

## **The complaint**

Mr D complains that the goods he was supplied with under a fixed sum loan provided by Telefonica UK Limited trading as O2 ("Telefonica") were not of satisfactory quality. He also complains that Telefonica unfairly declined his request to withdraw from the agreement.

## **What happened**

Mr D entered into a fixed sum loan with Telefonica on 11 October 2023. Under the agreement Telefonica was to supply and fund the purchase of a mobile phone. The agreement was interest free and the cash price of the goods was £1,073.88, to be repaid over 36 months.

Mr D says that the phone worked correctly for a few days but then stopped. He says the issue wasn't rectified by Telefonica for around two and a half weeks. Mr D says he told Telefonica he wished to withdraw from the agreement on 19 October 2023, but this didn't happen.

Mr D has shown that he had further contact with Telefonica on 12 November 2023. He's shown that Telefonica sent him a text message on the same day saying that he'd need to pay £1,073.88 to end the agreement early.

Mr D says that he spent significant time trying to resolve problems with Telefonica and has offered to supply this service with over 26 calls which demonstrate the poor service he received. He's asked to be compensated for the trouble and upset he was caused by the problems he experienced with the goods he was supplied, as well as the poor service he received. I understand that Mr D has not made any payments towards the agreement on the basis that Telefonica has not resolved the complaint to his satisfaction.

More recently, Mr D says he encountered difficulty in making international calls from the device in question and the issue wasn't resolved for around 24 hours. Mr D asked to be allowed to end the agreement with nothing further to pay, but to keep the goods. As an alternative, he asked to return the goods, end the agreement and receive further compensation.

From what it's said, I think that Telefonica broadly accepts Mr D's complaint – it's accepted that it was responsible for incorrectly blocking the device in question, as well as providing poor service in rectifying the issue. Telefonica offered to pay Mr D £200 compensation by way of an apology for everything that had happened.

Our investigator accepted that Mr D's agreement allowed him to withdraw from it within 14 days. However, they weren't persuaded that Mr D had met this condition because they hadn't been supplied with such a call by either party and that event wasn't represented on Telefonica's contact notes.

They accepted, however, that Telefonica was answerable for Mr D's complaint about the goods he was supplied with not being of satisfactory quality. They found that by incorrectly blocking the device for around two weeks, the goods weren't of satisfactory quality. They

also accepted what Mr D had said about the poor service he'd received from Telefonica. Having considered everything that had happened, they ultimately concluded that the £200 compensation Telefonica had offered was fair.

Lastly, the investigator said that the difficulties Mr D experienced in making international calls didn't seem to be about the quality of the goods he was supplied with. They found it was more likely to be linked to network access – something this service doesn't have the power to consider a complaint about.

Mr D disagreed with our investigator's assessment. He provided a number of calls between himself and Telefonica which he considered demonstrated the poor service he'd received. He maintained that Telefonica ought to end the agreement to resolve the complaint. Mr D asked for an ombudsman's decision on the case.

The case was passed to me to make a decision. Before issuing this provisional decision, I sought clarity on matters from Mr D via our investigator on the following issues;

- the length of time the device in question wasn't operational;
- whether Mr D had access to another mobile phone whilst the one in question wasn't operational; and
- whether Mr D wanted to share anything specific from the calls he'd originally offered to share with us, since we hadn't received all of them.

In response, Mr D said that he believed it had taken until 12 November 2023 to resolve the issue. He accepted that he had access to another phone, so he hadn't been prevented from accessing Telefonica's network whilst his new device hadn't worked.

Mr D clarified that his main issue is that he asked to exit the agreement within 14 days whilst in a retail store, but that didn't happen. He said that he doesn't think he should be paying for the goods since he asked to exit the agreement in line with the relevant terms.

I issued a provisional decision on the case. In summary, I said;

*Mr D's complaint is about whether Telefonica's acted fairly in relation to a fixed sum loan. That's a regulated agreement and one which this service has the power to consider a complaint about.*

#### Withdrawal from the agreement

*The first point Mr D makes, and the one which he describes as the main issue, is whether Telefonica failed to allow Mr D to exit the agreement despite a valid request to do so.*

*I've reviewed Mr D's fixed sum loan with Telefonica. The relevant section to withdrawing from the agreement is section 9 – "right of withdrawal". 9.1 specifically says;*

*"You have the right to withdraw from the Credit Agreement, without giving any reason, before the end of 14 days beginning with the day after the day on which this Credit Agreement is made. The right you have to withdraw from this Credit Agreement does not affect your agreement for the purchase of the Device (which is governed by the Pay Monthly Mobile Agreement if you are obtaining credit for a Device purchased as part of an O2 Refresh tariff or the O2 Equipment Only Agreement if you are obtaining credit for a Device purchased without an airtime plan)."*

*It's my understanding that Mr D made the purchase as part of a "refresh tariff". So, the terms of any potential withdrawal from the fixed sum loan agreement were dependent on what was*

said under the associated "Pay Monthly Mobile Agreement". We've also been provided with a copy of that agreement.

The relevant section of that agreement is section 2 – "The Change-Your-Mind Period". It says;

*"If you change your mind about certain Equipment (usually a Mobile Phone) you've bought from us, you may be entitled to return items once and exchange them for another within the 14 day Change-Your-Mind Period. Details will be in your welcome letter or email, or in paragraphs 10, 12 and 13 of the Agreement. You can also ask in an O2 shop or check our Website. If you've taken Equipment from us under a separate Device Plan and you are withdrawing from that Device Plan after the Change-Your-Mind Period, you will have to pay for your Equipment in full."*

*I accept that the agreement goes on to say that Mr D could end both agreements and return the goods if he did so within 14 days. But, like our investigator, I think if Mr D made such a request within the required period, it'd likely be represented on Telefonica's contact notes, but it's not.*

*Additionally, Mr D has provided a copy of a call he had with Telefonica on 23 October 2023 in which he says he's tempted to attempt to withdraw from the agreement unless the issue is fixed. I think that if Mr D had already asked to withdraw from the agreement by that point, he would've made reference to it.*

*Overall, I'm not persuaded that Mr D asked to withdraw from the agreement within 14 days. It follows that I don't think Telefonica acted unfairly by declining to allow Mr D to end the fixed sum loan without repaying the balance of the agreement when he subsequently asked to.*

#### *The quality of the goods supplied*

*The Consumer Rights Act 2015 (CRA) is relevant to this case. It implies terms into the agreement that the goods supplied will be of satisfactory quality. That's defined as meeting the standard a reasonable person would consider satisfactory, taking into account the description of the goods, price paid, and other relevant circumstances. Satisfactory quality also refers to durability.*

*Mr D was provided with a brand-new mobile phone, so I'd expect it to be free from faults for a considerable period of time.*

*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 the first six months, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise.*

*There's some ambiguity about whether the device in question was of satisfactory quality or not. I don't think it's in dispute that there wasn't a physical problem with the goods themselves, nor was the issue in question caused by something to do with access to Telefonica's network. Rather, it seems that Telefonica caused the device to become inoperable by incorrectly blocking it. I accept that could be considered as an issue affecting the quality of the goods.*

*Under the CRA a consumer is able to assert a right to reject goods which aren't of satisfactory quality within the first 30 days from taking possession of them.*

*I've already covered above why I'm not persuaded that Mr D asked to withdraw from the agreement within 14 days of entering into it. I've reviewed all of the contact records supplied by Telefonica and I haven't been able to find any evidence to suggest that Mr D asked to end the agreement nor reject the goods within 30 days of taking possession of them.*

*I have seen that Mr D was in contact with Telefonica during that period, and on 12 November 2023 an early termination figure was generated. Mr D says that's because he asked to end the agreement. And I've no reason to doubt that's the case.*

*I can also see, however, that request was made following contact Mr D made in the preceding days about problems making international calls. So, there's some ambiguity here about whether Mr D asked to end the agreement because the goods weren't of satisfactory quality, or due to what appears to be issues related to network access. In any case, that event was more than 30 days from the date the goods were supplied to Mr D.*

*Outside of those 30 days, the CRA allows Telefonica an opportunity to repair the goods if they were found to be of unsatisfactory quality. And in this case, it's not disputed that Telefonica resolved the issue by removing the block.*

*It's important to note that even if I was persuaded Mr D had attempted to withdraw from the agreement and/or exercise his right to reject the goods within 30 days, it doesn't necessarily mean that I'd recommend he gets to do so now. That's because I'm required to decide what ought to happen based on what's fair and reasonable in the circumstances. Given the issue was rectified and Mr D has been able to use the device for 16 months or so, it wouldn't now be fair for him to reject it.*

*Given everything I've said above, I don't think that Telefonica acted unfairly by declining to allow Mr D to withdraw from his fixed sum loan, on the basis that the goods it supplied weren't of satisfactory quality. I also find that it wouldn't now be fair to allow Mr D to reject the goods or withdraw from the agreement.*

#### Putting things right

*What now remains to be decided is whether Telefonica has done enough to put things right, given everything that's been explored above.*

*Telefonica says that the block causing the phone to be inoperable was applied for around 10 days. Mr D initially said that it was around two and a half weeks. He later said the problem was resolved around 12 November 2023 – so, around four weeks. However, I can see from Telefonica's records that's when Mr D raised an issue about international calls. From everything I've seen (and I accept it's not entirely clear) it seems that the issues relating to the block existed for around two and a half weeks.*

*I've given careful consideration to what Mr D has said about the impact of being unable to use the goods in question for around two and a half weeks. He's accepted that he had access to another device – and I've seen evidence that he was able to use that device with Telefonica's network – so, I think the practical impact on Mr D hasn't been significant.*

*Nonetheless I accept that it must have been a frustrating situation for Mr D to be supplied with a brand-new mobile phone to find that it didn't work for two and a half weeks. I also accept what he's said about the poor service he received from Telefonica and I find it plausible he chased the matter on numerous occasions and didn't receive calls backs when he was told he would, for example.*

*Having taken all of that into account, and having regard with our approach to compensation*

*as well as awards we've made in cases of a similar nature, I find that the £200 offer made by Telefonica is a reasonable one.*

### Other considerations

*As above, Mr D has made some points about an inability to make international calls. Like our investigator, I find that issue likely wasn't something to do with the quality of the goods he was supplied with. It seems that from Telefonica's records that issue was resolved by making network changes. So, it's not something I've considered under this complaint.*

Telefonica agreed. Mr D maintained that he attempted to withdraw from the agreement within 14 days but the block on the phone prevented Telefonica from doing this. He said that he'd made the request whilst in a retail store and demonstrated that he'd emailed Telefonica asking for a copy of that call – specifying that he'd asked to withdraw during the call – on 4 March 2024.

The case has been passed back to me to make my 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.

It's clear from what Mr D has said, both in his initial submissions and in response to my provisional decision, that he feels strongly he asked to withdraw from his fixed sum loan agreement within the 14 days he was allowed to do so.

My role here, however, is to decide whether Telefonica has handled Mr D's complaint fairly based on what I consider to be fair and reasonable in all the circumstances. It's not solely to determine if there's been a technical breach of the conditions of Mr D's agreement. Even if I find there has been a breach of those conditions, I need to consider what would be fair and reasonable to require Telefonica to do now considering the events which have subsequently played out.

I've re-reviewed the agreement as well as the records of Mr D's contact with Telefonica. Given the additional details Mr D has supplied, I have been able to find what I think is a note of the call that Mr D refers to in which he says he asked to withdraw from the agreement. That note – dated 19 October 2023 – says that the store agreed to do a return of the phone but it wasn't possible due to the block. That's somewhat consistent with what Mr D has said. I'll explain why I said it's only somewhat consistent, though.

I accept the note refers Telefonica being unable to process a return of the goods. However, it's not clear or obvious what that might involve – for example, it could be that Mr D and Telefonica discussed returning the goods for repair or replacement. I think that's a possibility, because the note goes on the question whether it's a possibility to provide a replacement given that it was within 14 days of the goods being provided.

The remainder of the notes are consistent with Mr D's assertion that he declined to make repayments towards his agreement until his complaint is resolved to his satisfaction – referring specifically to the amount of compensation offered.

Overall, I think the evidence points towards there having been a discussion about the possibility of Mr D returning the goods and perhaps withdrawing from the agreement. I'm not persuaded that he asked to do so specifically, or that if he might have, that he didn't subsequently change his mind. That's because – and as I mentioned in my provisional

decision – I've heard a called recording on 23 October 2023 in which Mr D says he's considered withdrawing from the agreement. I doubt that he would've said that if he'd previously asked to or wanted to at the time. So, I'm still not persuaded that Telefonica unfairly declined a request to withdraw from the agreement.

As my provisional decision mentioned, I don't doubt that Mr D subsequently enquired about ending the agreement on 12 November 2023 at the point he was supplied with a settlement quote. The supporting evidence doesn't show why Mr D made such an enquiry though, but I think there's a strong possibility it was in connection with network issues he'd encountered – specifically an inability to make international calls. And, significantly, that was outside of 14 days from the start of the agreement and 30 days of Mr D having taken possession of the goods.

In any case, even if I was persuaded that Mr D had made such a request within the required period – and I'm not satisfied he did – it doesn't necessarily mean that I'd require Telefonica to unwind the agreement now. That's because Mr D has been in possession of the goods and has not denied having use of them (save for the period in which a block was incorrectly applied) for some 16 months. It wouldn't be fair or reasonable to require Telefonica to unwind the agreement and take the goods back now.

### **My final decision**

For the reasons explained above, my final decision is that Telefonica UK Limited trading as O2 needs to pay Mr D £200 compensation, to the extent that it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 April 2025.

Stephen Trapp  
**Ombudsman**