

The complaint

Mr W complains about a fixed sum loan agreement he took out with Telefonica UK Limited trading as O2.

What happened

In April 2024, Mr W says he saw an advertisement for a deal with Telefonica, where they offered to provide a set of wireless headphones for £20, as an incentive to buy a smart watch. Mr W decided to apply for the deal and took out a fixed sum loan agreement with Telefonica, to pay for the smart watch.

The smart watch had a cash price of £75. And after making an upfront payment of £150, Mr W was contracted to make monthly repayments of around £25 over a two year period. To sit alongside the smart watch, Mr W also took out an airtime services contract with Telefonica.

After a month of having the smart watch, Mr W contacted Telefonica, as he'd yet to receive any information about the headphones. Telefonica explained to Mr W that the deal they offered was in high demand, so there would be a delay in sending the headphones to him. But, by July 2024, Mr W still hadn't received the headphones and he says he noticed a fault with the smart watch. So, Mr W raised his concerns with Telefonica.

Although Telefonica acknowledged Mr W's complaint, they didn't provide a full response. Mr W remained dissatisfied and said he was paying for a device and an airtime services contract that he couldn't use. He also said Telefonica had misled him about the incentive they had advertised. Because Telefonica hadn't replied to his concerns, Mr W brought his complaint to our service.

Shortly after Mr W made contact with us, Telefonica told us that they would give Mr W all his money back, if he was to return the smart watch. One of our investigators considered Telefonica's offer, but found they should do more. In addition, he said it would be fair for Telefonica to allow Mr W to return the watch at no extra cost and refund all the payments he had made towards the airtime services contract. The investigator also said Telefonica should pay Mr W £200 for the distress and inconvenience caused.

Telefonica agreed with the investigator's findings, but Mr W didn't. He said he'd now repaid the balance of the fixed sum loan agreement and that he should be compensated for the cost of the headphones. Mr W also said he had made a payment of £20 to qualify for the deal for the headphones.

The investigator didn't change his conclusions and said the total amount offered by Telefonica was fair and reasonable. Mr W didn't accept the investigator's further findings and his complaint has now been passed to me to make a 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.

This case is about a fixed sum loan agreement which Mr W took out with Telefonica. These types of loans are regulated financial products, so we are able to consider complaints about them.

Mr W's concerns about misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

In Mr W's case, he says that had he known about the availability of the headphones, he would not have entered into the fixed sum loan agreement for the smart watch. So, I've considered if Telefonica gave Mr W incorrect information, which he then relied upon to make the decision to take out the borrowing.

Having considered the advertisement Mr W has sent to us, I can see that Telefonica told him that he would receive the headphones for the cost of £20, if he bought the smart watch. Telefonica later explained to Mr W that once the purchase of the smart watch was complete, they would send him a voucher, which he could exchange for the headphones. But, due to the demand for the deal Telefonica was offering, they say they were unable to send Mr W the voucher.

While I accept that Mr W feels very disappointed that Telefonica didn't send him the voucher they had promised, I don't think it means they gave him incorrect information when he entered the loan agreement. I think the headphones were available to Telefonica's customers as part of the promotion. So, I don't think there was a misrepresentation by Telefonica, that induced Mr W into buying the smart watch.

On balance, I think it was the popularity of Telefonica's deal that led to them being unable to supply the headphones, rather than any untrue statement of fact. All this means, I don't think Telefonica needs to take any steps to put things right because Mr W says he was given incorrect information.

However, it remains that Telefonica didn't give Mr W what he had paid for as part of the deal. So, I've thought about the quality of the smart watch they provided to Mr W and where he hasn't had the use of the headphones.

The quality of the smart watch

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality, fit for their intended purpose and as described. By satisfactory quality, the CRA says this is what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances.

The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met. 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 that period, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for the customer to show that the goods were not of satisfactory quality.

Mr W was provided with a brand new smart watch device, costing £751. So, I think it was reasonable for him to expect it to be free from faults for a considerable period of time. Within

his complaint to Telefonica, Mr W says the device developed a fault whereby it wouldn't connect to the data services that they also provided. He says he made Telefonica aware of the fault in July 2024, but he started to experience problems soon after he bought the device.

To support what Mr W says, he has described where the smart watch supplied by Telefonica failed to connect to a network. He says this meant the smart watch could not function as it was supposed to and Telefonica didn't do anything to help him. Mr W has also shown us where Telefonica now values the smart watch at £100, significantly less than what he had paid for it just a few months previously.

I've looked at Telefonica's records of their contact with Mr W and I can see where he raised his concerns about the connectivity of the smart watch around three months after it was supplied to him. So, I think Mr W had told Telefonica of the fault he had found soon after he had got the device. I can also see that although Telefonica acknowledged Mr W's concerns, they didn't take any action to inspect Mr W's device, or offer a route for a repair.

From all the evidence we have, I think Mr W had the smart watch for much less than the six months set out in the CRA. I also think Telefonica failed in their onus to inspect the device and offer a diagnosis within a reasonable time. Furthermore, I think Telefonica didn't provide all the goods Mr W has paid for, given he hasn't received the headphones. Under the CRA, I think it means there was a breach of contract. So, it follows that Mr W is due a remedy from Telefonica.

Once Mr W had referred his complaint to our service, Telefonica recognised what had happened. They asked us to pass on their apologies to Mr W and after some discussions with our investigator, they offered Mr W a remedy. So, I've considered if that remedy is fair.

Telefonica say they will take back the smart watch device and on receipt, they will refund all the repayments made by Mr W, towards the fixed sum loan agreement. I think this part of Telefonica's offer is fair because it means Mr W will not have paid for the smart watch and he will recoup all the costs he has incurred under the agreement.

I also think it's reasonable for Telefonica to have the device returned to them, before Telefonica puts this part of the settlement in place. I say this because Mr W shouldn't benefit from both the refund and retaining the smart watch itself. However, I don't think it would be fair for Mr W to pay for the return of the smart watch. So, Telefonica should provide a postage solution that is free from any cost to Mr W.

Additionally, Telefonica have agreed to refund all the payments Mr W has made towards the airtime services contract that was sold alongside the smart watch. This is because Mr W hasn't been able to make use of those airtime services, as the smart watch had connectivity faults.

Mr W's airtime services contract isn't a regulated agreement by the Consumer Credit Act 1974, which means I cannot make a finding on its performance. But, Telefonica have accepted there's been a breach of contract of the loan agreement for the device, that stems from connectivity issues. So, in the very specific circumstances of this complaint, I think their offer is fair, to refund all the associated costs from the airtime services agreement.

Throughout Mr W's complaint with Telefonica, he's told us about the time taken to repeatedly contact them to find a solution and where he says they provided a poor service. He also says he paid an upfront fee of £20 for the headphones. Furthermore, I'm aware of the loss of the use of the funds Mr W has paid to Telefonica under both the loan and airtime service contracts. Telefonica have recognised this and offered to pay Mr W £200 for the distress and

inconvenience caused.

I accept that Mr W has been put to a level of trouble and upset by Telefonica. But, having considered everything, I think Telefonica's offer strikes the right balance between the losses Mr W has incurred and the worry he's been put to. In the round, I think it's fair for Telefonica to pay Mr W £200 for the distress and inconvenience he has experienced.

In his response to our investigator, I can see where Mr W has asked to be compensated for the total cost of the headphones. While I understand Mr W's disappointment at not receiving the headphones, I don't think he's had any financial loss by not having them in his possession. I think Telefonica's acceptance of a breach of contract and their offer to put things right, covers any financial loss Mr W complains of. So, I don't think it would be fair to ask Telefonica to make a payment to Mr W equivalent to the retail cost of the headphones.

Mr W has also mentioned to us where he doesn't think Telefonica will follow through with their offer. I acknowledge that part of this settlement is reliant on Mr W returning the smart watch. But, if Mr W decides to accept my findings, Telefonica will be duty bound to make the settlement to him.

Moreover, Mr W has told us he'd like a refund of the payments he's made under a separate mobile telephone device agreement. Mr W hasn't previously raised any concerns about the quality of that handset to Telefonica, or demonstrated where it was connected to the fixed sum loan agreement for the smart watch. To be clear, I make no finding about the agreement for that mobile telephone handset in this decision. Mr W should take any concerns he has about that device to Telefonica in the first instance.

Overall, I think Telefonica's offer puts Mr W back in the position, as far as reasonably possible, from before he took out the fixed sum loan agreement. In all the circumstances, I think Telefonica's offer is fair and reasonable and I don't require them to take any further steps to what they've already offered to do.

Putting things right

For these reasons, Telefonica UK Limited trading as O2 should:

1. Refund all the payments to Mr W that he has made towards the airtime services contract that was opened alongside the fixed sum loan for the smart watch, from the start of the contract, to the date of settlement of this complaint;
2. Pay Mr W £200 for the distress and inconvenience caused;
3. Provide Mr W with a method to return the smart watch at no additional cost to him; and
4. On receipt of the smart watch, refund the upfront payment of £150 and all the repayments to Mr W that he has made under the fixed sum loan agreement, from the start of the agreement to the date it was settled.

Telefonica must pay these amounts within 28 days of the date on which we tell them Mr W accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Telefonica deducts tax from any interest they pay to Mr W, they should provide Mr W with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax

authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Telefonica UK Limited trading as O2 to put things right as set out above.

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

Sam Wedderburn
Ombudsman