

The complaint

Mr G complains about the outstanding amount owed under a fixed sum loan agreement taken out with Vodafone Limited trading as Vodafone.

What happened

In September 2022, Mr G took out a Subscriber Identity Module (SIM) card only deal with Vodafone. He says he gave the SIM card to his son, who I'll call 'X', because it was unlikely they would be accepted for the deal offered by Vodafone.

About a year later, Vodafone's records show that the username, postal and email address associated with Mr G's account were changed. A telephone number was also added to the account. These details match with those of X. The records also show where a change to the account holder name and a device purchase was attempted, but declined by Vodafone. Text notifications of the successful changes were sent to Mr G.

In October 2023, Mr G's account was accessed again. This time, the postal address was changed back to that of Mr G. The user also applied for a fixed sum loan agreement to pay for a brand new mobile telephone device and took out a new airtime service agreement. The applications with Vodafone were successful. But, the delivery address for the device was different to Mr G's billing address. Mr G tells us that the device was sent to X's home address.

After around five months, Mr G says he received correspondence from Vodafone, to say the fixed sum loan and airtime service agreements were in arrears. Mr G says he didn't take out either agreement with Vodafone and complained that a fraudster had opened them using his name.

Vodafone couldn't match the security details they had for Mr G's account, so they say they weren't able to investigate his complaint. So, Mr G brought his complaint to our service.

One of our investigators looked into Mr G's case and found that Vodafone hadn't treated Mr G fairly. He wasn't persuaded Mr G had given his authority to X to make changes on the account, or to apply for the fixed sum loan and airtime services agreements. So, the investigator concluded that Vodafone shouldn't hold Mr G responsible for the repayments due to either agreement. He also asked Vodafone to remove any information linking Mr G to the agreements from Mr G's credit file, and to pay him £100 for the distress and inconvenience caused.

While Mr G accepted the investigator's findings, Vodafone didn't. They said Mr G had received correspondence about the agreements and had allowed X to operate the account. And this meant Mr G had given authority to X to make changes and orders on his behalf.

The investigator didn't change his conclusions and now Mr G's complaint has 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.

Firstly, I'd like to explain that where the evidence is incomplete or inconclusive, 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.

The crux of Mr G's complaint is that Vodafone have asked him to pay off a debt in relation to a regulated fixed sum loan agreement. Our service is able to consider complaints relating to these sorts of agreements. So, I've gone on to think about the evidence submitted by all the parties.

On the one hand, I can understand Vodafone's position that even if Mr G didn't set up the account himself, he ought to have known about it shortly afterwards. This is because they say they sent a direct debit instruction to Mr G. And because he was made aware of changes to his account by a third party, two months prior to the application for borrowing. Vodafone also added the account to Mr G's credit file.

But on the other hand, Mr G has told us he didn't realise the account was on his credit file and he doesn't remember receiving any texts about the change of contact details. Furthermore, Mr G says it was quite possible for X to have known the personal details needed, to be able to access his account.

So, I've looked at the evidence both sides have sent us, to decide if it's fair for Vodafone to hold Mr G responsible for the outstanding balance of the fixed sum loan agreement.

There are a few possibilities that might have given Vodafone a proper basis for pursuing Mr G for the debt owed under the loan agreement: Namely:

- Mr G applied for the loan agreement himself; or
- A third party applied for the loan on Mr G's behalf, with his actual or apparent authority.

To help me consider both possibilities, I've looked at the lead up to the application for the fixed loan agreement and what happened afterwards.

The change of contact details

Two months before the fixed sum loan started, Vodafone say a user accessed Mr G's account and changed the username, main telephone number, email address and postal address. I can see from Vodafone's records where the added details match with those of X. Vodafone also say they sent notification of these changes to Mr G's mobile telephone, which was listed as an alternative contact number on the account. Mr G says he cannot remember receiving those texts.

I've thought about the notifications sent to Mr G. While I'm persuaded it's likely they were sent by Vodafone, I don't think they were enough to cause alarm, or that an unknown third party had control of the account. Afterall, Mr G was aware that X had use of the SIM, so it follows that some of their contact details would be associated with it.

Furthermore, I can see that the notifications from Vodafone suggests extra details have been added, rather than changed from Mr G's details completely. So, I can understand why this

would cause little concern, compared to a notification warning of a total change of personal information.

Vodafone's records also show that shortly after X's details were added, the user tried to change the name of the account holder and make an application for an upgrade. I can see where the request was made to change the account into X's name, but it was declined by Vodafone. The user was then told they would need Mr G's authorisation to change the name of the account holder and to reapply for an upgrade again, after ninety days.

Having looked at everything, I think the information available to Vodafone in August 2023, shows they were aware that someone other than Mr G had accessed the account. I also think Vodafone was aware that the third party was attempting to apply for an upgrade. But, I'm not persuaded the evidence means Mr G knew about all of the changes, or the unsuccessful upgrade application.

The opening of the fixed sum loan agreement

By October 2023, Vodafone's records show another change was made. Specifically, the user changed the postal address back to that of Mr G and on the same day applied for the loan to pay for a brand new device. A new airtime services agreement was also taken out.

The records also reveal that the device was to be delivered to the same address used, when Vodafone declined an application in August 2023. In other words, the device was sent to X's home instead of to Mr G.

I've thought about Mr G's involvement in the opening of the loan agreement and the subsequent delivery of the device. Overall, I'm not persuaded Mr G opened the fixed sum loan agreement himself. Based on all the evidence, on balance, I'm persuaded that a third party applied for the borrowing using Mr G's details.

Was the third party acting on Mr G's behalf?

The type of deal taken by Mr G was solely for a SIM card for X to use alongside an existing device. So, I don't think Mr G set out in September 2022, to provide X with anything more than that. Indeed, the label given to the account by Mr G, says 'X's SIM only' and Mr G has told us about X's previously poor record at handling credit. I acknowledge though, that Mr G's intentions could have changed over the following year.

I've considered that there isn't a note in Vodafone's records which passes authorisation for X to speak on Mr G's behalf. And I can see that the direct debit for the loan agreement wasn't claimed from an account held by Mr G. I also have to think about the activity in August 2023, where Vodafone were aware that a third party was trying to change the name of the account holder and had previously failed in an application for borrowing.

Furthermore, I think Mr G has been credible and consistent with what he's explained to both Vodafone and to our service during our investigation. This is supported by his attempts to resolve things, when he said he first became aware of the agreement at the start of March 2024. Vodafone's records show that around the same time they reverted to the previous contact details on the account, in attempts to talk to Mr G about the debt owed.

I understand where Vodafone say Mr G may have given X access to his online account and this means he accepted the possibility of any subsequent activity X went on to carry out. Mr G disputes this and has told us he didn't allow X access.

However, even if I accept Mr G handed his account access details to X, I would need to

consider in what capacity he did so, in the circumstances of this case. Here, Mr G took out the SIM only deal for X. I've said I haven't found any persuasive evidence to show that he intended to provide X with anything in addition to that. So, I think any authority Mr G might have given to X, stopped with the management of the SIM only deal. I don't think it extended to applying for entering into a credit agreement.

Overall, I don't think the evidence shows that Mr G had given his actual or apparent authority for a third party to take out a loan for the device. On balance, I'm persuaded that the third party acted on their own, and that Mr G wasn't aware until Vodafone contacted him about the arrears at the end February 2024.

Summary

In all the circumstances, I don't think Mr G opened the fixed sum loan agreement with Vodafone himself. Furthermore, on balance, I don't think Mr G gave his actual or apparent authority for a third party to open the agreement on his behalf. So, I don't think it's reasonable for Vodafone to hold Mr G responsible for the outstanding balance of the fixed sum loan.

It follows that I think it's fair for Vodafone to allow Mr G to exit the loan agreement for the device at no extra cost. This means Vodafone should end their pursuit of Mr G for any further payment.

I make no finding on the actual level of service associated with the airtime agreement that was provided in October 2023, since I don't have the power to do so. But, where I've made a finding that Mr G didn't authorise the loan agreement, I think it follows that Vodafone shouldn't hold Mr G responsible for any payments due under the associated airtime contract. So, I think it's fair for Vodafone to end their pursuit of Mr G for the airtime agreement.

In light of my findings, I don't think Mr G should suffer any consequences to his credit file for any adverse information caused by the loan and airtime agreements. So, I think it's fair for Vodafone to remove the loan and airtime services agreement from the records held about Mr G with credit reference agencies.

Finally, I acknowledge where Mr G has been caused distress and inconvenience by Vodafone. But, I think the bulk of the trouble appears to have been caused by X, when the loan agreement with Vodafone was opened without Mr G's authority.

However, I don't think Vodafone helped Mr G, when he called to dispute the debt in March 2024, and left him to worry about how the borrowing was taken out in his name. I empathise with Mr G, in that it must have been very worrying time. So, I think it's fair to ask Vodafone to make a payment for the distress and inconvenience caused. Overall, I think a payment of £100 reflects the distress and inconvenience Mr G experienced.

Putting things right

For these reasons, Vodafone Limited trading as Vodafone should:

1. Allow Mr G to exit the fixed sum loan agreement and the airtime services agreement at no additional cost to him;
2. Remove all information about the fixed sum loan agreement and the airtime services agreement from the details held with credit reference agencies about Mr G;
3. Pay Mr G £100 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and require Vodafone Limited trading as Vodafone to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 April 2025.

Sam Wedderburn
Ombudsman