

The complaint

Mr W has complained about the return of a mobile phone supplied under a fixed sum loan agreement with Telefonica UK Limited trading as O2.

What happened

Mr W entered into a fixed sum loan agreement for the supply of a phone in March 2024. The total amount payable was around £1,100 and he agreed to make an upfront payment of £30 and 36 repayments of around £30. Mr W also entered into a separate service agreement for the supply of airtime, which included an option to “Switch up” to a new device subject to certain conditions.

In August 2024 Mr W decided to use the “Switch up” option. He entered into a new fixed sum loan agreement with Telefonica. He bought a different phone which cost around £900 and agreed to make 36 payments of around £25. He also entered into a separate service agreement for airtime.

When he received the phone, he said he decided it was not suitable for him, so he asked to return the device and cancel the agreement. He said that he used the cooling off period so that he could revert to his previous device and tariff.

Mr W said he used online support to request the return, and asked for advice on what he needed to do. He said he was told to return the device to factory settings and return the phone for his previous contract to be reinstated.

Mr W said Telefonica failed to revert the account as he was told would happen, which meant he thought he’d lose out. He also said it didn’t tell him that he needed to download his e-SIM which meant he lost his phone number temporarily.

Mr W said he was forced to disclose his vulnerability in order to try to retrieve his phone number. He was told to go into store but told Telefonica it wasn’t an option due to anxiety. He later forced himself to go to a store but experienced a panic attack and still didn’t have access to his contacts. He said he was told to return the phone so that his number could be reinstated. He was unhappy with the support offered in store.

Mr W said he returned the newer device, and it was signed for on 19 August 2024. He said that he pleaded and chased for a physical SIM which meant he was able to reinstate his mobile number. But he was still being billed for the phone that he had returned.

After a month he said the returned phone was removed from his bill, but the rest of the account wasn’t reversed. Mr W made a complaint to Telefonica that his account wasn’t reversed, and he was now at a financial loss. He said that he’d been unable to access the specialist support for vulnerable customers.

Telefonica didn’t issue a final response and Mr W referred his complaint to our service. Telefonica made an offer to resolve the complaint. In summary it said:

- Mr W chose to “switch up” to swap his current device for a new one on 15 August.
- Before Mr W was able to send his previous device back to complete the process he changed his mind about the new phone. The new phone was received back on 19 August but Telefonica didn't cancel the new credit agreement until 16 September.
- Telefonica should have been able to revert him to his original tariff manually.
- Telefonica would ensure that any overpayments would be refunded, and he would be paying the same amount as the original agreement by making manual credit corrections.
- It acknowledged the poor service, apologised and offered £250 compensation.

An investigator here passed on Telefonica's offer, but Mr W didn't accept it. He said that although the adjustments had been made to payments, he hadn't been put back onto the same airtime tariff, which would enable him to “Switch up” again in the future. He said that if that had been part of the offer he would have accepted.

Our investigator tried to mediate a more acceptable offer and issued an opinion setting out that Mr W should be allowed to exit his agreement with nothing further to pay and the phone should be collected. He said that the compensation was fair, but this would allow Mr W to find a deal that he was happy with.

Telefonica agreed but Mr W didn't. In summary he said:

- He'd already paid around £240 for the phone and wanted this refunded
- He couldn't be left without a phone or service and needed precise timescales
- If he didn't get a refund for what he paid for the phone he expected the compensation to be higher than £250

The complaint was passed to me to make a decision. I issued a provisional decision which said:

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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. I am very sorry to hear about the difficulties Mr W has described to this service. I can't imagine how that made him feel, but thank him for bringing his complaint.

The loan agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Telefonica is also the supplier of the goods under this type of agreement.

When Mr W entered into either of his loan agreements, he also entered into separate service agreement commonly known as airtime. But we're generally not able to deal with complaints that solely relate to airtime agreements because they aren't a financial service. But sometimes the agreements are intrinsically linked to the credit agreements which makes putting things right more complicated.

Both parties appear to agree on what went wrong when Mr W tried to return the goods, so I'm not going to go into a lot of detail on that here. But what's left to decide is the remedy to put things right.

Mr W's airtime agreement included an option to "switch up" which he used when he entered into the new agreement. The new loan agreement also included a cooling off period, as it was entered into at a distance, which Mr W decided to use.

By using the cooling off period, Mr W was exercising a statutory right to exit the credit agreement. It seems that what went wrong with adding the "switch up" back on to his airtime agreement was as a consequence of a problem unwinding the regulated credit agreement. But if Telefonica disagree with that it can respond with comments to this provisional decision. Mr W is now being held to a contract which has had a term (or feature) removed. It seems only fair that Telefonica should find a way to enable Mr W to be able to have that term included. But it's difficult for me to direct Telefonica to take specific action on the airtime agreement as it isn't a financial service. In any case, it said that it simply can't add "switch up" back on due to its system constraints.

I need to explain to Mr W that changing his contract in future might inevitably come with some slight temporary inconvenience, for example if he has to swap his device, SIM or number. But I don't think returning the device and unwinding the contract now, as recommended by our investigator, would resolve things satisfactorily. I've taken into account what he's told us about his vulnerability and anxiety at being without a device/airtime, and considering what he's paid for the phone so far. So, I'm not going to make a direction that Telefonica should unwind the existing contract. I think there is a different way to resolve things which might be simpler.

Telefonica have now agreed to offer an individual arrangement to Mr W should he wish to change his phone during the remaining term. It said:

"When a customer doesn't have Switch Up available, they do have the option to trade in their existing device using the O2 Recycle service.

- Switch Up = if the existing phone meets the grading, it will clear the full CCA - they can hand it in store or send it back via jiffy*
- Recycle = the customer sends their existing phone to the Recycle team and uses the payment is allocated to the existing CCA balance. If the Recycle offer doesn't fully clear the balance, the remainder can be paid in full or, in some cases, continue to be paid for monthly.*

As an alternative to Switch Up in Mr W's case, O2 would be happy to agree to clear any remaining balance after the Recycle order has been processed. For example, remaining CCA balance is £600, O2 Recycle offers £300 to be paid to CCA and O2 clear the remaining £300 (these figures are for illustration purposes only)" [sic].

It seems that Telefonica have found a way that will broadly put Mr W into the same position if he chooses to get a new phone during the term of this contract. Mr W hasn't yet made a decision to change his phone, or made a choice on one that would be suitable for him, so this situation is hypothetical which makes it difficult for me to make a direction. But Telefonica's latest suggestion would seem to fairly accommodate him being able to change his phone within the remaining term of this agreement in a similar way to "switch up". I'm not able to make a direction that "switch up" should always be available to Mr W once this contract ends. That's because Telefonica may decide to vary its terms in future, and as I said earlier the airtime isn't a financial service.

This arrangement would also allow Mr W to select a new phone and contract that suits him, and then if he's happy he can choose to recycle the old phone, and Telefonica will waive any shortfall in line with what it would have done under the 'switch-up' process. This seems like a fair and reasonable way to resolve the complaint. Mr W should note my earlier comments about temporary inconvenience when changing his device/contract. He'll also need to decide if the terms of any new agreement are suitable for him as they might differ. But if something

goes wrong in the future when he decides to enter a new contract, he might be entitled to bring a further complaint.

Mr W said that he couldn't access the support for vulnerable customers at the time. I can see that Telefonica have asked him to opt into its "Access for You" service where he can provide information about what reasonable adjustments are needed.

Given all the circumstances here, I agree with our investigator that the compensation seems fair, and broadly reflects what has happened. Mr W has experienced more frustration than I would expect and has made more than a reasonable effort to sort things out himself.

Telefonica responded to my provisional decision and agreed. Mr W also responded and broadly agreed. He said:

- He had already paid around £419 towards his existing phone which meant there was £659 left to pay.
- He had checked a valuation and the phone was worth £325 and was in pristine condition.
- He was concerned that the provisional decision did not allow him to move away from Telefonica. But if he had support from our service should anything go wrong, hopefully he could start rebuilding some trust with Telefonica.
- He had concerns that using the recycle service might be difficult if he did it at some future date rather than as soon as possible.
- He had chosen a new phone and was ready to enter a new contract with features that he was happy with. As the new phone was similar he thought he would be unlikely to use the cooling off period and he would be able to get it before recycling his old one.

As both parties have responded I'll now go on 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.

Firstly, I'd like to thank both parties for responding so quickly to my provisional decision. I'm pleased to hear that Mr W is happy with the resolution, and although I can understand his reservations, he seems to have decided to stay with Telefonica for his next contract. I need to make it clear that this decision isn't dependent on that. If he decides to get another contract elsewhere, he'll still be able to use the recycle service.

If Mr W accepts the final decision, he'll be free to start the process of applying for the new contract that he has selected. He should note that this decision doesn't cover any aspect of that new contract.

As the prospective new contract and the recycle service aren't dependent on each other Mr W will be free to recycle the old phone once he receives his new device.

He should note that this might mean he has to make contractual payments for two contracts at the same time while the recycle is being processed. He might also need to move his

number over to any new contract, which he'll need to discuss with Telefonica. This decision also doesn't cover those events, but I would suggest he waits until the settlement is completed to do that, to avoid any complications.

But once Mr W recycles his phone in line with the instructions on Telefonica's website, including allocating the payment to his loan account, he can let our investigator know and we'll communicate with Telefonica in order to get the remaining balance written off in line with the decision.

As I haven't been provided with any further information to change my decision, I still consider my findings to be fair and reasonable in the circumstances. I'm making a final decision to afford Mr W the protection of a legally binding decision.

My final decision is the same for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Telefonica UK Limited trading as O2 to do the following:

- Write off any shortfall on the loan agreement should Mr W decide to use its recycle service for his current phone, in line with what Mr W would have been able to achieve with the "switch up" feature, and that its during the term of the agreement
- Remove any adverse information reported to the credit reference agencies in relation to the phone that was returned, to the extent that it hasn't done so already
- Pay Mr W £250 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 July 2025.

Caroline Kirby
Ombudsman