayments.

Our Investigator said he didn't think O2 had done anything wrong as there wasn't enough evidence to suggest Mr J was pressured, after considering that he raised this as a concern four years after the agreement was taken out in 2019.

2. Fixed sum loan agreement for a smart watch

This was a 36-month fixed sum loan agreement, taken in 2022, to be repaid in monthly instalments of £12.99.

After Mr J and his partner separated, Mr J says he checked his O2 account and found his

partner had taken out a fixed sum loan agreement for a smart watch using his details in April 2022. So, he raised this with O2 in 2023. Mr J says he didn't give his ex-partner authority for her to do this, that she did this without his knowledge, and that she had access to his O2 account to do this. Mr J also emailed O2 on 1 June 2023, telling them that he had started receiving default notices about this agreement and said his credit file was being damaged.

In O2's final response letter they said it appeared the smart watch was ordered online which meant Mr J's ex-partner had access to his online O2 account. And that Mr J would have needed to accept the order of the watch through an email which they sent to his email address, although they haven't provided a copy of the email they sent. Because of this, O2 didn't think they'd done anything wrong. As there was an outstanding balance of around £300 due under the agreement, amounting to around 24 missed monthly repayments, O2 say they recorded a default and passed Mr J's account to a third-party debt collection agency which, from the information available to me, seems to have happened in August 2023.

O2 acknowledged Mr J's circumstances had changed. And because of this, O2 said they'd take the debt back from the debt collectors and clear the outstanding balance. O2 also said they don't require the smart watch to be returned and the debt will show as satisfied on Mr J's credit file. However, due to there being missed payments for the watch, they've a legal obligation to report Mr J's true payment history. Therefore, O2 said the default on Mr J's account will remain.

Our Investigator said Mr J's ex-partner was able to take out the agreement, using his details, by accessing his online O2 account. And having considered the evidence which suggested Mr J had told O2 that there was an arrangement for his ex-partner to pay towards this agreement, as well as being satisfied the watch was delivered to Mr J's address, and that the payments were being taken out from Mr J's account, he didn't think O2 were acting unfairly in holding Mr J responsible for this agreement. As the account was in arrears, our Investigator didn't think O2 were doing anything wrong in reporting the default on Mr J's credit file.

3. Customer service issues with O2

Mr J also complains about the service he received from O2. I've summarised his key points below:

- There were several times he contacted O2 and a Manager at O2 via email about his complaint but didn't receive a response and instead, he was ignored.
- When he tried to call O2 about the issues he was facing, they hung up on him and he said he had conversations with O2 via their online chat which took several hours with no resolution.
- O2 told him something different about allowing his daughter to use the phone at a reduced tariff price of £9.
- He was contacted several times by debt collectors who were chasing him for the outstanding balance of the smart watch. Mr J says they threatened him which caused him distress.
- He offered O2 a repayment plan for the outstanding amount for the watch. But O2 refused this and kept telling him this amount was with a debt collection company.

In summary, our Investigator said there were times between April and June 2023 where Mr J had spoken to O2. And while Mr J made references to O2 hanging up on him when he called, there wasn't evidence that Mr J had contacted O2's payments team as he'd been asked to do in O2's final response letter, to make the outstanding payment due under the smart watch agreement.

Our Investigator said despite asking Mr J to contact O2's payment team, Mr J emailed the Manager at O2 who issued the final response letter instead. And that even though Mr J said he didn't want to call O2 as they'd previously hung up on him, he did eventually call O2 in October 2023 requesting to set up a repayment plan for the outstanding balance due under the agreement for the smart watch. But by this point, the debt had been passed to the debt collection agency, so it wasn't possible to set up a plan. Overall, our Investigator felt Mr J could have done more to contact O2's payments team as he'd been asked to do, sooner than October 2023, to set up a payment plan.

The impact on Mr J and what he wants as a resolution

Mr J says this whole situation has impacted his mental health, he's had many sleepless nights and that the issue with the smart watch has had a negative impact on his credit file. Mr J says he doesn't want to be held responsible for the smart watch and that he couldn't afford to pay the outstanding amount under the agreement for the smart watch. Mr J says his ex-partner also said she couldn't afford to pay for the outstanding amount neither, which caused him further stress and worry.

Mr J says he doesn't feel O2 supported him when he contacted O2's Manager via email to ask about setting up a repayment plan for the amount due under the watch agreement. So, Mr J has asked for an apology from O2 for not supporting him and for allowing agreements to be taken out without his consent or knowledge and for the stress this has caused him. As Mr J has asked for an Ombudsman to review matters, the complaint has been passed to me to decide.

I issued a provisional decision on the matter, setting out the below:

What I can't look into

Mr J has raised several points relating to airtime agreements including a £9 tariff he was told he could go on, being overcharged for airtime tariffs and also contact he'd made with O2 relating to his concerns about airtime arrangements that had been in place.

However, our Service can't consider complaints about airtime agreements as they're not within our jurisdiction. So, with this in mind, I can't comment on any issues Mr J has raised in relation to airtime agreements.

1. Fixed sum loan agreement for a mobile phone device

Mr J hasn't been clear as to whether the phone he bought for himself at the time was financed through a fixed sum loan agreement. Due to the passage of time, O2 have only been able to provide one fixed sum loan agreement for a mobile phone along with an airtime agreement for the same phone – both agreements were taken out at the same time in 2019, they both included Mr J's details as well as his direct debit information. Mr J says he thinks the telephone number on the airtime agreement was his ex-partner's. So, I think it's likely the fixed sum loan agreement that has been provided is the one Mr J says he feels he was forced and pressured into taking out for his ex-partner. With that said, I don't think O2 have acted unfairly, and I'll explain why.

I won't be able to know for certain what discussions took place at the time between Mr J and the O2 advisor in store in 2019 as I wasn't there. Understandably, due to the time that has passed, O2 haven't been able to get their advisor's side of the story. Ultimately, I think an allegation of pressure and force is subjective - so as well as taking into consideration what Mr J has told us, I've also thought about the evidence that's available to me.

The online chat information supplied by O2 shows Mr J first contacted them in 2023. In this chat, Mr J started off with referencing cancelling phone contracts that seem to be in place and about being overcharged for the airtime tariff, rather than a concern about feeling pressured into taking out the fixed sum loan agreement in 2019. While Mr J mentioned later in the online chat that he felt forced to take out an agreement for his ex-partner, it seems the main focus of Mr J's contact to O2 in 2023 was about cancelling certain phone contracts and also being charged more than he was expecting for the airtime arrangement that was in place.

Having considered Mr J's testimony and the wider context of what's happened here, including the time it took Mr J to raise the issue with feeling pressured into taking out the agreement, which was around four years after this agreement was taken out, I'm not persuaded that O2 acted unfairly in relation to this agreement.

2. Fixed sum loan agreement for a smart watch

Mr J says his ex-partner had access to his online O2 account and that she took out a fixed sum loan agreement for a smart watch without his consent or authority in 2022. The address on the agreement was Mr J's, the delivery address on the order details for the watch was Mr J's and O2 told us the watch was successfully delivered.

Having reviewed the online chat notes from 2023, when the advisor suggested that Mr J can either change the direct debit for the watch to his ex-partner's account or cancel the agreement and ask his ex-partner to pay off the remaining device plan for the watch, Mr J says that she was paying him around £5 a month and that she won't pay the device plan off all at once. So, it seems to me there was some form of arrangement to pay between Mr J and his ex-partner for the watch.

Mr J hasn't provided an explanation for how his ex-partner was able to access his O2 account online and ultimately, it's his details on the fixed sum loan agreement for the smart watch. Without an explanation for how Mr J's ex-partner was able to access his online O2 account and apply for the fixed sum loan agreement using all of Mr J's details, it's difficult for me to say O2 have acted unfairly here based on the information they had available to them at the time the agreement was taken out – which was Mr J's. With all this in mind, I think on balance, Mr J gave his actual or apparent authority for the agreement to be taken out. So, I don't think O2 are acting unfairly in holding Mr J responsible for this agreement.

O2 say throughout the agreement, requests for payment weren't successful and that Mr J was notified by email of the overdue amounts. I haven't seen copies of these emails, but I would expect O2 to notify Mr J of the outstanding payments. It seems from what O2 have provided, that online card payments of £12.99 were being made via Mr J's online O2 account towards the agreement, which Mr J says wasn't him. But it seems the last payment was in April 2023 and from May 2023 onwards, there were no payments being made, leaving an outstanding arrears amount of around £300 – which was for the remaining 24 months of the agreement left to pay. O2's final response letter instructed Mr J to contact their payments team direct to make this payment.

So, with that said, I've gone on to consider whether O2 acted fairly in how they handled the debt due under this agreement once they'd decided Mr J needed to pay the outstanding amount. In doing so, I've also thought about the customer service issues Mr J has complained about.

I think it's worth pointing out a lot happened between Mr J and O2 when thinking about the service he received. While I may not comment on every point Mr J has raised, I want to assure him that I've thought about what he told us, when considering what's fair.

Mr J has provided us with copies of emails he sent to a Manager at O2 between June 2023 to November 2023 – the lack of response to these emails form part of Mr J's complaint about the customer service he received and his point around feeling ignored by O2. Part of Mr J's complaint to O2 on 1 June 2023 was that he was concerned he was starting to receive default notices about the outstanding debt and the impact this potentially had on his credit file. However, O2 didn't address this concern and repeated to Mr J that the outstanding arrears amount was owed.

Following O2's final response letter on 8 June 2023, where they asked him to contact their payments team to pay the outstanding arrears due under this agreement, Mr J didn't do this. Instead, he sent a number of emails to the Manager who had issued the final response letter. Mr J asked for help in relation to the arrears and the agreements that were taken out but hadn't received a reply from the Manager. In these emails, Mr J let O2 know on 22 September 2023 that he had just received a letter from the debt collection agency and that this was causing him stress, making him unwell. From what I can see, Mr J asked O2 for help before they passed his account to the debt collectors. But there's no evidence to suggest O2 engaged with Mr J's request for help.

The emails Mr J sent also showed he told O2 multiple times that he couldn't repay the outstanding balance due under the agreement for the smart watch. Mr J offered for O2 to take £20 out of his account or the monthly repayments of £12.99 - which I don't think he would have done had he not been prepared to pay towards the debt. Overall, Mr J didn't receive a response to a lot of the emails he sent and from what I understand, there were instances where Mr J received the Manager's out of office as an automatic response to his emails.

When thinking about what happened here, I've taken into account The Consumer Duty. The Duty has been in force in relation to firms' regulated activities since 31 July 2023, so I think it's applicable in this case. The Consumer Duty was introduced by the Financial Conduct Authority as a means of setting clearer standards of consumer protection across financial services requiring firms to put their customers' needs first.

Mr J told O2 that he'd broken up with his partner, he'd been made redundant and also that he was recovering from an illness – so I think it's fair to consider that he was put in a potentially vulnerable position here.

One of the cross-cutting rules of the Duty explain that businesses are responsible for addressing the risk of harm when it is reasonably foreseeable. And this includes consumers with characteristics of vulnerability being unable to access and use a product or service properly because customer support isn't accessible to them.

All in all, while I don't think it was unreasonable for O2's final response letter to direct Mr J to contact their payments team, Mr J had contacted O2's Manager several times over several months between July and November 2023, repeatedly asking for help to resolve the issue of the outstanding debt, amongst other issues. So, despite not contacting O2 in the way they requested, I'm satisfied Mr J was still attempting to get through to O2. Having considered the situation Mr J was in, I don't find this to be unreasonable. However, I don't think O2 made their service or support as accessible to Mr J as it could have been.

Additionally, I think O2 could have done more to make Mr J aware of the consequences of not paying what they were asking him to pay and that this would likely to lead to a default. While I haven't seen a record of the default, or when it was applied, I'm aware that a default can have a serious impact on a credit file, lasting for six years. And I think given what Mr J told O2 about his circumstances at the time, O2 could have engaged with Mr J more about the default and its consequences.

Mr J says O2 hung up on him at times when he called and that he spent several hours with O2 trying to resolve issues, which is disappointing to hear. While I don't doubt what Mr J has told us, I don't have any records of these calls, nor what they were about. In any case, I can understand why Mr J says he feels he was ignored.

Putting things right

So, with all of this in mind and also thinking about the fairest way to resolve matters, considering the lack of service Mr J has complained of from O2 and the impact this had on him, I think it would be reasonable to give Mr J the option of either of the following in order to resolve this complaint. In doing so, I've included what O2 proposed as one of these options:

- 1. To proceed with what O2 have proposed which is to take the smart watch debt back for the smart watch agreement from the third-party debt collector, have the outstanding amount written off, to show the agreement as satisfied on Mr J's credit file and to keep the default remaining on his credit file - provided it's not dropped off naturally in any event.*

OR

- 2. For O2 to take back the smart watch debt from the third-party debt collector, work with Mr J to set up a payment plan for the outstanding amount due under the smart watch agreement and once Mr J clears the debt, O2 should remove the default from Mr J's credit file - provided it's not dropped off naturally in any event.*

OR

- 3. Reinstate the smart watch agreement, let Mr J recommence repaying the monthly repayments for what's outstanding and remove the default from Mr J's credit file at the same time. However, any future missed payments under this arrangement could be reported by O2.*

In response to this provisional decision, O2 can let me know what their comments are and Mr J can let me know if he agrees, what option he'd like to take from the above. If Mr J doesn't agree with this decision, he can let me know his reasons and I'll consider these further.

Responses to my provisional decision

O2 responded and said they've changed their systems since the smart watch agreement was taken out. Therefore, they wouldn't be able to set up a payment plan or set up the original agreement as suggested in options 2 and 3 of the 'putting things right' section in my provisional decision. O2 said the only option they could go with is option 1.

Mr J responded and said while he didn't mind any of the options I suggested, he thought option 1 would be better for him. Mr J said this was because he wouldn't be paying for a smart watch that he doesn't have. Mr J also said this option puts an end to this issue for him and that it has taken him a while to rebuild his credit history.

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.

It seems both Mr J and O2 have agreed to the same option that I proposed in my provisional decision, which is option 1. As an agreement has been reached, I see no reason to comment any further or change my findings.

Putting things right

To clarify, the option both Mr J and O2 agreed to was for O2 to:

- Take the debt back for the smart watch agreement from the third-party debt collector, meaning the debt collector won't contact Mr J about this debt,
- Write off the outstanding amount due under this agreement,
- Show the agreement as satisfied on Mr J's credit file and to keep the default remaining on his credit file, provided it's not dropped off naturally in any event.

My final decision

My final decision is that I uphold this complaint. And I require Telefonica UK Limited trading as O2 to carry out the actions under the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 March 2025.

Leanne McEvoy
Ombudsman