

The complaint

Mr R has complained about the way Virgin Media Mobile Finance Limited (VMMF) dealt with him regarding a fixed sum loan agreement he'd taken out to buy a phone.

What happened

Mr R bought a phone for £432 using a two-year fixed sum loan agreement with VMMF in 2017. Payments were £18 a month for the handset, and he had a separate airtime agreement. There were some issues with the payments for the fixed sum loan, so VMMF ended the agreement, asked Mr R to repay the full amount and referred the debt to a collection company.

Mr R raised a complaint off the back of the way VMMF dealt with things. And this was referred to the Financial Ombudsman. An ombudsman issued a final decision in 2019 saying, in summary, that VMMF had not misled Mr R about there being two direct debits. They said VMMF did what they'd expect with regards to arrears contact, it acted fairly in terminating the agreement and asking for the full balance to be repaid. The ombudsman did, however, think VMMF shouldn't have told Mr R to contact the third-party debt company before the debt had been formally passed over. The ombudsman didn't find they had enough evidence VMMF had been rude or that it had failed to deal with a complaint. But the ombudsman did think it was unfair VMMF didn't do enough to contact Mr R about the debt when the third-party debt company returned it. The ombudsman's final decision said VMMF should work with Mr R to arrange an affordable repayment plan. And that it should reduce the debt by £75 in recognition of the way things were handled.

Mr R accepted the decision but contacted the Financial Ombudsman again in July 2019 because he couldn't agree a payment plan with VMMF. It hadn't carried out what the ombudsman had directed. He also complained to VMMF about this along with its response to a data subject access request (DSAR).

It looks like VMMF made an offer in relation to airtime and texts that was worth around £80, but as he wasn't getting anywhere, Mr R put in a complaint through another Alternative Dispute Resolution (ADR) scheme that I'll call 'C' in January 2020. It looks like he'd also contacted the Information Commissioner's Office (ICO) as well. Mr R was unhappy VMMF hadn't carried out what the ombudsman had directed. And he said it was affecting his health. He requested VMMF contact him to discuss the ombudsman's decision, to award further compensation and issue an apology. Mr R requested £500 compensation.

VMMF accepted Mr R's request to pay £500 compensation and it also apologised to him in February 2020. Mr R accepted this to resolve things. However, a few months later Mr R says he started to receive arrears letters again, so he contacted VMMF to complain. He was unhappy VMMF wasn't responding to him. From what I can see, Mr R wanted a senior staff member to look into his concerns. He wanted compensation and a response.

From what I can see on VMMF's notes, it couldn't initially locate the final decision from the ombudsman. Mr R was again unhappy VMMF wasn't contacting him when it should have done, and that it wasn't responding to his DSAR properly. Mr R says he was told the debt

was with a debt collector, but when he contacted the company, it had no information. VMMF looked into part of Mr R's complaint. It sent him a final response on 8 October 2020 referring to a disconnection request, but saying it had no record of it. And it also said in relation to the DSAR Mr R had made it couldn't provide everything he'd requested. From what I can see, it contacted Mr R the next day to let him know it would be in touch about what it could provide in response the DSAR.

There were a couple more conversations in October 2020. VMMF's notes again mention Mr R raised the 'settlement' having not been honoured, although I think VMMF's notes incorrectly referred to the compensation from C rather than the settlement from the ombudsman's final decision. The notes also indicate Mr R was unhappy he was asked to contact another department to discuss his fixed sum loan agreement because he wanted everything dealing with under one reference. Mr R remained unhappy he wasn't receiving a response. But the notes indicate VMMF gave Mr R the number for its collections department.

VMMF's notes show Mr R phoned to clear the outstanding balance on his airtime bill in December 2020. But the notes show things went quieter for around the next year. Mr R says he received another arrears letter in December 2021. VMMF received another complaint referral from C in April 2022. Mr R reiterated points he'd been previously unhappy about and requested £850 compensation. Mr R also referred his complaint back to the Financial Ombudsman. C issued an adjudication in June 2022 saying it had looked at what happened since the last complaint was referred to it. C said it couldn't help Mr R to enforce the ombudsman's final decision. It said it couldn't see VMMF had failed in its duty of care to Mr R in relation to the DSAR. But it said VMMF should have responded to Mr R's complaint sooner. And that the customer service had let him down. C directed VMMF to pay Mr R £50 and respond to his complaint. But Mr R rejected this.

So to summarise, Mr R has complained:

- VMMF failed to respond to his complaints and queries over a long time.
- VMMF didn't follow the ombudsman's final decision.
- VMMF didn't send deadlock letters Mr R wanted so he could pursue his complaint.
- VMMF didn't provide him with appropriate data he was entitled to.
- He was worried a debt collector would contact him.
- VMMF wouldn't agree payment plan with him.
- It has caused him distress and inconvenience.

Mr R requested £2,000 compensation and for VMMF to stop sending arrears letters. He also asked the Financial Ombudsman to consider imposing sanctions on VMMF.

VMMF responded to our service and, in summary, said:

- Unfortunately, it was unable to see whether Mr R accepted or rejected the ombudsman's final decision due to the way the emails were sent.
- It was initially unable to reduce the loan balance and so it would've usually arranged a separate refund to go direct to Mr R. But it hadn't been able to establish it had done that. It eventually managed to reduce the loan agreement by £75.
- Mr R was awarded £500 off the back of his initial complaint referred to C, but that VMMF was yet to receive a payment towards the loan agreement.
- There was another offer of £50 in relation to the second complaint referred to C.

Our investigator looked into the complaint and said, in summary:

- He was not going to consider Mr R's complaint that had already been considered under the previous final decision.

- He wasn't going to consider what was looked at by C.
- The complaint about the DSAR referred to in VMMF's final response letter in October 2020 could not be considered as Mr R brought this complaint outside of the six months he had to refer it to our service. This time limit was set out in the final response letter and so this part of the complaint was outside of our jurisdiction.
- He thought VMMF had a number of opportunities to help resolve the dispute about the fixed sum loan agreement, but it hadn't done so.
- He didn't think VMMF handled things fairly since 2020 and it had adversely impacted Mr R.
- He didn't think the £75 reduction of the fixed sum loan had done enough to resolve things so he thought VMMF should pay Mr R £350. And that it should do this within a month.

Mr R responded to say, in summary:

- The investigator should set out VMMF has acted deceptively. He questioned why he wasn't allowed to return the handset and to have the debt cleared.
- He was unhappy he wouldn't get a 'judgment' straight away.
- He didn't trust VMMF to resolve things.
- The compensation wasn't sufficient and didn't reflect the impact. He requested £2,200.

VMMF accepted the investigator's assessment. I issued a provisional decision that said:

I want to acknowledge that 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 want to assure Mr R 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.

I understand Mr R wants the Financial Ombudsman to sanction VMMF, but that's not something I'm able to do. It's my role to look into what's happened and decide quickly and with minimum formality whether VMMF needs to do something for Mr R to put things right.

I want to say I'm sorry to hear the matter has caused Mr R distress and inconvenience. And I thank him for taking the time and effort to bring his complaint.

I'm first going to set out what I'm intending to consider. Our investigator has also done this in his assessment, but I'm issuing a provisional decision in case the parties want the chance to comment further before I look to issue a final decision.

- *I'm not intending to consider what has been looked at under the previous final decision.*
- *Our service has the power to consider how VMMF has dealt with the regulated credit agreement, but not the airtime. So I will focus on that.*
- *Mr R hasn't disagreed that the complaint relating to the DSAR and disconnection referred to in the October 2020 final response was brought out of time, so I will not consider those points further.*
- *I will, however, look at what's happened holistically for all other matters that took place since the previous final decision was issued in May 2019.*

I don't think it's in dispute that VMMF could have handled things better. It should have actioned what was needed after the original final decision within a few weeks. So the fact

Mr R was still complaining about it months and years later must have been very frustrating for him.

VMMF agreed to offer Mr R £500 in February 2020. C said VMMF should pay Mr R £50 in July 2022, but Mr R rejected this. Our investigator recommended VMMF pay Mr R £350 in relation to what he could consider, and it has agreed. VMMF has also now carried out the monetary direction made in the previous final decision from the ombudsman. But it's not been able to come to a payment arrangement with Mr R as he originally wanted it to do.

Mr R doesn't think £350 is sufficient. But, in the round, given he's already received £500 from VMMF, I think a further £350 is broadly a fair way to put things right. I'm not intending to direct VMMF to do more. I'll explain why.

As I said above, I've considered everything on file and set out a summary of what's happened. I'm not going to refer to every form of contact over the last few years.

I agree with C in that VMMF missed various opportunities to fully consider Mr R's complaints and issue a response that covered off everything he was unhappy about. Mr R has raised complaints through various channels, and it must have been really frustrating for him to feel like he wasn't getting anywhere. I think having so many parties and complaint points involving different departments and organisations has added to the confusion for VMMF. But that's not Mr R's fault.

I'm mindful there were periods where there was quite a lot of contact between Mr R and VMMF such as the second half of 2020 where the inconvenience would have been more acute. But there were also significant periods of next to no contact such as in 2021. It seems like contact would recommence when VMMF sent arrears letters to Mr R. I imagine Mr R was inconvenienced and caused a level of distress when he was going back and forth with VMMF. But I think there naturally would have been less distress and inconvenience caused when there was no contact.

All things considered, I've already set out VMMF should have carried out the direction in the final decision straight away. It looks like VMMF did give Mr R details for its collections department, but on the whole, I think it should have made it easier for Mr R to speak to it and come to an arrangement to pay off his agreement. It wasn't always made clear who Mr R needed to speak to. I think VMMF gave him conflicting information on occasion. Such as when it thought the complaint was resolved, when in fact it wasn't. There were times it didn't contact Mr R when I think it should have. It's not in dispute it ought to have dealt with his requests for information more fairly. As I said above, I appreciate there were various organisations and departments involved that have likely added to the confusion, but VMMF should have dealt with Mr R's complaint sooner and covered off everything he was unhappy about. I think its departments ought to have been better coordinated in this particular case. I think this would've avoided a lot of the issues that's been caused. Mr R has said the impact is that this has exacerbated on-going medical conditions of his. And he's spent a long time chasing the matter up and making complaints.

While I appreciate VMMF agreed to pay Mr R £500 primarily in relation to how it dealt with things between mid-2019 and February 2020, I'm not going to direct it to simply use that as a pro-rata measure for how much compensation it should pay for February 2020 up until Mr R referred his complaint to our service in 2022. As I said above, having considered everything in the round, I think the extra £350 compensation in all the circumstances is broadly fair and reasonable. If Mr R were to accept it, taking into account the compensation he'd receive in total, I think this is in line with a fair and reasonable award. It acknowledges the impact of substantial distress, worry and upset over a long, albeit not always sustained, period of time.

Mr R can let us know in response to this provisional decision whether he wants to use this to put towards the fixed sum loan agreement. As I said above it looks like VMMF did provide Mr R with details of its collection department. But those details were not always correct. Therefore, for completeness' sake, VMMF should also provide up to date details of who he needs to contact to repay any outstanding balance. It should do this in response to this provisional decision.

Finally, I realise Mr R was let down after the last final decision was sent, and he's concerned that might happen again. I think it's important to note Parliament didn't give the Financial Ombudsman the power to enforce final decisions, but Mr R would be able to go to court to do that on the basis of any final decision that's made. But I hope that won't be required.

Both parties accepted my provisional 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.

As both parties have accepted, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Virgin Media Mobile Finance Limited to:

- Pay Mr R £350 compensation.

Should Mr R accept the decision, VMMF must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple. It should also provide us or Mr R with the details I've set out above so he will know who to contact about the debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 March 2023.

Simon Wingfield
Ombudsman