

The complaint

Miss N complained about the condition of a phone that was supplied under a fixed sum loan agreement by Telefonica UK Limited trading as O2.

What happened

The events of this complaint are well known to both parties, so I'll only briefly summarise them here. Miss N entered into a fixed sum loan agreement with Telefonica for the supply of a new mobile phone in December 2023. The cash price of the phone was around £1,290. Miss N also entered into a separate service agreement for airtime.

Miss N said that the device was faulty, and that she couldn't make or receive calls. She said that Telefonica advised her to visit the manufacturer. The manufacturer was unable to fix the device so replaced it with a refurbished model.

Unhappy with this Miss N contacted Telefonica. She said she was told the only way to resolve things would be to cancel the agreement and return the phone. She would then be able to enter into a new agreement and get a new phone.

Eventually Miss N got the new phone after several visits to the store and phone calls. But when she returned from holiday she found she had a letter from a debt collector. She tried to resolve this with Telefonica and the debt collector to no avail, and the information was still reported on her credit file.

Miss N referred her complaint to the Financial Ombudsman. She said she wanted her credit file amended as well as compensation for the distress and inconvenience caused by Telefonica for an extended period. An investigator here considered the complaint. She said that Telefonica had made a fair offer which included:

- Waiving the balance of another agreement of £307.92 when it didn't need to
- Ending the agreement for the phone which had been returned, and a refund of payments with simple interest.
- Removing any adverse information from the credit file
- £150 compensation

Miss N didn't agree. In summary she said:

- She was pleased that the default would be removed and her credit file would be rectified, but she was unhappy with the amount of compensation.
- The issue had been ongoing for one and a half years and had heavily impacted on her livelihood. It caused massive strain on her credit and ability to gain credit. It caused her to overpay interest with other lenders. It made it exceptionally difficult for her to get a car, move home, and open an overdraft.
- It didn't reflect the length of time she had spent trying to resolve the matter, including phone calls, going into store, paying for parking, spending hours in store until closing time.

- It had caused emotional distress and tangible impact on her life. £150 did not reflect this and was belittling of her experience and her complaint.
- She was seriously disappointed in the offer, which did not reflect the gravity of the financial, reputational, and emotional damage she had suffered due to Telefonica's prolonged mishandling. The offer appeared nearly identical to an earlier offer proposed over a year ago despite significant escalation.
- Miss N referred to breaches of regulator rules, and legislation, citing examples of case law which she said supported her request for further compensation. She said a credit card limit was reduced by £5,000 and she was unable to renew her overdraft. This led to her having to borrow money from friends and family to cover emergency repairs. She said that compensation in the region of £10,000 was proportionate, evidence based and in line with legal precedent.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules including Consumer Duty, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

Miss N has provided detailed submissions both before and in response to our investigator's view. I acknowledge her strength of feeling and she puts forward her point of view passionately and articulately. I've read and considered everything both parties said, but I've summarised the key points here. While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I want to set out that I'm required to consider what happened up to when Telefonica sent its final response letter in March 2024, as the events preceding this relate to what it has had the chance to consider. Things moved on from then, so I've tried to be as pragmatic as possible when dealing with this complaint when thinking about what parts I can decide. But I need to be able to draw a line under the complaint with my decision because it will mark the end of our process. If there are further complaints about events that occurred after the final response letter that are not clearly included within this decision, they would have to be taken up separately.

Firstly, I am very sorry to hear about the difficulties Miss N has described to this service. However, I think it is worth noting at this early stage that I am not making the size of award that she has asked for. I know she is unlikely to be happy with this decision. However, my role is to resolve disputes informally. She doesn't have to accept it and may choose (after seeking legal advice as appropriate) to take more formal action against the supplier, such as through a court.

I also 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 Miss N considers there is a wider claim in relation to her health here, then if she decides to accept my decision, she might wish to take appropriate legal advice as to how my award (and her acceptance of it) might impact any other claims she might be considering.

Where the evidence is incomplete or 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.

The 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, and responsible for a complaint about whether the goods conform to the contract, and the administration of the credit agreements.

Miss N has referred to Ofcom's guidance on complaint handling. I need to let her know that I'm not looking into a complaint about Telefonica's actions as a telecommunications firm. But rather its obligations as a lender. It is regulated by the Financial Conduct Authority to provide lending for regulated credit agreements.

The Consumer Rights Act 2015 (CRA) is of relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, and safety.

The phone was brand new when it was supplied and cost around £1,290. So, I don't think a reasonable person would have expected it to have any issues present when it was supplied and they would expect it could be used as intended. The phone wasn't functioning due to being unable to make or receive calls.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer, must be taken not to have conformed to it on that day. Unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Telefonica said that the goods did conform to the contract, but it was later established that there was an error on Miss N's account which caused the initial device, the manufacturer replacement, and the subsequent phone the store supplied, not to work. It said that once a new account was established, and a new device supplied, everything worked as expected.

I haven't been given sufficient evidence of what happened here. It isn't clear that there is sufficient evidence there was a fault with the phones which made them of unsatisfactory quality. The report from the manufacturer is inconclusive. It seems unlikely that several phones would all have the same problem, and it seems likely the issue has stemmed from a problem with the SIM or underlying airtime agreement (which does not fall within our remit as it is not a financial service within our scope). But regardless of the liability for supplying goods of satisfactory quality, Telefonica was also responsible for the administration of the loans, and it seems to accept it has made mistakes in dealing with them. So, I don't find it necessary to continue to deliberate on liability.

Putting things right seems to have been the problem here. I can understand why Miss N might be unhappy to receive a refurbished device, however that was from the manufacturer and I'm not looking into their actions here.

But it seems that things did not go smoothly once Telefonica agreed to cancel the agreement for the phone. The original and replacement agreements should have been cancelled with nothing to pay, as that is what Telefonica agreed to do. It seems that Telefonica also accept that something went wrong and the cancellation process wasn't completed as it should have been. The cancellation of agreements where the goods have been returned is clearly something that Miss N was entitled to, it isn't something that should be considered compensation.

But I can see that the agreement for a watch was also cancelled as a mistake, and Miss N retained the watch. I can't see any reason why Telefonica would maintain that offer, other than by way of compensation for what had happened. It's unclear how much was outstanding, when that arrangement was made, Miss N said around £360 was still outstanding and Telefonica recently confirmed it was a little over £300. But I think it is fair for Telefonica to continue to offer this.

But Miss N continued to have problems. She was pursued for debts that were not due, the debts were sold to a third party who also pursued her, and her credit file was loaded with inaccurate information about her payment history which she says had a detrimental impact on her ability to get credit.

Miss N is also claiming other damages or financial losses as a result of Telefonica's actions. But there's a lot to think about when deciding whether losses should be payable in these sorts of situations. I need to think about whether the losses were directly flowing from Telefonica's mistakes; whether Miss N has tried to mitigate her losses; and whether they were reasonably foreseeable or too remote.

She's said that her credit card limit was reduced and she was declined credit as a result of Telefonica reporting inaccurate information to her credit file. While I've no doubt it may have had some impact on her overall credit score, I've also noted there was other information on her credit file which might have caused other lenders to review their decisions to lend.

I haven't seen enough to show that she's been declined for credit, or offered credit on less favourable terms, as a direct result of what happened. It might help Miss N to know that a credit score is a tool produced for consumers to check their general credit worthiness, but it isn't used by lenders when making decisions. Each lender will have its own specific criteria about how it will lend, and I haven't seen enough to persuade me that the sole reason she's been declined credit was a result of Telefonica's mistakes. And not for some other reason such as not meeting the lender's criteria, ongoing reviews or other checks it might be required to complete, or even other adverse information which is shown on her credit file. So, I'm not making an award for the wide-ranging impact she's described on her ability to get credit.

Deciding compensation is not an exact science here. And issues and problems in everyday life is expected when a complaint needs to be raised. However, here Miss N suffered more than the usual problems you might expect in everyday life, and it went on sometime. I have thought about our website guidance on such awards. I do think from what Miss N has said that the issues with how Telefonica administrated the loans has caused considerable inconvenience, upset and worry.

Miss N raised a number of complaints about what happened from the early stages. She's spent a lot of time on the phone and trying to resolve the issues in store. She's been promised call backs which she said didn't happen, and I can't see that Telefonica ever clearly confirmed its position in writing or by email. Earlier offers to resolve the complaint didn't include a full write off of the agreement for the watch. Even if it did, Telefonica had also been aware that it had already agreed to end the agreements, the contact notes reflect

this. It could have taken early action to correct the source of the mistake, even if Miss N didn't accept any offers that it had made. That might have prevented things escalating and compounding its earlier mistakes. Instead, the debt was sold, and she's also had to deal with contact from debt collectors. Telefonica has recently confirmed that it recalled the debt from collection and amended her credit file, but I've included a direction in my decision for the avoidance of doubt.

It seems that had Telefonica supported Miss N, also giving her clear and consistent information about her complaint and its stance – I think it would have resulted in a better experience and less overall distress and inconvenience. I think the situation would have likely been resolved much sooner as well.

No amount of money can change what's happened. But I've considered that Telefonica didn't need to write off the balance for the watch, so I consider it having done so by way of compensation. So, its total offer is in the region of £450 and that is in line with what's awarded where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. I know that Miss N wants £10,000, but I don't find I have the grounds to make that sort of award here.

Considering all the circumstances, I agree with our investigator's assessment. The offer set out is a fair and reasonable way to resolve the complaint.

I appreciate that Miss N is unhappy that Telefonica continued to pursue the debt while the complaint was with our service. Unfortunately, we only have the power to direct it to do something in a final decision, and that only becomes binding if she accepts it. So I can't increase the award because it declined to do anything while the offer was being considered.

My final decision

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

- Recall the debts sold (if that has not been done already)
- End the agreements with nothing further to pay (if that has not been done already)
- Refund any payments made under the agreement for the phone.
- Pay 8% simple annual interest on any refunds from the date of payment to the date of settlement*
- Pay £150 compensation
- Remove any adverse information reported to the credit reference agencies for the watch.
- Remove any reference to the loan from its reporting to the credit reference agencies.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 20 February 2026.

Caroline Kirby
Ombudsman