

The complaint

Miss A complains about the service provided to her by Telefonica UK limited trading as O2 in respect of fixed sum loan agreement she entered into with it in April 2020.

What happened

In April 2020 Miss A entered into a fixed sum loan agreement with O2 for a mobile (in purple or pink) costing £1,334.00. Under the terms of the fixed sum loan agreement, everything else being equal, Miss A undertook to make an 'upfront' payment of £100 followed by 29 monthly payments of £41.14 and a 'final' monthly payment of £40.94 - making a total sum repayable of £1,334.00 (at an APR of 0%).

As well as entering into a fixed sum loan agreement with O2 for a mobile Miss A also entered into an unregulated service agreement (for airtime) with it and an insurance contract (at a monthly cost of £15) with a company that I will call "I".

Based on notes provided by O2, Miss A contacted it in June 2021 about a "damage claim". These notes further suggest that O2 referred/transferred Miss A to I.

Based on what Miss A has said and submitted I provided her with a replacement mobile.

Based on notes provided by O2, Miss A contacted it in September 2021 to complain about the quality of the replacement mobile she had been provided with by I.

As I understand it Miss A sent the replacement mobile back to I for inspection and repair, or inspection and replacement. However, I returned it to Miss A. Miss A then sent it to O2 (in February 2022) for inspection and repair, or inspection and replacement. However, it was never received by O2, or it was received by O2 and then lost by it.

In November 2021, following a complaint she had made to it, I sent Miss A a final response letter ("FRL"). Under cover of this FRL I said it wasn't upholding Miss A's complaint that it had provided her with a faulty mobile and if she was *"unhappy with [its] resolution of [the] matter"* she had the right to refer her complaint (against it) to our service.

In May 2022, following a complaint she had made to it, O2 issued Miss A with a FRL. Under cover of this FRL O2 said it accepted responsibility for the loss of the mobile and by way of compensation it was prepared to offer a refurbished replacement in black – purple or pink not being available. O2 also said that if Miss A preferred to *"upgrade to a new phone, [it would] close [her] Device Plan [with] nothing further to pay"*.

In June 2022 O2 issued Miss A with a further FRL. Under cover of this FRL O2 said that it believed its offer made under cover of its May 2022 FRL was fair, but it no longer had any stock in any colour.

In August 2022 Miss A referred her complaint about O2 to our service.

In January 2023 O2 confirmed to our service that it was prepared to pay Miss A £411.20, being a refund of 9 monthly fixed sum loan agreement payments made of £41.14 (for the months of January 2022 to September 2022) and 1 monthly payment made of £40.94 (for the month of October 2022) and based on the fact that the last use of “the replacement phone” was on 31 December 2021.

One of our investigators considered O2’s offer and believed that it was fair and reasonable in all the circumstances. However, Miss A didn’t agree. And because of this her complaint was passed to me for review and decision.

In June 2023 I issued a provisional decision in which I said, in summary:

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

It’s clear that Miss A has very strong feelings about this complaint. She has provided detailed submissions in support of her view which I can confirm I’ve read and considered in their entirety. However, I trust that Miss A will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn’t to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I’ve got is incomplete, unclear, or contradictory, I’ve to base my decision on the balance of probabilities.

In April 2020 Miss A was provided with three different products, a fixed sum loan agreement (for a mobile) with O2, an unregulated service agreement (for airtime) with O2 and an insurance contract with I.

O2 comes under this service’s compulsory jurisdiction. The fixed sum loan agreement it provided is regulated and one which this service has the power to consider a complaint about. Under this type of agreement, O2 is responsible for a complaint about the quality of the mobile supplied to Miss A in April 2020 and to a lesser extent the mobile supplied to Miss A (by I) in, or around, June 2021.

We don’t have the power to consider a complaint about the unregulated service agreement with O2. Broadly speaking our rules allow us to consider complaints about regulated activities as well as a few others specified. Complaints about unregulated service agreements aren’t covered by our rules. We also don’t have the power to consider (in this decision at least) any complaint Miss A might have about I.

So, in the context of this complaint, I can say whether I think the original mobile O2 supplied to Miss A under her fixed sum loan agreement, and to a lesser extent the mobile supplied to Miss A (by I) in, or around, June 2021, were of satisfactory quality. I can also find on whether O2 handled matters relating to that agreement fairly.

I can’t, for example, decide whether Miss A’s insurance claims were handled appropriately. These matters relate to an insurance contract with a different company, I, which isn’t party to this complaint, so I can’t require O2 to do anything in relation to these matters.

The Consumer Rights Act 2015 ("CRA") is relevant here. It says, in summary, that any goods supplied must be of satisfactory quality – defined as whether they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances. Satisfactory quality also refers to the durability of the goods.

So, in the context of Miss A's complaint, I need to determine whether there's been a breach of contract on the grounds that she was supplied with goods which were of unsatisfactory quality.

Miss A was supplied with a brand-new mobile by O2, so I'd expect it to be free from faults for some time and also to be sufficiently durable.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within the first six months, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Miss A to show that the goods weren't of satisfactory quality.

The mobile was supplied to Miss A in April 2020, and it was some 14 months before she contacted O2 for the first time. I think it's fair to suggest that if the mobile was of unsatisfactory quality at the point of supply, Miss A would have contacted O2 sooner than she did. I would also add that based on what both parties have said and submitted it's unclear whether Miss A's mobile developed a fault in June 2021 or had become damaged.

I think it's also important to add that although the replacement mobile Miss A was supplied with by I may have developed a fault in, or around, September 2021 (although O2 suggest she was using it 'till 31 December 2021), when looking at O2's obligations I'm required to have regard to how long Miss A was in possession of a satisfactory mobile since April 2020 not how long she was in possession of a satisfactory mobile since June 2021.

And based on what Miss A has herself said and submitted I'm satisfied she was in possession of a satisfactory mobile for some 17 months (bar a short period whilst I was securing her a replacement) and this simply adds weight to my view that O2 aren't liable to compensate Miss A along the lines she suggests it should have to.

Put another way, based on what both parties have said and submitted, I'm satisfied that more likely than not Miss A was supplied with a mobile from O2 in April 2020 that was of satisfactory quality and one that was sufficiently durable.

So had the replacement mobile (provided to Miss A by I) not been lost I would have simply directed O2 to return it to Miss A, nothing more. In other words, I wouldn't have directed O2 to have repaired the replacement mobile (provided to Miss A by I) and I certainly wouldn't have directed it to provide Miss A with a brand new mobile as she submits it should.

However, in this case, the replacement mobile (provided to Miss A by I) has been lost and O2 accepts responsibility for that loss. And it's only fair that Miss A should be compensated for this loss.

In deciding what O2 should do to fairly (and reasonably) compensate Miss A I've had regards to the position Miss A would have been in had the replacement mobile (provided to her by I) not been lost but returned to her by O2 in 'good time'.

In my view the position Miss A would have been in is one where she would have been in possession of the replacement mobile (provided to her by I) worth very little and with an obligation to continue paying her fixed sum loan agreement payments till October 2022.

The position Miss A has ended up being in was one where she wasn't in possession of the replacement mobile (provided to her by I) worth very little and in the position of having paid her remaining fixed sum loan agreement payments.

So, with this in mind, I can confirm that I'm satisfied that a payment of £411.20 by O2 would constitute both fair and reasonable compensation for it to have to pay.

O2 responded to say it accepted my provisional decision.

Miss A responded to say that it should be made clearer to consumers, who elect to purchase insurance, that they are entering into a contract with somebody other than O2. And had this 'fact' been made clear to her in April 2020 she wouldn't have purchased the insurance (at a cost of £15 a month) that she did.

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 can understand the point Miss A has made in response to my provisional decision. But as this particular point wasn't raised as part of Miss A's original complaint to O2, or our service, I make, nor am I able to make, any finding on it in this decision.

Given what I say above and given that O2 confirmed it accepted my provisional decision I can confirm that I see no reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that Telefonica UK Limited trading as O2 must pay Miss A £411.20 in compensation, but nothing more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 3 August 2023.

Peter Cook
Ombudsman