

The complaint

Mr H complains about the outstanding amount owed under a fixed sum loan agreement, taken out in his name with Virgin Media Mobile Finance Limited.

What happened

In May 2020, Mr H signed up to a SIM only deal with Virgin. Around two years later, Mr H's account with Virgin was used to order a brand new mobile telephone handset. To pay for the handset, a fixed sum loan agreement with Virgin was taken out in Mr H's name.

The repayments due under the loan were paid by Direct Debit until March 2022. Mr H says it was at this point he realised the payments were being made and subsequently cancelled the Direct Debit. Mr H also contacted Virgin to tell them he didn't apply for the loan.

Virgin continued to send arrears letters to Mr H. So, in June 2022, Mr H complained to Virgin to say they shouldn't hold him responsible for the debt, and that a fraudster had used his details to open the fixed sum loan agreement.

In their final response, Virgin said the application for the loan included Mr H's personal details and that the handset was delivered to Mr H's home address. Virgin also said Mr H had made some payments towards it and was responsible for the balance of the loan. Mr H didn't agree with Virgin's approach and brought his complaint us.

One of our investigators looked into Mr H's case and found that Virgin had treated Mr H fairly. She concluded that the person who applied for the loan, needed to have known several pieces of Mr H's personal information. And that it was unlikely a fraudster would have ordered the handset to be delivered to Mr H's home address.

The investigator also thought the SIM usage and the loan repayments meant Mr H was aware of the loan and had authorised its opening. Overall, the investigator found that it was fair for Virgin to hold Mr H responsible for the outstanding amount owed under the fixed sum loan agreement.

Mr H didn't agree and said he didn't take delivery of the handset from Virgin. The investigator didn't change her conclusions and Mr H's case has now been passed to me to make a 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.

Before I do so, I'd like Mr H to know that I empathise with the situation he has described to us. And I can see that it must have been extremely worrying time for him.

Virgin is seeking to recover payment from Mr H under a regulated fixed sum loan agreement. Our service is able to consider complaints about these sorts of agreements. Where the evidence is incomplete, inconclusive or contradictory, as some of it is here, I reach my

decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr H's account with Virgin

I've looked at Virgin's records of Mr H's account and I can see where he took out a SIM only deal with them in May 2020. Mr H's version of events is consistent with Virgin's records and he has told us that he hasn't allowed anybody else, to have access to his account with Virgin. Mr H has also told us that he used the telephone number associated with the SIM card, but stopped when the fee free deal expired.

Having thought the evidence here, I think there was a connection in place between Mr H and Virgin, before the fixed sum loan agreement was taken out in September 2022.

To access the account online and make changes, Virgin say a user needs to input specific personal details. Virgin have told us that a user will need to know a user's bank account details and a memorable word, as well as information like address, date of birth and full name. While I understand that some of this information is quite basic, I think other details are quite personal and more random.

Consequently, in Mr H's case, I think the person who applied for the fixed sum loan needed to have known more than basic information about him, to have started the application for the borrowing.

I've concluded that Mr H had an existing account with Virgin and that several pieces of personal information were needed to have applied for the loan for the handset. So, I've also thought about the loan agreement forms, the delivery of the handset and what happened with the repayments to decide if Mr H has been treated unfairly by Virgin.

The application for the fixed sum loan agreement

Virgin's records show that they sent a replacement SIM card to Mr H in August 2022, when they made some changes to their network. I can see that the SIM card was sent to Mr H's home address. The records also show that around a month later, the email address held on Virgin's file was updated online.

Once the email address was changed, the application for the fixed sum loan was made and agreed. Virgin say that copies of the agreement were sent by email and post on the same day and the records show the handset was delivered by a courier, to Mr H's home address two days later.

Within the copy of the agreement sent by email, Virgin's records show that to sign it, the user needed information about the bank account from where the Direct Debit was to be paid. So again, I think the person who signed the agreement, needed Mr H's personal details.

Mr H has told us that nobody had access to his account with Virgin and I've not seen any documents to suggest he was the victim of a theft or another type of fraud, around the same time as the application for the handset with Virgin.

Having thought about all the evidence, on balance, I'm not persuaded Mr H's account with Virgin was accessed without his authority or apparent authority. I think the notifications and delivery of the replacement SIM card may have made Mr H aware he still had an account with Virgin. I also think Virgin made Mr H aware of the application, when they sent a copy of the fixed sum loan agreement to his home address.

The delivery of the handset

Mr H has told us that he didn't take delivery of the handset. Virgin haven't provided proof from their courier to demonstrate who signed for the delivery, or a photograph of the package being handed over. They say they have deleted that information due to the passage of time. I find this unusual and unhelpful, particularly where Mr H raised his concerns with Virgin, within six months of the delivery.

However, Virgin have provided their notes to show when the handset was ordered and delivered, as well as the delivery address and the courier they used. Virgin have also said that the delivery address must be the same as a customer's home address, when it's the first handset Virgin supply.

The evidence we have shows that the handset was delivered by a courier to Mr H's home address. Within Virgin's records there is space for extra delivery notes to be added. I cannot see from Virgin's notes that there was a problem with the delivery, or that the handset was sent back. So, on balance, I think the handset arrived at Mr H's home, shortly after the fixed sum loan application was agreed by Virgin.

Additionally, to support what Mr H says, an unknown third party would needed to have ordered the handset to his address and then intercepted the package from the courier upon delivery. While I understand that this is a possibility, I don't think it's typical for a fraudster to have ordered items, without authorisation from the account holder, to the account holder's home.

Taking everything into consideration, I'm persuaded the handset was delivered to Mr H's home address. I acknowledge what Mr H says about not taking delivery of the handset himself. But, I don't think it follows that this means he didn't authorise the start of the fixed sum loan agreement and the delivery of the handset.

The repayments to the fixed sum loan agreement

Mr H has explained to us that the repayments towards the loan for the handset were taken from his partner's bank account. Virgin say that the bank account details used for Direct Debit when the agreement started, needed to match to name of the account holder. So, each party to this dispute have given conflicting information here.

We don't have a copy of a statement from Mr H's partner's bank account, to support what he says. But, I have seen the Direct Debit details given to Virgin when the application was made and I think they show where Virgin have matched Mr H's name to the bank account used.

In any case, it seems that payments were being made towards the loan, either from Mr H's account, or from a party known to Mr H. And it took Mr H, or his partner several months to spot what was happening and contact Virgin.

Mr H says he stopped using the initial SIM card he took out with Virgin, because he only wanted to make use of the fee free period. So, I don't think there were other transactions to Virgin that could have caused confusion for Mr H.

In all the circumstances, I think the time it took Mr H to report his concerns to Virgin and where I can see repayments were made towards the account from Mr H or his partner, add weight to Virgin's argument that he had authorised the start of the loan.

On balance, I don't think Virgin are acting unfairly by deciding that the most likely thing to have happened, is that Mr H gave his authority, or apparent authority for them to open the

fixed sum loan agreement. Therefore, I don't find I have the grounds to direct Virgin to stop pursuing Mr H for the outstanding debt owed under the loan.

From what I've seen, it doesn't seem that Mr H has made any payments to Virgin since the start of his complaint. So, it may be that a balance remains owed by Mr H.

In this instance, I remind Virgin of their responsibility to treat Mr H's current financial circumstances with due consideration and forbearance. This will mean working with Mr H to make sure he is able to make affordable repayments to any outstanding debt, if he's unable to make a lump sum payment.

My final decision

My final decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 March 2024.

Sam Wedderburn
Ombudsman