

## **The complaint**

Mr N complains that Telefonica UK Limited trading as O2 (“Telefonica”) unfairly asks him to repay a fixed sum loan he says he didn’t give authority for.

## **What happened**

Mr N says he became aware that he was being asked to repay a debt in relation to a fixed sum loan agreement with Telefonica in 2023, following contact from a debt collection agency. He told Telefonica he hadn’t received any goods from it in relation to the agreement, and unless it could demonstrate otherwise, he wouldn’t pay. He accepted that at the time the agreement had been taken out he’d been in a retail store, looking to purchase a mobile phone, but hadn’t entered into an agreement with Telefonica. He suggested that someone in the store might have impersonated him and entered into the agreement in his name, fraudulently.

Telefonica didn’t agree. It said that the agreement had been entered into in a retail store in 2017 and all of the details, including telephone number, matched Mr N’s. It also said that the agreement had been paid by Mr N until April 2018 and its records showed that the phone had been used with Mr N’s telephone number – specific to his SIM card.

Mr N brought his complaint to this service. In doing so, he accepted that he’d applied for a similar agreement with Telefonica online. He also accepted that he’d gone to one of its retail stores, but maintained he didn’t enter into the agreement. His submissions focused on Telefonica not being able to prove that the mobile phone was given to him and he offered a number of scenarios under which it might have been possible for the agreement to have been entered into fraudulently.

Our investigator didn’t uphold the complaint. They concluded, on balance and given the available evidence, that it was more likely than not that Mr N had given authority for the agreement and the goods had been provided to him. They were therefore satisfied that Telefonica had acted fairly by asking Mr N to repay the agreement.

Mr N disagreed. He disclosed that although he’d signed a tablet in a Telefonica store, he maintained that he had not been provided with any goods. He made a number of detailed submissions about how it’s possible he could’ve been the victim of fraud and maintained that Telefonica had not proved that he had been provided with the goods associated with the agreement.

Mr N asked for an ombudsman’s decision on the case so it’s been passed to me.

## **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.

Mr N’s complaint is about whether Telefonica has acted fairly in seeking to recover payment from him under a fixed sum loan agreement. It’s a regulated agreement and one which this

service has the power to consider a complaint about.

Mr N has made a number of detailed submissions in support of his complaint. I don't find it necessary to mirror that level of detail in explaining what I think a fair and reasonable outcome to the complaint is. I can assure Mr N, however, that I've carefully considered everything he's presented.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory – as it is in this case – I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

In this case Mr N has said, a number of times, that Telefonica ought to be able to demonstrate that he was provided the goods in question. However, taking into account that it's been almost six years since the event, I need to decide what was most probable in the absence of conclusive evidence.

Telefonica says the agreement in question was entered into in one of its retail stores near where Mr N lived, using an address he'd lived at and was signed digitally and verified using a telephone number which Mr N accepts had belonged to him. It also says that identification would've been required from the applicant.

Mr N says that at the point the agreement was entered into, he no longer lived at the address on the agreement or used the telephone number used to verify it.

Telefonica says that it can't provide evidence - or a receipt that Mr N has requested – to show that the goods were provided to him as those records are no longer available due to the time passed. However, it's provided evidence which it says shows that the handset provided under the agreement was used with the SIM card for the telephone number which Mr N accepts was his.

In my view Telefonica has provided what I consider to be persuasive evidence that Mr N likely entered into the agreement and was provided with the goods in question. I've carefully considered Mr N's assertion that he's been the victim of fraud and that someone had impersonated him. However, I don't think he's provided what I consider to be persuasive evidence that it was likely the case, particularly because he accepts having signed for something in a Telefonica store.

Given all of the above, on the balance of probabilities I find it likely that Mr N entered into the fixed sum loan he complains about and was provided with the goods in question. I therefore find that Telefonica has acted fairly in asking him to repay sums owing under that agreement.

### **My final decision**

For the reasons explained above, my final decision is that I don't 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 11 January 2024.

Stephen Trapp

**Ombudsman**