

The complaint

Mr K has complained that Virgin Media Mobile Finance Limited (VMMF) misled him when he took out a fixed sum loan agreement to pay for a mobile phone.

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, Mr K took out a fixed sum loan agreement with VMMF to pay for a phone. The phone cost around £1,000 and Mr K was required to make £28 monthly payments for three years. Mr K says VMMF misled him because it told him he wouldn't have to pay for a sim on top of this. But he found out this was incorrect.

To give some background, it looks like Mr K had a media package with a company linked to VMMF which came with a free sim. Mr K changed the media package on 2 August 2022, but his new package didn't come with a free sim. Mr K says that when he took out the fixed sum loan agreement with VMMF for the phone at the end of the month he was told he'd only be paying £28 per month. Mr K complained because he was charged £10 per month for the new sim. Mr K acknowledged the sim deal linked to the media package was ending. But said when taking out the fixed sum loan agreement the agent should have been aware of this. He said he was unhappy he was paying £38 per month and could have got it cheaper elsewhere.

VMMF sent a final response to acknowledge his previous media package came with a free sim. But when this was changed on 2 August 2022 the new package didn't include this. It said the new package took effect on 1 September 2022. VMMF said Mr K acknowledged he was told he'd lose his free sim. VMMF said Mr K ought to have been aware his free sim would expire after the 30 days' notice period ended for the media package. VMMF did however offer to reduce Mr K's tariff by £3 per month, give two months free airtime and a one-off credit of £20. But it says Mr K rejected this. VMMF also gave Mr K the options to cancel the sim services, which would leave him only repaying the handset at £28.

Mr K referred the complaint to our service. He said he wouldn't have had to pay the extra £10 if he went to another network provider to buy the phone. VMMF initially said the complaint wasn't within our jurisdiction because the dispute related to a sim contract, and not a regulated activity we have the power to investigate. After initially agreeing with this, our investigator spoke to Mr K. He explained that the discussions he was complaining about related to taking out a regulated fixed sum loan agreement. Our investigator explained to VMMF that this was something we could consider.

Our investigator went on to consider the complaint to see if she thought Mr K was likely misled when taking out the fixed sum loan agreement. She highlighted VMMF couldn't supply the relevant sales call because it hadn't been retained. But she said she thought the free sim deal package was still showing as being in place when Mr K entered the agreement because that deal wasn't deactivated until a few days later. Our investigator thought given Mr K knew the free sim deal was ending he could have asked the advisor to confirm the situation for the new phone.

Ultimately our investigator didn't think there was enough evidence to show Mr K was misled or that he was induced into taking out the agreement. She also wasn't persuaded Mr K would've done anything differently if he'd been better informed. So she didn't make any recommendations.

Mr K responded to say he was told the sim would be free for 36 months. He says he did explain to the advisor his media package had recently changed. He says he was induced into the fixed sum loan agreement by what VMMF had told him. He also supplied copies of text messages he says shows the sim was offered for free after the old deal ended. Mr K also highlighted he'd changed his network provider in April 2023 and was now only paying £4.95 per month. He reiterated he'd never pay £10 a month for a sim as there are better deals elsewhere.

Our investigator put Mr K's evidence to VMMF. It said its systems hadn't noticed the sim changes until after Mr K had entered into the fixed sum loan agreement. It couldn't confirm why the change didn't happen immediately without being able to listen to the relevant sales call. But it said Mr K ought to have been aware of the situation.

Our investigator spoke to Mr K again and he explained another Alternative Dispute Resolution (ADR) scheme had been involved and he was offered a refund of the £10 monthly payments since inception along with £50. But he wanted to take things further as he thinks he's lost out. He says he would have bought the phone elsewhere had he been properly informed.

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 K 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.

As our investigator and VMMF has pointed out, there are parts of the complaint the Financial Ombudsman is unable to consider. Our investigator has explained what we can consider, so I'm not going to go over everything again in detail. But in summary, Mr K has complained he was misled when taking out a regulated fixed sum loan agreement. Our service is able to deal with complaints about the sale of regulated credit agreements like these. And VMMF can be held liable for antecedent negotiations carried out in relation to the making of any regulated agreement. Mr K has complained about the negotiations when making the regulated agreement so this is something our service can consider.

It's disappointing the relevant sales call isn't available. Without this call it's difficult to determine exactly what was said. Mr K has been clear and consistent he was misled. VMMF's notes, however, don't show that he was. Where the evidence is incomplete, I have to base my decision on the balance of probabilities.

I've not seen anything in the contracts or finance agreement to evidence Mr K was misled about a free sim. But that's not to discount what Mr K may have been told on the phone. Given Mr K took out the fixed sum loan agreement during the notice period for the change of

media package, this might explain why an agent of VMMF thought Mr K still benefited from a free sim. But without being able to listen to the call, I'll never know what was discussed.

In any event, Mr K has been able to come out of the sim deal and he's gone to another network provider. Based on what he's told us, he's effectively had a few months without having to pay for a sim and he received compensation. So I think that part of his complaint has been broadly put right for him.

What's left to decide is whether VMMF needs to do anything in relation to the fixed sum loan agreement and whether it needs to pay further compensation. Mr K indicated previously he'd want to hand the phone back and receive a full refund. But even if I were to say he was unfairly misled into entering into the fixed sum loan agreement, given he's had the phone for around a year now I don't think it'd be fair to direct VMMF to take it back and offer a full refund. It's only fair Mr K pays for the use of the phone.

I take Mr K's point that had he known the true cost of the phone and the sim he may have gone to another supplier. But I've not been shown evidence of what savings he'd have made by doing this. And I've not seen that Mr K would have benefitted by more than the amount he received off the back of the other ADR investigation. When referring his complaint to our service, Mr K highlighted the £10 cost as being the reason he'd have gone to another provider. And he's received that money back now. So I don't have evidence of a financial loss as such that I can direct VMMF reimburse Mr K. Moreover, Mr K has already received some compensation relating to the matter. I don't find I've seen enough to have the grounds to direct VMMF to pay more.

I can understand why Mr K is unhappy. If VMMF did mislead him I suspect this wasn't done intentionally and it was as a result of the recent media package changes on the account having taken place. Not that that would make it fair on Mr K. But as I said, while Mr K has shown to be consistent and credible, the problem I have is that I'd like to have had more certainty that firstly Mr K was misled, and secondly that he's lost out financially. Based on what I've seen, I don't find I have the grounds to direct VMMF to take further action.

My final decision

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 K to accept or reject my decision before 29 September 2023.

Simon Wingfield

Ombudsman