

The complaint

Mr B has complained about the administration of a fixed sum loan agreement with Telefonica UK Limited (trading as O2).

What happened

Mr B entered into a fixed sum loan agreement with Telefonica in November 2022. He bought a phone which cost around £1,200 and agreed to make 36 payments of around £33.

Mr B said that he received a letter from Telefonica explaining that it was changing the terms of a separate service agreement. It said that he could leave that agreement at no cost and continue to pay the monthly loan payments.

Mr B decided to leave the service agreement, and he said he spent over four hours with Telefonica trying to explain things. He said that some of the advisors didn't know what he was talking about. Mr B said he went into store, and they were able to help him.

Mr B said Telefonica contacted him to say he needed to pay the full remaining balance on his loan.

Mr B said he ended up paying £588.33 by credit card. He said he incurred interest and had to pay for parking. He said that he had spent a lot of time and effort trying to sort things out and it caused him stress and worry. Mr B said the demand for payment had ruined his holiday.

Telefonica accepted it hadn't handled things well and it offered to pay £150 compensation for his experience. Our investigator mediated a higher offer and Telefonica said it would refund £598.33. Mr B didn't agree and in summary he said:

- He'd spent 8.5 hours on the phone and received incorrect information and poor service
- He made four visits to the store incurring parking and driving costs
- Telefonica didn't issue a final response
- The enforcement notice and the potential impact on his credit file caused stress. It wasn't enforceable and Telefonica breached the Consumer Credit Act 1974 (CCA) and CONC.
- The demand for payment ruined a family holiday
- The stress triggered a health condition
- He incurred a financial loss by having to pay additional interest on his credit card
- The increased balance on his credit card had an impact on his credit file

The complaint has been passed to me to make a 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've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it.

Both parties agree that Telefonica shouldn't have issued a default notice and demanded full payment of the loan. But it's left for me to decide whether the refund is enough to cover Mr B's losses, and compensation that fairly reflects the impact on Mr B.

I first need to make clear that this Service is neither the industry regulator nor a court of law. We don't fine and punish businesses, nor do we award punitive damages. Our role is to assess whether a business has acted fairly and reasonably and, if not, whether it's taken fair steps to put things right.

Mr B said he should get a refund of what he paid following the enforcement notice. He said that the notice wasn't enforceable, and Telefonica breached the CCA and CONC. I acknowledge Mr B's strength of feeling and I've read and considered everything he's said, but I don't need to decide whether the notice was enforceable, or what legislation was breached, as everyone agrees that the notice shouldn't have been issued.

Ideally what should have happened is for the loan to be reinstated, but Telefonica haven't been able to do this, so it offered an alternative. Telefonica accepts that it shouldn't have sent the notice, and that its service could have been better. But for Telefonica's mistake he would have paid for the goods over a longer period albeit with no interest. Even though Telefonica have offered to refund £598.33, that sum would have been fairly due under the agreement as he's been able to keep the goods. So, I think a fairer way to look at the offer is in terms of compensation for what happened, and I need to decide if there are grounds to direct Telefonica to do more than this.

Mr B said that he incurred additional costs because he paid the sum using his credit card. I think Mr B acted reasonably and tried to mitigate any potential impact on his credit file. So, I think he should be refunded these costs. I've asked him to provide his credit card statement to show how much interest he's been charged, and he's provided this for the last few months. I can see the transaction but it's difficult to work out how much interest he's been paying because he regularly pays down the balance and there are new transactions. But I've made some basic calculations, and I don't think he's paid more than £100 in interest. I haven't seen sufficient evidence that the increased balance adversely affected his credit file, or that his parking costs amounted to more than a few pounds. I don't intend to award an additional sum to cover interest or parking because I think that the total amount offered is fair in terms of covering his losses and reflecting the impact caused by Telefonica's mistake. I'll explain why.

Telefonica have accepted that Mr B contacted them on multiple occasions and didn't get a response. I can understand that Mr B felt frustrated, worried, and not listened to. He's spent more than a reasonable amount of time trying to sort things out himself when this was something which was reasonably within Telefonica's gift to resolve at an earlier stage. He's

explained that the stress and worry ruined a family holiday and may have triggered a serious health condition.

I'm sorry to hear about what's happened. But I need to point out that I am unable to award for long term health issues as a consequential loss. These are known as claims for loss of amenity. If Mr B considers there is a wider claim in relation to his health here, then before accepting any decision by me he might wish to take appropriate legal advice as to how my award (and his acceptance of it) might impact any other claims he might be considering.

Deciding compensation is not an exact science here. And issues and problems in everyday life are expected. However, here Mr B suffered more than the usual problems you might expect in everyday life, and it went on for some time. I have thought about our website guidance on such awards. I do think from what Mr B has said that Telefonica's mistakes caused considerable upset and worry. No amount of money is going to change what's happened. But I'm satisfied the overall award that's been recommended adequately recognises the impact Telefonica's mistakes have had on him. I'm not going to direct it to do more.

Telefonica didn't really get to grips with the complaint, but I think the offer of £598.33 fairly reflects the upset and inconvenience that Mr B has experienced, and I think it covers any financial loss from additional interest charged and parking costs. It follows that I think this is a fair and reasonable way to resolve the complaint.

My final decision

My final decision is that I uphold this complaint and direct Telefonica UK Limited (trading as O2) to do the following, to the extent that it hasn't done so already:

- Pay Mr B £598.33 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 May 2025.

Caroline Kirby
Ombudsman