

complaint

Mr S complains that he wasn't told that he was entering into a credit agreement with Virgin Media Mobile Finance Limited when he upgraded his mobile phone or that there was a charge for the handset. He's being helped with his complaint by his wife.

background

Mr S upgraded his mobile phone in March 2016. Virgin Media Mobile Finance says that he took out a freestyle contract, which incorporates a handset under a fixed sum loan agreement (which Mr S signed electronically) and a separate SIM contract. But Mr S says that he wasn't told that there was a charge for the handset and that he didn't sign a loan agreement. He complained to Virgin Media Mobile Finance in August 2018 about the charges for the handset and about some usage issues. He wasn't satisfied with its response so complained to this service about the charges for the handset.

The adjudicator didn't recommend that this complaint should be upheld. He said that Mr S had electronically signed a loan agreement in March 2016 which provided details of the phone and its cost and that Virgin Media Mobile Finance sent Mr S confirmation that his direct debit and loan agreement had been set up. It had also sent him arrears letters when he missed his payments and its contact notes show that when he paid for his airtime in May 2016 he said that he would pay for the loan for his phone the next time – which the adjudicator said suggests that he was aware that he had to make payments for the phone.

Mr S's wife – on his behalf - has asked for this complaint to be considered by an ombudsman. She has responded in detail and says, in summary, that:

- she was with Mr S when he upgraded his phone and he wasn't told that there was a charge for the handset and he didn't sign a loan agreement;
- a copy of his signature has been added to the loan agreement;
- he has no recollection of receiving a direct debit mandate and didn't check his bank statement;
- he didn't receive a copy of the signed loan agreement or the direct debit mandate;
- Mr S moved in August 2017 and his post was forwarded – but he didn't receive the letters that Virgin Media Mobile Finance says that it sent to him; and
- Virgin Media Mobile Finance should provide a copy of the recording of the call in which it says that Mr S would pay for the handset next month – and he would've meant that he'd make his normal payment the next month.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr S received a new handset when he upgraded his phone in March 2016. He says that he wasn't told that there was a charge for the handset and didn't sign a loan agreement. And his wife – who says she was with Mr S when he upgraded his phone - has agreed with what Mr S has said.

Virgin Media Mobile Finance has provided a copy of the loan agreement with Mr S's signature on it. But I agree with Mr S's wife that it does initially look as though the signature might have been copied onto the agreement. But Virgin Media Mobile Finance has provided a copy of the loan agreement which shows that the signature was added on the day that

Mr S was upgrading his phone. And I consider it to be more likely than not that Mr S did sign the loan agreement. And the loan agreement said that the cost of the handset was £312 which Mr S would pay by 24 monthly payments of £13.

It has also provided an extract from its contact notes which says that Mr S made a payment for his airtime tariff in May 2016 and that he said that he would pay for his phone next time. But it hasn't provided a copy of that call which was made nearly two years ago. It says that it sent a direct debit confirmation letter showing his payment schedule to Mr S at the account address that he initially registered with it when he set up his agreement – and that letters were sent to Mr S in April, May and July 2016 and arrears letters were sent to him in November 2016, May 2017 and November 2017 and May 2018.

Mr S's wife says that Mr S didn't receive those letters and that he moved in August 2017 but that his post was forwarded. I consider it to be more likely than not that the letters were sent to Mr S by Virgin Media Mobile Finance – even if they weren't received by him.

There's no clear evidence to show what was agreed by Mr S and Virgin Media Mobile Finance when he upgraded his phone in March 2016. But the cost of the handset was £312 and I consider it to be more likely than not that Mr S would've been told that there was a charge for the handset. And I consider it to be more likely than not that Mr S did say that he would make a payment for the handset the next month when he spoke to Virgin Media Mobile Finance in May 2016. I also consider it to be more likely than not that Virgin Media Mobile Finance did send letters to Mr S about his contract. So I consider it to be more likely than not that Mr S knew – or ought to have known - that there was a charge for the handset.

He's had use of the handset that was provided to him – and I consider it to be fair and reasonable that he should pay for that handset. So I find that it wouldn't be fair or reasonable in these circumstances for me to require Virgin Media Mobile Finance to write-off the charge for the handset – or to take any other action in response to Mr S's complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 July 2019.

Jarrod Hastings
ombudsman