

The complaint

Mr D complains that Virgin Media Mobile Finance Limited (“Virgin Mobile”) has unfairly asked him to repay lending under an agreement he says he didn’t enter into.

What happened

In September 2020 Virgin Mobile sent Mr D a mobile phone. Virgin Mobile had provided a fixed sum loan in Mr D’s name to finance the cost.

Mr D told Virgin Mobile he hadn’t asked for the device and suspected his details had been used fraudulently. Mr D says later that day someone purporting to be a courier attempted to collect the device but he didn’t provide it, fearful that it was a scam.

Virgin Mobile sent Mr D a pre-paid jiffy bag to return the device which he said he subsequently did. However, he was later asked by Virgin Mobile to make payments under the agreement. Mr D says Virgin Mobile told him that it had received a package using the pre-paid service it had provided, but it contained a box of coffee sachets rather than the device, so he’d need to repay the lending under the agreement.

Mr D maintained that he had returned the device, so he brought a complaint to this service.

Our investigator said it wasn’t clear whether Mr D had entered into the agreement or not. But, they weren’t persuaded that Mr D had returned the device, in the most part because his evidence of postage showed the weight of the parcel as 60g, which was likely too light to be the device and consistent with the coffee sachets Virgin Mobile said it received. Our investigator concluded that Virgin Mobile had acted fairly by asking Mr D to make repayments under the agreement.

Mr D disagreed and asked for a decision on the case. It was passed to me and I issued a provisional decision on it. In summary, I said;

Mr D’s complaint is about a whether or not Virgin Mobile is acting fairly in relation to a fixed sum loan. That’s a regulated agreement, and one which this service has the power to consider a complaint about. Mr D is eligible to bring this complaint because Virgin Mobile has sought to recover payment from him in relation to the fixed sum loan.

In considering what I believe to be fair and reasonable in all the circumstances, I’m required take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

The starting point on this case to determine whether Mr D actually entered into an agreement with Virgin Mobile. If I find that he didn’t, then Virgin Mobile ought not to pursue him for any payments required under an agreement he wasn’t party to.

From what Virgin Mobile has said – both in its contact notes as well as in its submissions to this service – I think it accepts that Mr D was the victim of fraud and hadn't applied for any lending with it. I think that Mr D's actions in alerting Virgin Mobile to what had happened at the first possible opportunity supports that.

Additionally, I've seen from Virgin Mobile's records that there were further applications for more goods on the same day that Mr D had reported the matter. It seems that those attempts were ultimately blocked by Virgin Mobile, presumably because it had accepted those applications had been made without Mr D's authority. I think this further supports that Mr D had been the victim of fraud.

I think it's clear from everything that's been provided that Mr D, or someone acting on his behalf, didn't enter into an agreement with Virgin Mobile. So, I find that Virgin Mobile is not acting fairly by attempting to pursue Mr D for payments under an agreement he wasn't party to. I'm provisionally finding that Virgin Mobile ought to remove Mr D's liability from the agreement as well as any information relating to the agreement it may have recorded with credit reference agencies.

This service is limited to determining whether Virgin Mobile is acting fairly in relation to the regulated loan pertaining to this complaint. So, whether or not Virgin Mobile actually received the device back isn't something it'd be appropriate for me to comment on – because it's not about Virgin exercising rights under the fixed sum loan. It's for Virgin Mobile to decide whether to take any further action in relation to the matter outside of the agreement.

My provisional decision was that I intended to require Virgin Mobile to;

- Remove Mr D's liability from the fixed sum loan it gave in his name and cease pursuit of any sums owed in relation to it from Mr D; and
- Remove any information it recorded in relation to the agreement with credit reference agencies.

Both Virgin Mobile and Mr D responded. Virgin Mobile agreed with the provisional decision and said it had nothing further to add. Mr D also agreed.

The case has been passed back to me to make my final 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.

Both parties agreed with my provisional decision and neither has provided any further evidence to be considered. As a result, I find no reason to depart from my provisional decision and I therefore now make it final.

My final decision

For the reasons explained above, my final decision is that I require Virgin Media Mobile Finance Limited to;

- Remove Mr D's liability from the fixed sum loan it gave in his name and cease pursuit of any sums owed in relation to it from Mr D; and

- Remove any information it recorded in relation to the agreement with credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 October 2022.

Stephen Trapp
Ombudsman