

The complaint

Miss C complains that an iPhone acquired with finance from Virgin Media Mobile Finance Limited wasn't of satisfactory quality.

What happened

In March 2020 Miss C was supplied with a phone and entered into a fixed sum loan agreement with VMMF. Miss C experienced issues with the screen and speaker and took the phone to an Apple store who diagnosed the phone as requiring a replacement display.

Miss C contacted Virgin in September 2021 and reported issues with the screen and speaker. She asked Virgin to repair the phone. Virgin said it could send the phone for repair but that because it was out of warranty, Miss C would have to pay for repairs.

Miss C was unhappy about this and complained to Virgin. In response, Virgin said it didn't think it was responsible for repairs because of the length of time that had passed since the point of supply.

Miss C remained unhappy and brought her complaint to this service. She said she didn't think she should have to pay for repairs because the phone had become faulty through no fault of her own.

Our investigator upheld the complaint. He said that under section 75 of the Consumer Credit Act, VMMF (as the credit provider) was jointly liable with Virgin (the supplier) if there had been a breach of contract or a misrepresentation. The investigator said he didn't think the phone was of satisfactory quality because it wasn't sufficiently durable, which meant there had been a breach of contract. The investigator said that VMMF should replace the phone with a like for like model.

VMMF didn't agree. It said that Miss C had failed to report the fault to them within the 12 month warranty period and that if she had done so, she would have been entitled to a free repair. Virgin said the phone was almost 2 years old when the fault was found and said that reasonable expectation of durability was the duration of the 12 month warranty period. VMMF said that if it was to be responsible, it thought it should be allowed to repair the phone.

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.

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit. There can be a valid claim under section 75 if the payment was made under a debtor-creditor-supplier agreement, and if it can be shown that the supplier acted in breach of contract or made a misrepresentation.

In this case, Miss C is the debtor, VMMF is the creditor and Virgin Mobile Telecom Limited is

the supplier.

Miss C hasn't said that the phone was misrepresented. So, I've focussed on whether there's been a breach of contract.

The relevant law says that goods must be of satisfactory quality at the point of supply. The quality of goods includes their general state and condition, and other things including fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

I've looked at the available evidence. Miss C has said that she first experienced issues with the screen display and audio around 11 months after the point of supply. A report from Apple states that the phone was found to be in good condition with no signs of misuse by Miss C. This report didn't diagnose the cause of the fault but recommended replacement of the screen. A subsequent re-test of the phone in January 2022 diagnosed failure of the screen.

Based on what I've seen, I'm satisfied that there is a fault with the phone. So, I've considered whether the phone was of satisfactory quality when it was supplied.

The phone was brand new when it was supplied. So, I'd expect it to be free from minor defects for a reasonable period of time. Miss C has said she first experienced an issue with the screen after around 11 months. Under the relevant legislation, it's up to Miss C to show that the phone wasn't of satisfactory quality at the point of supply.

I think the key issue to consider here is one of durability. I don't think that a reasonable person would expect to experience problems with the screen on a brand new phone in the first year. Even if I were to accept the argument that the fault wasn't diagnosed until 2 years into the agreement, I still don't think that a reasonable person would expect a phone to fail within this amount of time. I don't think 2 years is a reasonable period of time in the context of durability.

VMMF has said that durability should be assessed having regard to the length of the warranty period of 12 months. There's nothing in the legislation which links durability to the length of a warranty period. I understand that VMMF believe that the manufacturer should've repaired the phone, because the fault was first reported to the manufacturer within the warranty period. I don't necessarily disagree with the point VMMF makes. However, I'm not looking at a complaint about the warranty here and I'm unable to hold the manufacturer responsible under section 75.

I haven't seen anything in the available information to suggest that Miss C is in any way responsible for the fault with the phone. There's nothing to suggest external or water damage. The evidence seems to point towards a hardware fault.

Taking everything into account, I'm persuaded that the phone wasn't sufficiently durable, and therefore wasn't of satisfactory quality. This means there's been a breach of contract and VMMF need to put things right.

Putting things right

Under the relevant legislation, a business is allowed one opportunity to repair a fault. VMMF has said it should be given an opportunity to repair the phone. However, I don't think this would be fair. Miss C has already asked for a repair to be carried out at no cost to her and VMMF refused. So, I think VMMF has already had an opportunity to repair. I think the fairest resolution now would be for VMMF to replace the phone with a like for like model. Miss C will have to return the old phone.

My final decision

My final decision is that I uphold the complaint. Virgin Media Mobile Finance Limited must replace Miss C's phone with a like for like model.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 July 2022.

Emma Davy
Ombudsman