

The complaint

Mr R is unhappy with the quality of a mobile phone provided by Virgin Media Mobile Finance Limited (Virgin Finance) that he paid for using a fixed sum loan.

What happened

In December 2020, Mr R bought a mobile phone and funded the purchase via a fixed sum loan provided by Virgin Finance. The cost of the mobile phone was £972 and under the agreement Mr R was required to make 36 monthly payments of £27 to repay it.

In May 2023, Mr R contacted Virgin Finance as the mobile phone battery was failing and he was experiencing issues with the reception in his area. Mr R says Virgin Finance told him there was a known issue with the battery on the type of mobile phone he had purchased. Given this Mr R asked for the mobile phone to be repaired, replaced or for him be allowed to start a new contract early. Virgin Finance refused these options and so a complaint was raised.

Virgin Finance issued its final response and offered Mr R £50 for the issues with the mobile phone's reception. This was due to issues in his area and wasn't to do with the mobile phone itself. Virgin Finance also confirmed its position that the mobile phone was outside the manufacturer's warranty period and so it wouldn't be taking any further action. Therefore, Mr R remained liable for the outstanding amounts due under the agreement.

Mr R remained unhappy and so referred his complaint to our service. One of our investigators looked into the complaint and concluded there wasn't sufficient evidence to confirm any fault was present or developing at the point of sale. They also confirmed our service wasn't able to consider the issues Mr R had experienced with reception in his area and so couldn't comment on the £50 Virgin Finance has previously offered.

Mr R didn't agree and said he was told by Virgin Finance the model of mobile phone had a known issue with battery failing. He said the mobile phone should last at least the term of the finance used to purchase it. As it didn't, Virgin Finance should take responsibility and resolve the issue.

As Mr R didn't agree, the complaint has been passed to me to decide.

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.

Firstly, I agree that the Financial Ombudsman Service can't look at Mr R's issues with the reception in his area. This isn't an activity covered by our rules. Mr R doesn't appear to dispute this. Therefore, should Mr R want to accept the £50 Virgin Finance previously offered for the reception issues, it would be something he would need to take up directly with it.

Given this, what I've considered in this decision is whether the mobile phone supplied to Mr R was of unsatisfactory quality.

Section 75 of the Consumer Credit Act 1974 is relevant here. It allows, subject to certain criteria, someone buying goods and/or services on credit to claim for a breach of contract or

a misrepresentation against their credit provider when there is a like claim against the supplier.

Those criteria include things like the cost of the goods being between £100 and £30,000 and there being a debtor-creditor-supplier relationship. From what I can see here, all the necessary criteria for a claim to be made under s.75 have been met.

The Consumer Rights Act 2015 (CRA) is also relevant here. It says that goods supplied must be of satisfactory quality, defined as meeting the standard that a reasonable person would consider satisfactory taking into account the price, description of the goods and other relevant factors. Satisfactory quality also refers to the durability of the goods. This means if Mr R was provided with a mobile phone that wasn't of satisfactory quality, then Virgin Finance might be required to take further action to remedy the situation.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty after that time, it's usually the consumers responsibility to evidence the goods weren't of satisfactory quality. Mr R was supplied the mobile phone in December 2020. He reported the fault with the battery failing in May 2023, around 29 months later. Given this, I believe the onus is on Mr R to show that the mobile phone wasn't of satisfactory quality or sufficiently durable.

Mr R has explained the mobile phone is faulty due to a battery failing issue. He hasn't provided any further evidence to show that there is fault. For example, it doesn't appear the mobile phone has been assessed by the manufacturer or looked at by an independent engineer. Instead, Mr R is relying upon the information Virgin Finance gave him where he says it acknowledged his make and model of mobile phone had a known issue with the battery.

While I don't dispute Mr R may have been told this, it doesn't automatically mean his mobile phone was of unsatisfactory quality. The battery issue on his mobile phone could be down to damage, amount of use, not having up to date software or even certain apps using battery in the background. As I've said, above the onus here is on Mr R to show the mobile phone was of unsatisfactory quality and given what's been provided here, I'm not persuaded that Mr R has clearly demonstrated it was. Whether that be at the point of supply or because the mobile phone wasn't sufficiently durable.

Moving forward I would like to remind Virgin Finance of its obligation to treat Mr R with forbearance and due consideration in relation to any outstanding amount that remains owed.

My final decision

I don't uphold Mr R's complaint against Virgin Media Mobile Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 January 2024.

Paul Blower
Ombudsman