

The complaint

Mr R complains that Telefonica UK Limited trading as O2 gave him five fixed sum loan agreements for devices he couldn't afford to repay.

What happened

O2 gave Mr R the following fixed sum loan agreements:

Agreement	Date	Device	Total cost	Repayment terms
1	December 2019	Phone	£103.32	£2.87 for 36 months
2	April 2020	Phone	£732	£20.34 for 36 months
3	September 2020	Watch	£768.20	£21.35 for 36 months
4	October 2020	Phone	£732	£20.34 for 36 months
5	March 2021	Phone	£825.01	£22.92 for 36 months

Mr R says O2 failed to complete sufficient checks to determine if he could afford the agreements. He also said he was subject to economic and domestic abuse. He says the agreements were taken out so the items could be sold and his ex-partner then kept the proceeds.

Mr R says he didn't receive a response to his complaint and so he referred it to our service. O2 said it wrote to Mr R to request further information in response to his complaint but didn't receive a reply. O2 responded to our service to say it had limited information available given how long ago the sales took place. However, it concluded it had no evidence to suggest it lent irresponsibly.

There has been some confusion over the details of the agreements in question. Initially O2 confirmed this was 5 agreements which consisted of agreements 2-5 as listed above. O2 confirmed that the other agreement was a second watch taken on the same day and on the same terms as agreement 3. Our investigator considered the complaint on that basis and didn't uphold it. They sympathised with Mr R's circumstances, but didn't think there was sufficient evidence to suggest O2 was aware of the reason he was entering into the agreements. The investigator also concluded there was limited evidence to show the results of the checks completed. However, based on the limited information they did have, they also couldn't conclude that the agreements were unaffordable for Mr R.

Mr R didn't agree and so the complaint has been passed to me to consider.

I contacted O2 to confirm the details of the fixed sum loan agreements in dispute as I felt I had conflicting information. O2 has since confirmed that only one fixed sum loan agreement for a watch was taken out. However, it has confirmed there was an earlier agreement taken out in December 2019 (described above as agreement 1). I put this to Mr R who hasn't disputed that this is accurate.

So I have gone on to consider the complaint on the basis of the lending history as set out at the start of this decision.

I issued a provisional decision where I explained I was minded not to uphold the complaint. In my provisional decision I said:

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

I want to start by saying I'm sorry to hear of the circumstances surrounding these applications. Mr R has shared some very personal information which can't have been easy to do and so I wanted to thank him for sharing it with our service. As the circumstances are known to both parties I won't repeat them here.

What I need to consider is whether O2 knew or should have known about Mr R's wider circumstances and his reasons for taking out these agreements. Mr R has said he didn't tell O2 about his wider circumstances until he raised his irresponsible lending complaint. There's limited information about the sales which took place and ultimately, I don't have sufficient evidence to suggest O2 ought to have questioned Mr R further about this. I've considered that Mr R has taken a number of devices over a relatively short period of time. However, I don't think the number is so high that it should have caused O2 to question this further. It isn't uncommon for someone to take additional devices for their family or to upgrade or replace a lost or damaged device. So, I can't conclude that O2 should have done something differently when the agreements were entered into, as I don't think it had reason to suspect what Mr R has now told us about his wider circumstances.

I'll now go on to consider the lending decisions.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I have used this approach to help me decide Mr R's complaint.

O2 needed to make sure it lent responsibly to Mr R. It therefore needed to complete sufficient checks to determine if Mr R could afford to sustainably repay the lending. Our website sets out our approach to what we typically think when deciding if a lender's checks were proportionate. There is no set list of checks a lender should do, but there is guidance on the types of checks a lender could complete. However, these checks needed to be proportionate when considering things like the amount and term of the lending, what the lender already knew about the consumer, etc.

O2 has said that before agreeing to lend it asked Mr R for his employment status and income. It said it also completed a credit search. Given how long ago the sales took place, O2 has said it isn't able to provide details of the information it gathered. So, I can't conclude that O2 completed proportionate checks before agreeing to lend. I'm also mindful that these types of checks may have been sufficient in relation to agreements 1 and 2, but I think O2 needed to do more after this time. Given the overlapping nature of the agreements and the term, I think that from agreement 3 onwards O2 should have also taken steps to consider Mr R's essential expenditure before agreeing to lend.

I have therefore needed to recreate, as best as possible, what proportionate checks would have most likely shown.

Mr R has provided a copy of his credit file which I've reviewed. In relation to agreements 1-4 I can't see adverse information such as missed payments or defaults which ought to have caused O2 concerns. However, I can see that around the time of the final agreement Mr R's credit file would have most likely shown he was around two months behind on payments for a utilities account. I can also see from Mr R's repayment history with O2, that he missed some repayments on some of the device agreements. Whilst he typically brought his account back up to date within a month or two, by the time of agreement 5 O2 should have had some concerns about his repayment history with it.

However, whilst these are indications that someone might be struggling, I don't think this was sufficient to suggest at O2 shouldn't have lent at this time. I do think it should have caused O2 to explore Mr R's income and essential expenditure further to see if he could afford to repay the agreement. Unfortunately, I don't have sufficient information about Mr R's regular income and essential expenditure at the time of any of the lending decisions. Whilst Mr R has provided current account statements, these don't show his regular income or some of the essential living costs I would expect to see. Mr R has also said he is unable to provide any further statements. So, taking all the information I have into consideration, I don't have sufficient evidence about Mr R's circumstances at the time the agreements were given. So I can't conclude that proportionate checks would have revealed that the agreements were unaffordable for Mr R and therefore I don't intend to uphold his complaint.

Finally, I've thought about whether considering this complaint more broadly as a complaint about an unfair relationship (section 140A of the Consumer Credit Act) would mean we could consider it. Having done so, I don't think I can.

In relation to agreements 2-5 it appears the debt has been sold on. Where a debt has been sold, it follows that the debt purchaser is now the creditor for the purpose of the credit agreement. So, a claim about an unfair relationship can't be brought by the consumer against the original lender as they are no longer the creditor.

In relation to agreement one, the information I have suggests this was repaid in full and so the debt wasn't sold to a third party. As I've explained above, I don't think there's sufficient evidence to conclude that O2 lent irresponsibly to Mr R or otherwise treated him unfairly. So, I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

O2 responded to confirm it accepted my provisional decision. Mr R hasn't provided anything further.

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.

Having done so, I see no reason to depart from the conclusions reached in my provisional decision (which forms part of this decision.) So, it follows that I don't uphold this complaint.

To summarise, I'm sorry to hear of the circumstances surrounding why Mr R entered these agreements. However, I don't think O2 were aware of these circumstances or that it ought to have been aware. So, I don't think O2 should have acted differently when Mr R was entering the agreement.

Turning to the lending decisions, I don't think there is sufficient evidence of the steps O2 took before agreeing the device loans in question. So, I can't conclude it completed proportionate steps before agreeing to lend.

However, ultimately, I don't have sufficient evidence about Mr R's circumstances at the time

the lending decisions were made. So, I can't safely conclude that proportionate checks would have demonstrated that Mr R couldn't have afforded the agreements in question. So, because of this, I can't uphold his complaint.

I also don't think s.140A of the Consumer Credit Act 1974, where relevant, would lead to a different outcome in this complaint.

My final decision

For the reasons explained above and in my provisional decision, I don't uphold this complaint against Telefonica UK Limited trading as O2.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 January 2026.

Claire Lisle
Ombudsman