

## **The complaint**

Mr M complains about the quality of the goods he was supplied with under a fixed sum loan with Virgin Media Mobile Finance Limited.

## **What happened**

Mr M entered into a fixed sum loan with Virgin in February 2022 to finance the purchase of a mobile phone and wireless earphones. It seems that in December 2022 Mr M had cause to take the earphones to one of the manufacturer's retail shops, due to a fault. At this point he was told that the earphones had already been registered to someone else sometime before they were provided to him, so he raised a complaint with Virgin on the basis that he'd been supplied with used, rather than new, goods.

In response, Virgin said it had spoken to the store Mr M visited which said it had replaced the earphones, but also that the set Mr M had been provided were previously registered in June 2021, prior to being supplied to Mr M. However, Virgin also said it had spoken to the manufacturer directly and it was unable to supply further information about the registration date of the earphones, now that they'd been replaced and the registration date had changed.

Whilst Virgin didn't think it had enough evidence to suggest Mr M had been supplied with a used item – and it noted that Mr M hadn't previously mentioned any issues about the quality of the items when he received them – it credited one of his accounts with it with £150 as a gesture of goodwill. It didn't think it needed to do anything further to put things right.

Mr M disagreed and so, referred a complaint to this service. In the meantime Mr M completed a Direct Debit indemnity claim to recover all of the payments he'd made to his agreement. Consequently, Mr M's account fell into arrears and it was terminated by Virgin.

In referring his complaint to this service, Mr M asked for his agreement to be cancelled, any sums paid to be refunded and adverse information relating to the agreement to be removed from his credit file. He also said that Virgin had failed to add a flag to his account to represent that he was vulnerable, and that the situation had a detrimental impact on him.

Our investigator didn't uphold the complaint. They said that evidence about whether Mr M had been supplied with used goods was somewhat contradictory, but in any case, even if we had sufficient evidence to demonstrate that – which they didn't think we did – it wouldn't be fair to cancel the agreement or refund any payments made. Our investigator said that as the earphones had been replaced, and Mr M had been paid £150 to one of his accounts with Virgin – which was more than we would've recommended had Virgin not already paid that sum – that it wouldn't be fair to ask Virgin to do anymore. Our investigator said that as they weren't persuaded Virgin had done anything wrong, and because Mr M had completed an indemnity claim, Virgin had acted fairly in terminating the agreement.

Mr M disagreed. He said that he believed the evidence showed that used goods had been supplied to him, so Virgin had not complied with the agreement nor the law.

Our investigator responded to say that he considered Virgin had taken appropriate steps to

resolve the matter. He also pointed out that Mr M's agreement didn't say that he'd be entitled to cancel the agreement and have payments refunded in the event that he has issued with the quality of goods supplied.

The case has been passed to me to decide what should happen.

### **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.

Mr M's complaint is about the quality of earphones acquired using a fixed sum loan agreement. That's a regulated agreement, and one which this service has the power to consider a complaint about.

Section 75 of the Consumer Credit Act 1974 is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. In practice that means if Mr M has a claim against the supplier for misrepresentation or breach of contract, he also has a 'like claim' against the finance provider.

The Consumer Rights Act 2015 (CRA) is also relevant here. It says, in summary, that any goods supplied must be of satisfactory quality – defined as whether they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances. Satisfactory quality also refers to the durability of the goods.

In the context of Mr M's complaint, I need to determine whether there's been a breach of contract on the grounds that he was supplied with used goods, rather than new ones. I can also decide whether those goods were likely of unsatisfactory quality.

At the outset I think all parties accept that under Mr M's agreement he was meant to be supplied with a brand new mobile phone as well as earphones. Mr M hasn't raised any issues about the mobile phone, he's simply asserted that the earphones supplied to him had been previously used. Nonetheless, it's important to note that under Mr M's agreement he was required to repay a total of £1,368 over 36 months, interest free, on the basis that he was supplied with both a mobile phone and earphones.

Like our investigator, I think there's some ambiguity about the condition of the earphones Mr M was supplied. I think Virgin's made a reasonable point in asserting that Mr M didn't raise any issue about the goods being used until some ten months after their provision. I think likely that Mr M would've been reasonably aware if the goods supplied had been second hand or used. Additionally, I've seen correspondence between Virgin and the manufacturer, and it did not provide any specific details about the goods other than to say that they'd been registered in February 2022.

Mr M on the other hand has provided some persuasive evidence to show that the goods had previously been registered – he's provided a report from the retail shop he visited to say that the registration date had been changed, and that shop also confirmed that was the case with Virgin.

That being said, even if I'm reasonably satisfied that the goods had been registered to someone else prior to being provided to Mr M, I don't think that necessarily means they'd been used. It could be the case, for example, that the goods had been supplied to someone else and returned still in new condition, having been registered. There's also the possibility

that there could've been a mistake with the registration of a product with a similar serial number. I can't say for sure, because I haven't been provided with sufficient evidence from either party to reasonably conclude what's happened here. In any case, I don't think that it matters now, and I'll explain why.

As above, I can't say for sure what's happened here, but I'm not persuaded, on balance, that the goods supplied to Mr M were previously used. I think that if that had been the case, he likely would've noticed it before ten months into the agreement. I also haven't seen any specific evidence from the manufacture to confirm that's what happened, as I would've reasonably expected if it had been the case. So, I don't think that Virgin had an obligation to put things right for Mr M.

For the avoidance of doubt, even if we had been able to establish that had Mr M had been supplied with used goods, I likely would've recommended that Virgin now supply Mr M with the goods specified under the contract. I understand that the earphones (although not the associated charging case) were replaced by the retail shop Mr M visited. So, whilst I appreciate it's likely of little consolation to Mr M, I think that he's broadly in the position he ought to be in. Like our investigator, I think that Virgin has done more than I would've required it to by crediting one of Mr M's accounts with £150 compensation.

Mr M's asked this service to require Virgin to remove incorrect information supplied to credit reference agencies about the agreement. He hasn't been specific about why he believes the information it's recorded is inaccurate, it doesn't seem he raised that issue with Virgin in the context of this complaint, and it wasn't covered in Virgin's response to the complaint. So, should Mr M wish to dispute the accuracy of the information that Virgin has recorded, he might be able to do so separately.

That being said, it's worth pointing out that Virgin has an obligation to record accurate information with credit reference agencies about the agreement. I've seen evidence that Mr M chose to do a Direct Debit indemnity at the end of January 2023 because of his dispute about the goods provided to him. This immediately put the agreement significantly in arrears, and Virgin – reasonably in my view – sent Mr M a default notice on 31 January 2023. It asked him to make up £418 worth of arrears by 18 February 2023.

Mr M didn't do this, and the agreement was then terminated on 26 March 2023. Taking into account the level of arrears as a result of the indemnity claim, and that the agreement didn't say that Mr M needn't pay or was entitled to a refund in the event of a dispute about the goods (outside of his rights under Section 75), I think it was fair for Virgin to have terminated the agreement. And it follows that I think it'd be fair for Virgin to have recorded those events with credit reference agencies. That being said, and as above, should Mr M dispute the accuracy of what's been recorded, he might be able to raise this separately.

Lastly, I acknowledge the point Mr M has made about Virgin failing to add a flag to his account to represent that he was vulnerable. This is another point that wasn't covered in Virgin's response to Mr M's complaint, so again I ought not to make a finding on it in this decision. I can, however, consider whether Virgin treated Mr M fairly in the specific context of this complaint, and all things taken into account, I don't think that Mr M was treated unfairly by Virgin.

### **My final decision**

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 July 2023.

Stephen Trapp  
**Ombudsman**