

The complaint

Mr C complains about the service provided to him by Vodafone Limited (“Vodafone”) in respect of a fixed sum loan agreement (“agreement”) he entered into with it for a mobile phone handset (“phone”).

What happened

On 12 April 2023 Mr C entered into an agreement with Vodafone for a phone costing £841.00. Under the terms of the agreement, everything else being equal, Mr C undertook to make an upfront payment of £739.00 followed by 24 monthly payments of £4.25 – making a total repayable of £841.00 at an APR of 0%.

On 17 April 2023 Mr C contacted Vodafone to say that he had received the phone but the box seal was broken which was of a concern.

On 21 April 2023 Vodafone issued Mr C with a final response letter (“FRL”). Under cover of this FRL Vodafone said that as Mr C’s choice of handset wasn’t in stock for an exchange he could either keep the phone or return it for a refund. Vodafone also offered Mr C a £20.00 grocery voucher by way of compensation.

On 22 April 2023 Mr C settled his agreement by paying Vodafone £102.00.

In May 2023, and unhappy with Vodafone’s FRL, Mr C complained to our service.

In July 2023 Vodafone confirmed to our service that it was prepared to add £50.00 to Mr C’s Vodafone account by way of further compensation.

Mr C’s complaint was considered by one of our investigators who came to the view that in all the circumstances Vodafone’s offer (of a £20.00 grocery voucher and a £50.00 account credit) was both fair and reasonable.

Mr C didn’t agree so his complaint has been passed to me for review and 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.

Having done so I can confirm that I’ve come to the same overall outcome as the investigator and for broadly the same reasons. There is also very little I can usefully add to what has already been said.

Mr C paid for the phone using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements and the goods supplied under them.

It's not in dispute that Mr C received a phone in a box with a broken seal. So, all I need to decide in this case is what Vodafone should have to do to fairly and reasonably compensate Mr C for this fact, having regards to both Vodafone's legal and regulatory obligations.

Now I can understand why Mr C would have been unhappy to receive his phone in a box with a broken seal. But based on what both parties have said and submitted, and given I've seen nothing that would lead me to conclude the phone was anything other than brand new and hadn't - in any way - been 'compromised' I can confirm that I'm satisfied that the offer Vodafone made to Mr C under cover of its FRL was a fair one, that being Mr C could keep the phone or return it for a refund. I'm also satisfied that this offer was made to Mr C by Vodafone in good time.

It's my understanding that Mr C decided to wait for his choice of phone to come back into stock, despite Vodafone saying under cover of its FRL that *"As the [phone] is out of stock, we're unable to exchange [it] and we advise we don't have a date of restock at this point"*. And then, some three months later, decided that he would like to return the phone for a refund.

Now in some cases I might find that a consumer taking three months to decide they would like to take up a business' offer for the return of an item (and for a refund) shouldn't mean the loss of that right. But in this case Vodafone submits the phone is no longer in a new or in an unused state. Now I accept that Mr C says he has done nothing other than switch the phone on. But having considered what both parties have said and submitted on this point I can confirm that I find Vodafone's submissions the more plausible and the more persuasive. In other words, I'm satisfied that more likely than not the phone is no longer in a new and unused state and Vodafone need not have to accept its return (for a refund).

Having said the above, I accept that receiving a phone in a box with a broken seal would have caused Mr C a degree of distress and inconvenience. But I'm satisfied that Vodafone's offer of a £20.00 grocery voucher and a £50.00 account credit for this to be entirely appropriate in all the circumstances.

My final decision

My final decision is that Vodafone Limited, to the extent it hasn't done so already, must provide Mr C with a £20.00 grocery voucher and a £50.00 account credit.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 October 2023.

Peter Cook
Ombudsman