

The complaint

Mr L has complained about the way Virgin Media Mobile Finance Limited (VMMF) handled things when he entered into a fixed sum loan agreement with it to buy a device.

What happened

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. But in summary, Mr L entered into a fixed sum loan agreement with VMMF to pay for a device (mobile phone) for his son in October 2022. The device cost £1,332 and was to be paid back with £37 repayments for three years. Mr L says as part of the deal, VMMF offered to extinguish a previous fixed sum loan agreement. This previous agreement was taken out in July 2020 for two devices (mobile phone and ear buds) totalling £1,476 with £41 repayments for three years. I understand the old phone was faulty, which is why Mr L's son needed a new one. Mr L says there were some issues with the order paid for under the 2nd agreement in relation to the device's colour and storage, but he came to an agreement with VMMF, and his son kept the device.

Mr L says a few months later he noticed VMMF was still taking the £41 repayments for the old agreement. He was surprised and contacted VMMF to complain. VMMF said it had no noted confirmation of what Mr L was claiming. It said it didn't retain the relevant call as it took place over six months previous. But it offered to 'refund' the final two repayments due totalling £82.

Unhappy with the response, Mr L referred his complaint to our service. Our investigator said she couldn't see what went wrong with regards to the model that was ordered. She noted VMMF had applied a £4 discount to the associated airtime agreement and said Mr L accepted the 2nd device so thought that part of the complaint was resolved.

She said with regards to the complaint about the cancellation of the first agreement there was little to go on. She said the repayments continued for about seven months after the upgrade and she'd have expected the complaint raised sooner if Mr L thought the agreement had been cancelled. She thought the £82 offer from VMMF, which it agreed to reinstate even though the final two repayments had been made, was broadly fair.

Mr L responded and didn't agree with the assessment. He clarified what happened with the upgraded device and said the £4 discount was essentially an apology for VMMF ordering the wrong phone. Mr L's son didn't want to return the phone he was sent because he needed it for work. The phone he'd actually ordered was a different colour and with a higher storage. But he accepted the discount for the phone that he received.

Mr L said he only agreed for VMMF to contact his son about the upgrade on the understanding the original agreement would be cancelled as part of the upgrade. He said if it wasn't, he wouldn't have given permission for the upgrade. He says he recalls several conversations which were clear, and he had no reason to doubt the original agreement would be cancelled.

Mr L said he continued to pay for the first agreement while he was trying to ascertain why he was paying something he didn't think he owed. But that this was stressful. Mr L said he'd been a customer of VMMF for a long time. He has several accounts with it, and he raised the complaint as soon as he noticed the error. He also said he didn't receive any bills and if he did it would have come to light sooner.

Moreover, Mr L said the overall price was the key factor for him (and his son). Mr L and his son had another option to repair the original phone and that Mr L was induced into the second agreement. He would not have bought the recent device if the old agreement wasn't due to be cancelled.

As things couldn't be resolved the complaint has been passed to me to make a decision.

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 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'm required to decide matters quickly and with minimum formality. But I want to assure Mr L and VMMF 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 L bought both devices using regulated fixed sum loan agreements and our service can consider complaints relating to these sorts of agreements. But I don't have the power to consider what happened in relation to the airtime agreements.

I've listened to what Mr L said about the sale of the second phone. He says the wrong phone was delivered, but in order to resolve things he accepted a £4 discount towards the associated airtime agreement. Seeing as though this was accepted, I'm not going to go over everything again because it's not required.

The main thing in dispute is whether (or not) Mr L was misadvised prior to entering into the second agreement. Mr L is alleging VMMF induced him into the second agreement by misrepresentation. He's said he was told the first agreement would be ended, but this didn't happen.

On the one hand, Mr L has been consistent with his testimony. He's said either he or his son were told over the course of various calls that the original agreement would be cancelled. He said his son couldn't increase his outgoings (his son was covering the repayments for the device) so would not have taken on a second repayment at the same time the first one remained active. And Mr L has offered an explanation for why he didn't notice two repayments being made straight away.

But on the other hand, because the complaint wasn't raised straight away, the evidence that would be key is no longer available. Moreover, Mr L owed over £400 towards the original agreement when he took the upgrade. It seems unusual that VMMF agreed several times to write off such a large amount. I take Mr L's point that he thought VMMF did this to keep him as a customer. But from experience in these matters, it does seem like a very unusual step for VMMF to have agreed to take considering the amount that was left owing. And given it would have been so unusual, I'd have expected there to have been some sort of notes recorded by at least one of the agents. But there's nothing to indicate there was a special arrangement.

I'll never know exactly what happened. Where the evidence is incomplete or inconclusive, I need to reach my decision on the balance of probabilities. While I know Mr L will be disappointed, I don't find I've seen enough to determine, on balance, that VMMF agreed to pay off the original agreement. So I don't have the grounds to direct it to refund Mr L the repayments made since the upgrade.

VMMF offered to 'refund' the final two repayments that were due when it sent its final response letter. When Mr L made those two payments that offer couldn't be actioned. But our investigator asked VMMF if it would reinstate it by offering an £82 refund direct to Mr L. This has been accepted by VMMF as a way to resolve the complaint. I think this is fair of it in all the circumstances, and I'll leave it up to Mr L if he now wishes to accept the offer.

My final decision

Virgin Media Mobile Finance Limited offered Mr L £82 to resolve the complaint and I think this is fair in all the circumstances.

My decision is that Virgin Media Mobile Finance Limited should pay Mr L £82.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 December 2023.

Simon Wingfield
Ombudsman