

complaint

Mr M complains that Telefonica UK Limited, trading as O2, shouldn't have lent him money because he couldn't afford to repay it. His accounts went into arrears, he was disconnected and charged fees. He wants the outstanding balance written off and all negative markers removed from his credit file.

background

The background to this complaint is set out in my provisional decision dated 12 June 2019, a copy of which is attached.

I set out why I thought the four loans, which were made so that Mr M could obtain two mobile phones and two tablets, shouldn't have been agreed. I concluded O2 should buy back the debt from the debt collection agency and, on receipt of the four devices from Mr M, write off the outstanding balance. I also thought the account should be removed from Mr M's credit file.

O2 said it couldn't buy back the debt until the devices had been returned.

Mr M responded to say, in summary, that he would prefer to keep the first mobile phone – and that O2 had previously agreed to buy back the debt without that phone being returned.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

O2 has agreed it will buy back the debt. I've found that all four loans were mis-sold, so O2 should buy back the debt for all four loans.

Before O2 is able to write off any of the outstanding lending, it will need Mr M to return the devices. If Mr M returns all four devices, O2 should write off the outstanding debt. As I set out in my provisional decision, I don't find O2 would then need to refund any of the payments Mr M has made because he's had use of the four devices and it's fair that he pays for that use.

Mr M says he would like to keep his mobile phone (the one he obtained using the first loan in June 2017). And I can understand why. But if he chooses to keep the phone and only return the three other devices, he would still like O2 to write off the entire debt – including the £420 he still owes for the mobile phone.

I need to be fair to both parties. And, whilst I have found O2 mis-sold the loan, I don't think it's fair that Mr M should be able to keep something that he hasn't paid for. So if he chooses to keep the phone, he will need to repay the sum he still owes for that device. As noted earlier, although Mr M's paid some money towards the other devices, this reflects the use that he's had of those devices.

I would remind O2 of its obligation to treat Mr M positively and sympathetically if he is experiencing financial difficulties, particularly bearing in mind it mis-sold these loans. It may wish to consider accepting a reduced sum for the mobile phone, or agreeing an affordable repayment plan.

O2 should also arrange to remove the lending accounts from Mr M's credit file.

my final decision

My final decision is that I uphold this complaint. Telefonica UK Limited, trading as O2 should:

1. Buy back all four debts from the debt collection agency.
2. On receipt of the devices from Mr M, write off the outstanding balance on each loan.
3. If Mr M decides to keep one of the devices, O2 may continue to pursue Mr M for repayment of that debt, agreeing a repayment plan which is affordable for Mr M.
4. Remove the loans from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 August 2019.

Elizabeth Dawes
ombudsman

copy of provisional decision

complaint

Mr M complains that Telefonica UK Limited, trading as O2, shouldn't have lent him money because he couldn't afford to repay it. His accounts went into arrears, he was disconnected and charged fees. He wants the outstanding balance written off and all negative markers removed from his credit file.

background

Mr M took out the following fixed sum loans with O2:

11/06/2017	Phone	£720
22/11/2017	Tablet	£288
22/11/2017	Tablet	£288
16/01/2018	Phone	£240

All of the loans were interest free and repayable over 24 months.

By March 2018, Mr M's account was in arrears and in or around July 2018 the debt was sold to a debt collection agency.

Mr M complained to O2 saying that the loans for the two tablets and second phone had been mis-sold. He said he shouldn't have been allowed to add three further device plans to his account because he couldn't afford to repay them.

O2 said Mr M had applied for the loans online and it'd carried out a credit check for each application, which Mr M had passed. He'd agreed to the terms and conditions of the loans so, when he failed to make payment and the account went into arrears, O2 sold the debt to a debt collection agency.

Our adjudicator concluded that the loans shouldn't have been agreed, based on Mr M's credit file at the time which showed he already had seven defaulted accounts which he was trying to repay. But, because the loans were interest free, she didn't think O2 was obliged to refund any sums or to write off the remaining balance as Mr M had had use of the devices. But she thought the reporting of the account should be removed from Mr M's credit file.

O2 said it couldn't do this because the account had been sold. It said it could buy back the account, write off the outstanding debt and then remove the entries from Mr M's credit file. And it would do this if Mr M returned the devices.

Mr M didn't agree. He said, in summary that:

- He shouldn't have to pay anything if the loans were mis-sold.
- He didn't agree the balance that had been sold to the debt collection agency.
- He's paid off the majority for the first handset, so it's not fair he should have to return it.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When Mr M applied for each of the four loans, O2 said it checked his credit history to make sure he would be able to repay the loans. O2 said Mr M "passed" its checks. But I agree with our adjudicator that, based on the content of his credit file, it looked more likely than not that he would struggle to be able to afford to repay new lending - he had seven accounts in default which he was trying to repay.

So I don't think O2 acted reasonably when it agreed to each of the loans.

In the circumstances, I would usually ask O2 to refund any interest charges but in this case the loans were interest free.

If Mr M wants to keep the devices, it's only fair that he pays for them. But it doesn't look like he is in a position to do this. So I think, in these circumstances, O2 has made a fair and reasonable offer – it will arrange to buy the debt back from the debt collection agency and write it off, on receipt of the devices from Mr M.

Mr M doesn't agree this is fair. He's pointed out that he made 10 month's payments for the first phone – so he's paid £300. He made some payments towards the other devices so he's paid £388 in total. But he's had the first phone for nearly two years, the second phone for around 16 months and the two tablets for around 18 months. He's been able to use those devices. And they must still have some value should Mr M keep them and then subsequently sell them. So I think the amount he's paid is very fair for the use that he's had of each of the devices.

Mr M disputes the balance of the account that was sold to the debt collection agency. To clarify, a total of £1,394.31 was sold, made up as follows:

11/06/2017	Phone	£420.00
22/11/2017	Tablet	£256.00
22/11/2017	Tablet	£232.00
16/01/2018	Phone	£240.00
	Airtime bills	£246.31
Total:		£1,394.31

The airtime bills are not consumer credit accounts so are outside of our jurisdiction and do not form part of my decision. I include them here simply to help Mr M reconcile the figures.

Finally, Mr M's credit file has been affected. O2 should arrange to remove the account from his credit file when it writes off the outstanding balance. To be clear, this doesn't include the airtime bills.

Should Mr M decide he doesn't want to accept my decision, the debt will remain with the debt collection agency. He will need to complain to it if he wants his credit file to be amended.

my provisional decision

My provisional decision is that Telefonica UK Limited, trading as O2, should:

1. Buy back the debt from the debt collection agency and, on receipt of the four devices from Mr M, write off the outstanding balance.
2. Remove the account from Mr M's credit file.

Elizabeth Dawes
ombudsman