

The complaint

Miss D complains about the quality of an iPhone (“phone”) supplied to her under a fixed sum loan agreement (“agreement”) with Virgin Media Mobile Finance Limited (“Virgin”) and about Virgin’s offer to ‘put things’ right for her.

What happened

On 27 September 2022 Miss D entered into an agreement with Virgin for a phone costing £450. Under the terms of the agreement, everything else being equal, Miss D undertook to make 36 monthly repayments of £12.50 making a total repayable of £450 at an APR of 0%.

On 3 October 2022 Virgin supplied Miss D with a replacement phone because the original one wouldn’t turn on.

On 23 March 2023 Miss D contacted Virgin to say her phone wouldn’t turn on. However when the phone wasn’t sent for inspection and repair, Virgin treated the issue as resolved.

On 28 August 2023 Miss D contacted Virgin to say her phone wouldn’t turn on.

On 29 August 2023, and unhappy with the service she had received, Miss D advised Virgin that she intended to stop making her agreement repayments, that she wished to return the phone and that she wanted her name removed from its records.

On 18 September 2023, and still unhappy with the service she had received, Miss D advised Virgin that she still wished to return the phone and still wanted her name removed from its records.

On 26 September 2023, and still unhappy with the service she had received, Miss D advised Virgin that she wanted to cancel her agreement and that she wouldn’t be making any further repayments under it.

On 19 October 2023 Virgin issued Miss D with a final response letter (“FRL”). Under cover of this FRL Virgin explained that it was satisfied that it had done nothing wrong in refusing the phones return and in offering, instead, a warranty repair.

Unhappy with Virgin’s FRL, Miss D referred her complaint to our service.

Miss D's complaint was considered by one of our investigators who came to the view that Virgin should arrange for the phone to be collected from Miss D (at no cost to her) and for it to be inspected by O2, or that it allow time for Miss D to have the phone inspected by Apple or a third party of her choice.

She then went on to say that following the phone's inspection by O2, Apple or a third party, Virgin should consider Miss D's claim afresh having regard to any inspection report produced (by O2, Apple or a third party) and its various legal and regulatory obligations.

Finally, the investigator said that if Miss D wasn't happy with Virgin's handling of her claim afresh, after it having sight of any inspection report produced (by O2, Apple or a third party), she could raise a new complaint.

Virgin accepted the investigator's view, but Miss D didn't. And because Miss D didn't accept the investigator's view her complaint has been passed to me for review and 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.

Having done so I can confirm that I've come to the same overall outcome as the investigator and for broadly the same reasons. There is also very little I can usefully add to what has already been said.

I would also like to point out that I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Section 75 of the Consumer Credit Act 1974 ("section 75") is relevant here. It allows, subject to certain criteria, someone buying goods and/or services on credit to claim for a breach of contract or a misrepresentation against their credit provider when there is a like claim against the supplier.

Those criteria include things like the cost of the goods being between £100 and £30,000 and there being a debtor-creditor-supplier relationship. From what I can see here, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act 2015 ("CRA") is also relevant here. It says that goods supplied must be of satisfactory quality, defined as meeting the standard that a reasonable person would consider satisfactory taking into account the price, description of the goods and other relevant factors. This means if Miss D was provided with a phone that wasn't of satisfactory quality, then Virgin might be required to take further action to remedy the situation.

The CRA also sets out that goods which don't conform to the contract at any time within the period of six months beginning with the day on which the goods were supplied must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

In this case Miss D was supplied the phone in September 2022 and she reported the fault with it not turning on in August 2023, around 11 months later. So I believe it's for Miss D to demonstrate that firstly there's a fault with the phone and secondly the fault was present or developing at the point of supply.

Miss D has explained the phone is faulty because it won't turn on. However, she hasn't provided any evidence to show that there is fault, or if there is a fault, that fault means the phone was of unsatisfactory quality when supplied to her.

Whilst I don't dispute what Miss D says it doesn't automatically mean her phone was of unsatisfactory quality when supplied. The issue with her phone could be down to a number of things including, but not restricted to, damage. As I've said above, it's for Miss D to show the phone was of unsatisfactory quality and given what's been provided here, I'm not persuaded that she has done so.

Therefore I'm satisfied that Virgin has done nothing wrong in refusing to accept rejection of the phone as Miss D submits it should do.

I will now turn to the service provided by Virgin following Miss D's decision to report to it in August 2023 that the phone wouldn't turn on.

Like the investigator I'm satisfied that Virgin could have possibly done more to assist Miss D, like arranging for her phone to be collected from her free of charge for inspection by O2. But given that Virgin also gave Miss D the option of having the phone inspected by Apple, something I'm satisfied wouldn't have caused Miss D material distress and inconvenience, I'm not persuaded that failing to offer this option warrants the making by me of any award in favour of Miss D.

It's my understanding that Miss D's agreement is in arrears, arrears Virgin are seeking the payment of, or will look to seek the payment of moving forward. But given what I say above, the fact that it was Miss D's decision to stop making repayments and given the forbearance I understand Virgin has shown Miss D since August 2023, I can confirm that I'm satisfied it has done nothing wrong in this respect.

For the sake of completeness I would also add that although Miss D is clearly unhappy with how Virgin dealt with her complaint I'm satisfied that there were no material failings by Virgin in this respect and it issued Miss D with an FRL inside the regulatory timescales for doing so.

So in summary, I can confirm that having considered everything the parties have said and submitted I'm satisfied that what the investigator proposed Virgin should have to do, and which it says it's prepared to do, constitutes a fair and reasonable outcome to this complaint.

My final decision

My final decision is that on acceptance by Miss D of it (assuming she accepts it) Virgin Media Mobile Finance Limited must:

- arrange for the phone to be collected from Miss D (at no cost to her) and for it to be inspected by O2 or allow Miss D two months to have the phone inspected by Apple or a third party of her choice

- consider, following receipt from O2 or Miss D of an inspection report in respect of her phone, Miss D's claim under section 75 of the Consumer Credit Act 1974 afresh, having regard to the inspection report produced and its obligations under the Consumer Rights Act 2015

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 21 March 2024.

Peter Cook
Ombudsman