

## The complaint

Mr N is unhappy Telefonica UK Limited trading as O2 has continued to charge him for a device plan loan agreement and says he didn't return a mobile phone as part of an upgrade.

## What happened

Mr N purchased a mobile phone (Phone 1) from O2 in September 2023. He bought another version of the same phone (Phone 2) from O2 in May 2024 - which he says was used by an ex-partner. In October 2024, Mr N asked to upgrade Phone 1 using O2's Switch Up scheme – and took out a new device plan for a new phone (Phone 3). Mr N used fixed sum loans provided by O2 to help pay for each of the phones.

Mr N says there was a delay in him sending Phone 1 back to O2 because of issues with O2 providing him with a returns pack. Mr N also says he did send Phone 1 to O2, but he then found out O2 continued to charge him the monthly repayments for the linked device plan. Mr N made several complaints to O2 about this.

O2 first looked into the matter in February 2025 and said it appeared the Switch Up hadn't been processed correctly. It offered Mr N the option to return Phone 3 and start the process again – but it says Mr N confirmed he still had Phone 1 and it was being used by his child. Instead, O2 offered to credit £100 to Mr N's O2 account to compensate him, which he accepted.

O2 received another complaint from Mr N in October 2025. Mr N said he didn't have Phone 1, and it wasn't right for O2 to charge him when he'd returned it. O2 asked for proof of postage for the return, but Mr N didn't have this. He said he received a message confirming O2 had received Phone 1 back. O2's complaint handler accepted Mr N's version of events and said he would be refunded for payments made towards Phone 1 since the Switch Up took place, and the device plan would be closed.

In November 2025, Mr N chased O2 as it hadn't completed the steps it offered. O2 reviewed things and said the complaint handler had made a mistake when offering a refund, based on Mr N's previous statement that his child was using Phone 1. O2 told Mr N that it needed to see evidence he had posted Phone 1 back before it would review the matter, and that it wouldn't complete the previous offer. Mr N was very unhappy with this and brought the complaint to our service.

Our Investigator didn't uphold the complaint. In summary, she said the available evidence didn't show that Mr N had returned Phone 1 to O2. She also found O2 had no record of sending Mr N a text confirming it had received Phone 1. Mr N didn't agree and said O2 had told him the device plan for Phone 1 would be removed, and so it should honour this. O2 responded by saying that while Mr N had received a £100 credit as compensation, it didn't agree it had made an error.

O2 also provided the Investigator with some call recordings. On one of the calls, in February 2025, O2 said Mr N confirmed he intended to keep Phone 1. Our Investigator shared the calls with Mr N and explained she thought this supported her finding that O2 hadn't done anything wrong. As Mr N remained unhappy, the complaint was passed to me for 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.

Having done so, I agree with the outcome reached by the Investigator – and I'll explain why.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I've reached 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.

All three phones involved in the complaint were supplied by O2 and financed with regulated consumer credit agreements. This means our service can consider complaints about them. I should clarify that the Switch Up scheme O2 offers isn't a regulated financial activity itself – but Mr N is unhappy O2 has continued to collect payments for the regulated device plan linked to Phone 1. So, I'm satisfied I can consider Mr N's complaint about O2's actions towards the device plan, and whether it has treated Mr N fairly.

In an email O2 sent to Mr N in October 2025 it offered to remove the device plan for Phone 1 and refund £394.08 charges. O2 later withdrew this offer as it said the agent who reviewed the complaint made a mistake. I can understand why Mr N would be disappointed by this decision, but I can't force O2 to honour an offer it made in error. Instead, I need to consider if I think O2 has treated Mr N fairly or not, and if I think it needs to do anything to put things right on the complaint.

#### Is O2 fairly asking Mr N to pay for Phone 1?

Mr N agreed to upgrade to Phone 3 under the Switch Up scheme. For context, the scheme allows customers to exit their device plans early by returning the linked handset to O2, where the value can be used to clear the remaining device plan balance. The customer is required to take out a new device plan for the new handset at the same time.

I understand Mr N says he was under the impression Phone 3 would replace Phone 1 and he wouldn't have to pay for both device plans. This would have been the case if Phone 1 had been sent back to O2. O2's FAQs for the Switch Up scheme, available on its website, explain: *"If you don't return your old phone, you will continue to pay for that phone's device plan until it ends – along with your new one"*.

It isn't disputed that Mr N agreed to return Phone 1 when he took out the contract for Phone 3, under the Switch Up scheme. What is in dispute is whether Mr N then sent Phone 1 to O2, if O2 received it, and if O2 can fairly ask Mr N to continue with his device plan payments for Phone 1.

Mr N told our service he returned Phone 1 in October 2024 after upgrading at the start of the month, but he doesn't have supporting evidence such as the postal receipt. He also said he received a text message from O2 confirming Phone 1 had been received at its warehouse, but he doesn't have this message anymore. O2 can't see it sent confirmation of receipt to Mr N. This means I only have Mr N's testimony that he returned Phone 1 at the time of the upgrade.

To help me decide what I think, on balance, likely happened, I've considered the other available evidence surrounding the missing Phone 1 handset. O2 provided data showing the IMEI number for Phone 1 and the mobile numbers it was connected to – it says this shows Phone 1 was being used by a phone number on Mr N's account until the end of October 2024. O2 says this demonstrates Mr N hadn't returned the phone at this time. I think this evidence is persuasive. O2 also says there were other numbers linked to Phone 1 after October 2024, but it can't confirm who owns these lines.

In addition, I've listened to a recording of a call that took place between Mr N and a manager at O2 in February 2025. The manager called Mr N to find a solution to the complaint about Phone 1, after Mr N previously told O2 he'd returned it. During this call though, Mr N confirmed he still had Phone 1 and it was being used by his child at the time.

The manager offered Mr N the chance to return Phone 3 then reprocess the Switch Up with Phone 1. Mr N then confirmed he wanted to keep Phone 1 rather than return it. It was agreed Mr N wouldn't return Phone 1 and the manager explained he would need to pay for the device plans for Phone 1 and Phone 3. As Mr N wasn't happy with the total balance left on Phone 1's device plan, the manager offered him £100 credit to his O2 account, which he accepted. This leads me to think, on balance, that Mr N still had Phone 1 in his possession as late as February 2025. I'm also persuaded Mr N was aware of the total left to pay towards Phone 1, and that he was liable to make the repayments if he kept Phone 1.

Having considered all available evidence on the case, I don't think there is enough evidence to show Mr N returned Phone 1. So, I think it's fair for O2 to continue to ask Mr N to make the payments towards the linked device plan as per the agreement terms.

During the call, the manager offered Mr N £100 credit on his account to resolve things, which Mr N accepted. I've seen O2 added this credit to the account in February 2025. I've not seen evidence to persuade me O2 needed to pay Mr N compensation. But in any event, if I accept Mr N's testimony that O2 made some errors during the course of the complaint and upgrade, I think this amount would reasonably cover the impact these errors had on him.

Overall, as I don't think O2 has treated Mr N unfairly by asking him to pay for the device plan for Phone 1, I don't think it needs to pay Mr N anything further to resolve the complaint.

#### Complaint about airtime and data charges

Mr N has also told us he was unhappy with charges O2 had added to his airtime contract for a tablet and says O2 incorrectly changed two phone numbers on his account. Our Investigator explained why the Financial Ombudsman can't consider these complaints and neither party objected to this.

I agree that I can't consider Mr N's complaints about the airtime and data contracts as these aren't regulated financial activities – so I won't be looking at these parts of the complaint. If Mr N remains unhappy with O2's actions here, he might be able to take the complaint about the airtime contracts to another ombudsman scheme.

#### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 3 March 2026.

Hannah Dunkley

**Ombudsman**