

## **The complaint**

Ms A complains that the goods she was supplied with under a fixed sum loan with Virgin Media Mobile Finance Limited ('Virgin Media') weren't of satisfactory quality.

## **What happened**

Ms A entered into an agreement with Virgin Media to finance the purchase of a mobile phone in February 2022. The total amount repayable under the agreement was £1,404 and repayments were to be made in monthly instalments of £39 over 36 months.

In September 2023 Ms A raised a complaint with Virgin Media. She said that phone had stopped working and she'd been told by the manufacturer that it was due to a fault with the phone's motherboard. She said the phone hadn't been of satisfactory quality when supplied to her, as required by relevant legislation. She asked to be provided with a replacement or to reject the phone and end her agreement.

Virgin declined to help. It said the phone had come with a 12 month warranty which had expired. It didn't think it had responsibility to take action in response to Ms A's assertion about the quality of the phone, and that she remained responsible for the agreement.

Ms A referred the matter to this service. She said that the phone's manufacturer had told her the fault with phone should not have occurred at the point it did and was likely present when supplied. She also said the manufacturer said Virgin Media ought to replace the phone.

Our investigator didn't uphold the complaint. They said that relevant legislation required the goods to be of satisfactory quality when supplied. They said it seemed that the phone had worked without issue for some 18 months and they hadn't been provided with sufficient evidence to show that the goods hadn't been of satisfactory quality.

Ms A disagreed. She provided a report from the manufacturer which suggested the phone wouldn't turn on, likely had an issue with its motherboard and seemed to be free from cosmetic damage.

Our investigator accepted there's a fault with the phone, but they didn't think that the report Ms A had provided was sufficient to uphold the complaint, taking into account that the report only gives an indication as to what the fault could be and doesn't say that the fault was likely present when the phone was supplied to Ms A.

Ms A disagreed and asked for an ombudsman's decision on the case. She maintained that the phone she'd been supplied with wasn't of satisfactory quality.

The case has been passed to me to make a decision on it.

## **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.

Ms A's complaint is about the quality of a mobile phone 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 Ms A has a claim against the supplier for misrepresentation or breach of contract, she 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. So, in the context of Ms A's complaint, I need to determine whether there's been a breach of contract on the grounds that she was supplied with goods which were of unsatisfactory quality.

Ms A was supplied with a brand-new mobile phone, so I'd expect it to be free from faults for a considerable time and also to be sufficiently durable.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within the first six months, it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Ms A to show that the goods were not of satisfactory quality.

The mobile phone was supplied to Ms A in February 2022, and it was some 18 months or so before she reported faults to Virgin Mobile. I think it's fair to suggest that if the device was of unsatisfactory quality at the point of supply, I'd have expected the faults to have become clear well within that time.

Satisfactory quality also refers to durability. Ms A contends that she was told by the manufacturer that the fault with the phone would've been present at the outset and that the fault has occurred prematurely. But she's not provided evidence to demonstrate that. The manufacturer's report provided by Ms A simply suggests what the fault could be. It's not definitive about what the fault is, or what could've caused it.

Technological goods can go wrong for a number of reasons. Factors which could contribute to their life expectancy might be the frequency and nature of their use, as well as the environment they're used in and whether they've been misused. I don't think we've been supplied with persuasive evidence in this case to show why Ms A's phone went wrong.

I accept it must have been frustrating for Ms A that the phone she was supplied with developed a fault after around 18 months. However, I don't think we've been supplied with persuasive evidence to show that the fault occurred as a result of the phone being of unsatisfactory quality – either at the point it was supplied to Ms A or on the grounds that it hasn't been sufficiently durable. For that reason, I cannot fairly ask Virgin Media to take further action in relation to Ms A's complaint.

### **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 Ms A to accept or reject my decision before 15 November 2024.

Stephen Trapp  
**Ombudsman**