

The complaint

Mr A has complained that Telefonica UK Limited (trading as O2) is holding him liable for a credit agreement that was taken to buy a new phone.

What happened

The parties are familiar with the background details of this complaint – so, I'll only briefly summarise them here. It reflects my role of resolving disputes quickly with minimum formality.

In September 2025, Mr A ordered a new phone costing around £1,500 from O2 using a fixed sum loan agreement. O2 appointed a courier, who I'll refer to as D, to deliver the device to Mr A's home address – which D delivered on 3 October 2025. But on opening the outer packaging, Mr A says he found the phone was missing – it only contained a folded cardboard box. So, Mr A contacted O2 straight away to make them aware of the issue. Because O2 declined to send a replacement phone or provide any refund, Mr A complained to O2 about this.

O2 responded to Mr A's complaint by saying they were satisfied the phone had been inside the packaging when it left their warehouse due to weight checks. O2 also said the photographic evidence didn't show any tampering to the outer packaging at the point of delivery. Unhappy with O2's response, Mr A asked the Financial Ombudsman to consider the matter. Our Investigator didn't uphold the complaint saying, in summary, they thought the available evidence supported the phone had likely been delivered to Mr A. So, they didn't think O2 had acted unfairly when holding Mr A liable for the money they'd lent to him via the credit agreement linked to the phone. As Mr A didn't agree with the Investigator's findings the complaint has come to me to decide.

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.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr A and O2 that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it, it's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr A bought the device using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements.

Breach of contract

Mr A is alleging there was a breach of contract because R didn't supply the device he'd paid for, so it's unfair for O2 to hold him liable for the linked credit agreement.

I'm never going to know what happened to the device as the evidence is incomplete. O2 faced those same evidential challenges. Where the evidence is incomplete or inconclusive, I must reach my decision on the balance of probabilities.

Mr A has been consistent in his testimony, and I note he reported the matter soon after delivery. It's possible the device could have been removed at the warehouse or by D.

O2 says the package wouldn't have left the warehouse empty due to the weight and pre dispatch checks it carries out and they received no report from D to say the package had been damaged or tampered with in transit.

O2 highlighted the photographic evidence showed there was no obvious signs of tampering to the outer packaging. I'm mindful Mr A hasn't indicated that he found anything untoward in relation to the packaging prior to him opening it or subsequently.

The evidence isn't conclusive, but I think O2 would have liked to have been more certain about what happened. It's possible someone at the warehouse took the phone and was able to bypass the security. It's also possible the courier was able to take the device and repackage it in a different but similar looking bag with a reprinted label. However, the packaging shown by the photos was consistent with the packaging O2 uses and O2 said the weight of the package was as expected as well. So, I understand why O2 didn't think either of those scenarios were the most likely thing to have happened.

I'll never know for certain what did happen. If either the courier or someone at the warehouse has stolen the device these would comprise of very serious allegations. Unlike a court, I'm unable to summon witnesses for cross examination. And O2 would have faced similar hurdles. So, it's difficult to reach firm conclusions in the informal forum that I'm able to investigate this complaint.

I'm aware that prior to Mr A ordering the phone that's the subject of this complaint, Mr A had previously ordered two other phones from O2 in the last couple of months. Mr A informed O2 on both occasions he found no phone inside the received packages. O2 agreed at the time to cancel the credit agreements linked to those devices, although they say that on reflection, they shouldn't have done so. Irrespective of this, I understand why three apparent missing phones would give O2 cause for concern. O2 says they haven't found any issues at their warehouse and it's my understanding D hasn't made O2 aware of any issues either.

I think O2 took account of all the available information before responding to Mr A's complaint. Overall, I don't think I've seen enough to safely conclude that O2 reached an unfair outcome when determining that, on balance, it was more likely than not that the phone was inside the packaging when it was delivered to Mr A. So, I'm unable to say O2 acted unfairly when not cancelling the linked credit agreement and requiring Mr A to pay the outstanding balance.

To be clear, it's not to say something definitely hasn't gone wrong but, on balance, I don't think O2 received enough evidence to show the device wasn't successfully delivered to Mr A. Mr A doesn't have to accept this decision. He's free to pursue the complaint by more formal means such as through the courts, where witnesses may be able to be called and cross examined. While I appreciate Mr A has strong feelings about what's happened and it's likely he'll be disappointed with my decision, I'm not going to direct O2 to take any further action in relation to this complaint.

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 A to accept or reject my decision before 15 May 2026.

Carl Bibby
Ombudsman