

Claim OQZ38178
Rob Jonson claiming against Telefonica O2.

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Summary:

I purchased a Palm Pre and an 18 month airtime contract from O2 in October 2009.

I was told at the time that I would be able to unlock the phone from O2 for free or a nominal charge. This would mean that I could give the phone to my wife to use when I get a new phone, or that I could continue to use it when I leave O2.

O2 now say that they will not unlock the phone. This means that I must either maintain an ongoing airtime contract with O2 (beyond my initial 18 months), or that the phone becomes useless.

O2 representatives explicitly told me I would be able to unlock the phone. O2's contract and website imply that I can unlock the phone. I have a recorded conversation with an O2 customer service representative in which she says I can unlock the phone.

Even were this not true, I believe that the refusal to unlock the phone is such a significant detriment (it makes a phone costing approximately £450 useless unless I stay permanently with O2). I paid a large sum for the phone, in the expectation that it would become my phone. I even agreed to purchase an airtime contract from O2 for 18 months. The phone is as powerful and as expensive as many laptops. O2 are trying to say not only that I cannot give the phone to someone on another network – but that if I wish to use it myself, I must stay with their network in perpetuity.

This is a huge condition and one which they do not seem to apply to other phones. It should be flagged very clearly at the point of sale. Perhaps with a 'flashing red hand'.

In fact, there is no mention or link to this policy.

O2's Defence

point 4: O2 asks me to prove that I was told that I could unlock the phone.

I don't have a recording of the conversation from when I purchased the phone, but I do have a recent recording of a conversation with O2 customer services in which they tell me that they will unlock my phone for free. (<http://bit.ly/gGfmBQ>)

Also, my contract states

5.9: Where a handset is restricted to use on the Network we reserve the right to apply a charge for releasing or unlocking the handset. Details of the charge are available by calling Customer Services.

The clear implication here is that the network will unlock the phone.

However – my main point is that O2 should have clearly pointed out that they intended to keep my (very expensive) phone permanently locked to their network. This is a significant detriment. It means I cannot give the phone to my wife, and can only use it myself if I stay with O2 in perpetuity.

There is no mention now on the Palm Pre product description that the phone will not be unlocked.

Searching for 'Unlock Palm Pre', 'Unlock policy' or 'Simlock policy' on the O2 site doesn't reveal any page saying that the the Pre will not be unlocked. These searches do however lead to an 'unlock

form' where you can ask to have your phone unlocked. The Palm Pre is explicitly listed in this form (implying that it can be unlocked). (<http://bit.ly/fcH7pu>)

When I submitted this form online with my phone number and other details, there was a response some time later by email telling me that they would not unlock my phone.

O2 show 'exhibit 2' which does state that exclusive handsets such as the Palm Pre will not be unlocked. It is unclear to me how I should have seen this page. It is not linked from the Palm Pre page, and doesn't appear in the searches I list above. It is also unclear when this page was published.

Exclusivity

O2 try to conflate exclusivity with 'not unlockable'. In their letter to me, they wrote that I should have known the phone would not be unlocked because their magazine for that month mentioned that it was 'exclusive'.

My understanding of the word exclusive is the one that O2 give in point 4 of their introduction – meaning simply that it is not marketed or supplied by any other network in the UK. This meant that when I wanted to buy the Palm Pre from them, I also had to purchase 18 months of airtime.

If O2 wish to state that 'Exclusive' means that a phone will never be unlocked, then this is a significant re-definition of the term which should be explained in large clear terms at the point of sale.

O2 seem to rely on Exhibit 2 to indicate that they advertise that the mobile phone will not be unlocked because it is exclusive (section 4 b,c,d)

Exhibit 2 may have been on their site when I purchased the device (I ask O2 to confirm this), but a single page hidden in their huge site which is not linked from the product description, and which does not show up in reasonable search terms seems a highly unfair way to redefine the meaning of 'exclusive'.

Remedies

When I purchased the Palm Pre and airtime from O2, I understood that I would get airtime for 18 months, and also a smartphone for general use.

At the moment, the situation is that I have got the airtime, but the phone is now useless (I would like to give it to my wife – but she is not on O2). The sum I have claimed is to cover the amount I have paid for the phone.

It is hard to calculate the cost of the phone exactly, but different methods come up with similar valuations.

- 1) Difference in cost between buying airtime, and phone plus airtime for 18 months.
 - £96 plus the increased cost of £20 in the monthly contract compared to an equivalent 'airtime only' contract.
 - £491
- 2) Cost of Palm Pre sold unlocked by O2 in Europe

- €483
- 3) Cost of Palm Pre (current model) sold unlocked by HP in the UK
- £399

Please note – I am not claiming (as O2 implies) for the months after I initially asked to have the phone unlocked – I am claiming for the total cost paid for the phone as it is now not useable (except under the unfair restriction to an O2 network). I will of course be happy to return the phone to O2.

O2 have also offered to unlock the phone and pay me £100 for my time. I am still happy to accept that remedy. Unfortunately, though I did accept their offer – they withdrew it when I said I was not able to sign a confidentiality agreement.

Evidence requested from O2

A: O2 rely on Exhibit 2 (defence section 4 c,d) to show that I should have known that they would not unlock the Palm Pre.

I would like them to document:

1. When that web page was published
2. How they expected me to find the page
3. Whether the page was linked from the Palm Pre online description or my contract.

B: O2 imply that I should have know that their exclusivity meant that they would never unlock the phone. I would like them to document:

1. Where this policy was clearly explained
2. How I was supposed to find this policy
3. Which other phones were exclusive for some period of 2009
4. Which of these exclusive phones are now 'unlockable'. (e.g. the iPhone was an O2 exclusive)
5. How I was supposed to tell the difference.

C: I would like O2 to provide a copy of the online product page for the Palm Pre from the time of launch – or state that there was no link from the product page to any condition that the Pre would never be unlocked, or any indication that such a condition would be enforced.

(I have a copy of the current product page which has no such links).