

The complaint

Mr L has complained about the way Virgin Media Mobile Finance Limited (VMMF) dealt with a claim he'd made in relation to a phone he bought using a fixed sum loan agreement.

What happened

The events of the complaint are well known to both parties, so I'm not going to go over everything again in detail. But in summary, in July 2021 Mr L bought a phone for around £800 using a fixed sum loan agreement with VMMF. In December 2022 Mr L contacted VMMF because of a fault with the phone. Mr L says he spoke to an advisor who initially told him he'd have to pay for the repair, which I understand cost around £300. Mr L says he explained to the advisor he couldn't afford it and that the advisor told him he could cancel the agreement and he'd be sent packaging to return the phone. Mr L purchased another phone thinking his fixed sum loan agreement would be cancelled. But this turned out to be incorrect. VMMF said it incorrectly told Mr L the agreement could be cancelled. It apologised and paid Mr L £100 compensation.

Mr L wasn't happy with this and brought the complaint to our service to consider. He says because of VMMF's mistake he now has two monthly payments to make and that he can't afford them both. Mr L also complained the phone wasn't of satisfactory quality because it only lasted 14 months.

Our investigator ultimately thought Mr L wouldn't have bought the new phone had it not been for VMMF's incorrect information. So she thought it should offer to cancel the agreement. I understand Mr L owed around £300 towards the agreement.

Mr L agreed with the investigator's assessment, but VMMF didn't. It said the £100 compensation was fair for the incorrect information. And that it's not fair it is required to write off £300.

I issued a provisional decision that said:

Mr L bought the phone using a regulated fixed sum loan agreement and our service is able to consider complaints relating to these sorts of agreements.

Mr L is unhappy with the information VMMF gave him when he made the claim. And he's also mentioned he doesn't think the phone was of satisfactory quality. I think it makes sense to deal with both complaints together, as they're directly linked.

Quality of the phone

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes VMMF responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality (which includes their durability). The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.

It's important to note that I'm considering a complaint against VMMF, not the supplier – even though they have some sort of connection. So I have to consider VMMF's obligations as a provider of financial services – in this case its liability for breach of contract under section 75.

I can understand why Mr L is unhappy that he paid nearly £800 for the phone and it went wrong within a year and a half. It's a lot of money to spend and goods are supposed to be durable. We asked Mr L if he had any supporting evidence showing the reasons for the fault but he's not been able to supply anything. Given the phone went wrong over a year after Mr L bought it, I think Mr L (rather than VMMF) needs to show the fault is relating to something that makes the phone of unsatisfactory quality. Without sufficient evidence to determine the fault is an inherent problem, and not as a result of non-fair wear and tear for example, I don't have the grounds to uphold the complaint on this basis. If Mr L wants to provide evidence, I can consider this for him. But without that, I'm not going to make any directions in relation to VMMF's liability under section 75.

The way VMMF handled the claim

It's not in dispute Mr L was given wrong information by VMMF on the December 2022 call. For the avoidance of doubt, I've not been provided a copy of the phone call recording. As things aren't in dispute, I'm not persuaded I need to listen to it. But if there's something Mr L thinks I've missed, or is relevant, he should provide a copy in response to this provisional decision.

I've thought about what would have happened had a mistake not been made. Mr L said he was told he needed to pay for the repair initially. And given I've found, based on the evidence I've seen so far, VMMF wasn't liable for a breach of contract in relation to the quality of the phone, that was likely the correct information to give. But Mr L said he couldn't afford to pay £300 for the repair. So if he couldn't afford to pay for the repair he would have done something else. Mr L decided to buy another phone and pay for it monthly. Given the nature of the way people use phones it's unlikely Mr L would have decided to save up monthly for the repair costs or he'd have been without a phone for that time. There's a good chance Mr L simply would have bought another phone anyway so that he could pay for it monthly. Mr L hasn't told us or provided evidence he had an alternative to buying another phone.

Therefore, while I'm sympathetic to the situation, I'm not persuaded that simply writing off whatever is owed under the agreement is fair. Based on what Mr L has told us, it's likely he's ended up in the same position he would have been in had VMMF not gone on to mislead him. VMMF compensated Mr L £100 for the trouble and upset caused. I think that's broadly fair in all the circumstances for the loss of expectation.

However, I note Mr L has said that having two payments required is unaffordable. So I'd remind VMMF to treat Mr L with forbearance and due consideration if he's in financial difficulties. If Mr L has any other points or evidence he'd like me to consider, he should tell us in response to this provisional decision.

Mr L responded to say he refused the £100 compensation offer but VMMF decided to pay him £100 as a gesture of goodwill. He said the manufacturer had stated the phone's rear system had failed but the cosmetic condition only showed normal wear and tear. Mr L says this indicates he hadn't damaged the phone, and that it wasn't fit for purpose. He also says he wouldn't be in the same position if VMMF had given him correct information. And that he says the only reason he could afford to buy a new phone on monthly payments was because VMMF had told him his agreement would be cancelled. Mr L also highlighted that his phone should have lasted between three and five years and that it's not right it only lasted for 16 months.

VMMF hasn't submitted anything further for me to consider.

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 thank Mr L for responding to the provisional decision. I am sympathetic to the situation. And I can appreciate he would've been upset and frustrated that VMMF misinformed him.

I don't think it matters whether the £100 was paid as compensation or as a gesture of goodwill. I've set out that I think a £100 payment is broadly fair in all the circumstances for the misinformation.

I've also thought about what Mr L has said about the quality of the phone. I appreciate he says the manufacturer sets out the phone should last between three and five years and that there was no indication he'd damaged it. But the problem I have is that phones can go wrong for several reasons. Not all of these will be as a result of physical damage. I simply don't have enough evidence to be able to conclude the phone wasn't sufficiently durable meaning it wasn't of satisfactory quality. Without evidence to determine the cause of the fault, I don't have the grounds to say there's a breach of contract that VMMF is liable for.

I've also thought about what Mr L says about not being in the same position had VMMF given him correct information. But he's not explained how things would've fundamentally played out differently had VMMF not misinformed him. He told us previously he couldn't afford the repair. And he's not explained he had an alternative option other than buying another phone.

Therefore, while I know he'll be disappointed, I think VMMF has done enough to put things right, for the reasons given above.

My final decision

Virgin Media Mobile Finance Limited has already paid Mr L £100 to settle the complaint. I think this offer is fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 September 2023.

Simon Wingfield
Ombudsman