

The complaint

Mr C complains that Telefonica UK Limited trading as O2 failed to supply the goods it agreed to provide him under a fixed sum loan agreement.

What happened

Mr C entered into a fixed sum loan with Telefonica in January 2024 to cover the cost of purchasing a mobile phone. Under the agreement, Telefonica was also to supply the goods.

I've seen that subsequently, on a number of occasions in the following months, Mr C told Telefonica he hadn't received the goods, despite making the payments he was required to.

I've also seen that in September 2024 Telefonica wrote to Mr C to let him know that because it hadn't fully responded to the issues he'd raised, he could refer the matter to this service.

In its submission to this service, Telefonica said that the goods it was meant to supply to Mr C were sent to an incorrect address. It offered to refund any payments Mr C had made by that point (October 2024), supply the goods to Mr C and pay him £150 compensation by way of an apology.

Our investigator thought that was a fair way to resolve things. Mr C disagreed. He said that £150 was not sufficient compensation for the trouble and upset he'd been caused as a result of not being supplied with the goods, as well as having to chase matters with Telefonica. He said the offer ought to be 100 times bigger.

The case was passed to me to decide what should happen. I issued a provisional decision on the case. In summary, I said;

Mr C's complaint is about whether or not Telefonica is acting 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.

From what's been said I don't think there's any dispute about the events which led to this complaint. It seems that Telefonica agrees that it sent the goods it was meant to send Mr C to an incorrect address and that Mr C has not received them. The question here is whether Telefonica's done enough to put things right.

Mr C has made some comments regarding Telefonica's conduct and wanting to affect changes to the level of service Telefonica provides as a result of his complaint. To be clear, however, this service does not have a regulatory function. So, we cannot consider complaint about the general conduct of financial businesses or require them to change processes or procedures.

In the specific circumstances of this complaint, it's for me to decide whether Telefonica needs to do anymore to put things right for Mr C.

I think the offer made by Telefonica is problematic in terms of putting things right. I say this in part because Mr C has still not been provided with the goods in question. We're now 13

months into a 24 month agreement without Mr C having had possession of the goods. And as far as I'm aware, he's been making payments towards the agreement.

Putting that right isn't as straight forward as asking Telefonica to refund those payments, because Mr C's agreement was for the purchase of the goods, not their hire or rental. So, whilst it's not in doubt that Mr C has been deprived of the use of the goods, refunding those payments would effectively amount to a reduction in purchase price.

Additionally, technology moves fast and the price that's associated with the particular mobile phone Mr C purchase might not still be the same – it's likely to be cheaper. Particularly because I'm aware that the particular model Mr C purchase has now been superseded. Overall, taking all of the above into account, I don't think I could reasonably discern what level of price reduction would be appropriate in the circumstances. So, I don't intend to require that of Telefonica.

Rather, I think that an approach of putting Mr C back in (or as close as possible to) the position he otherwise would've been in but for Telefonica's error, would be the fairest thing to do here. That would involve unwinding the agreement, removing trace of it recorded with Credit Reference Agencies ("CRAs") and refunding Mr C with any payments made, along with 8% simple interest. And I think Mr C also ought to be compensated for the trouble and upset caused.

Mr C's gone into some detail about the impact of not being supplied with the goods. He's explained that he'd resorted to using his existing mobile phone, which had operational issues. He says those issues caused him to miss calls, one of which was about a close family member falling seriously ill. I accept that must have been very upsetting.

We'd generally expect consumers to mitigate the impact of a business' error. I've considered whether or not Mr C could've done that in the circumstances, by buying a replacement for his faulty mobile phone. However, taking into account that he expected to receive a new one from Telefonica and it seems he was initially told he'd still receive it despite it having been sent to an incorrect address, I don't think there's anything else I would've expected Mr C to have done to mitigate the impact here.

In deciding what a reasonable level of compensation would be, I've taken into account the extent of the impact Mr C has explained. I've also taken into account that it must have been frustrating to have chased matters with Telefonica on a number of occasions under the impression that he'd receive the goods he expected to, only to not. Having considered all of that, and having regard for the level of awards we've made in cases of a similar nature, as well as our general approach to compensatory awards, I find that £300 would be reasonable compensation for Telefonica to pay Mr C in the circumstances.

Lastly, whilst I've explained above what I intend Telefonica to do and why, it doesn't prevent Telefonica making another offer or maintaining its previous offer. I say this because Mr C might prefer to still receive the goods and receive a refund of payments by way of a price reduction – he's free to accept any offers Telefonica might have made or might make and reject my decision.

My provisional decision was that Telefonica ought to;

- End Mr C's fixed sum loan with nothing further to pay;
- Refund all payments made by Mr C to date including simple interest at 8% per annum from the date the payments were made until the date of refund;
- Remove the associated entry with CRAs
- Pay Mr C £300 compensation for the trouble and upset caused.

Telefonica agreed. Mr C maintained that he ought to be paid more compensation. He asked how much money he'd get back as well as when he'd receive the goods he was meant to be supplied with.

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.

Neither party has provided any information or evidence which I consider materially new for my consideration. As such, I've not found reason to depart from my provisional decision.

Mr C has, however, raised some questions about how I've arrived at the compensation award, how much money he'll get back and when he ought to receive the goods in question. I'll address those points in turn.

I accept that it must have been very frustrating for Mr C to not receive the goods he's been paying for. I've taken into account a number of factors in determining what a reasonable amount of compensation would be – and I've had particular regard for the impact matters have had on Mr C as well as our general approach to compensation and offers we've made in cases of a similar nature. I'm still of the view that £300 compensation is a reasonable sum, for the reasons explained in my provisional decision.

I can't say exactly how much Mr C ought to receive from Telefonica as a result of repaying the sums he's already paid towards the agreement. That's in part because neither party has said how many payments have been made, and that sum is also subject to interest, determined at the point the payment is made. That can be a complex calculation, but Mr C can expect to receive the payments he's already made, as well as an additional sum in respect of interest on top of that.

Mr C's asked when he ought to receive the goods. However, my provisional decision didn't require Telefonica to supply the goods to Mr C. Rather, my provisional decision explained that its intention was effectively unwind the agreement, refund all payments and pay Mr C compensation. It would not be fair to relieve Mr C of his obligation to pay for the goods and still ask Telefonica to provide them to him. So, to be clear, I don't require Telefonica to supply Mr C with the goods on the basis that he won't be required to pay for them, and he'll be reimbursed with any payments he's already made.

All of that being said, and as explained in my provisional decision, if Mr C would rather reject my decision and enquire with Telefonica as to whether an offer it made to supply the goods is still available, he's free to do so.

My final decision

For the reasons explained above, my final decision is that I require Telefonica UK Limited trading as O2 to;

- End Mr C's fixed sum loan with nothing further to pay;
- Refund all payments made by Mr C to date including simple interest at 8% per annum from the date the payments were made until the date of refund*;
- Remove the associated entry with CRAs
- Pay Mr C £300 compensation for the trouble and upset caused.

* If Telefonica UK Limited trading as O2 considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 April 2025.

Stephen Trapp
Ombudsman