DRN-4529113

The complaint

Mr M has complained about the quality of a phone he bought using a fixed sum loan agreement with Virgin Media Mobile Finance Limited (VMMF).

What happened

In February 2021 Mr M bought a phone for around £1,000 using a three-year fixed sum loan agreement with VMMF. He said in June 2023 his daughter was listening to music on the phone and it became hot and turned off. He said it's been broken ever since. Mr M said he took it to a manufacturer store in July 2023 and it confirmed there was no power seen, and it would no longer power on. The manufacturer didn't note any significant damage to the phone but said it was out of warranty so a repair would be at cost. Mr M decided to contact VMMF for help. He said VMMF passed him around different departments, so he made a complaint.

VMMF said there was no evidence the phone wasn't of satisfactory quality at the point of sale and noted it took almost two and a half years for a claim to be raised. It also highlighted the phone only came with a one-year warranty. But it apologised for transferring Mr M between departments. Mr M decided to refer his complaint to the Financial Ombudsman.

Mr M decided to pay for an independent report on the phone. The report set out the fault related to a chip failure and that there was no physical or liquid damage. The report set out there were several potential causes of the failure:

- A manufacturing defect
- Electrical overstress – can occur die to fluctuations in power supply or using non-standard chargers
- Age-related degradation
- Thermal stress – prolonged exposure to high temperatures, either from external sources or internal heat generation due to overuse

The technician also said the failure of the chip in the device was likely due to internal factors as opposed to misuse or external damage.

One of our investigators looked into things. She thought VMMF should have considered the claim under section 75 of the Consumer Credit Act 1974 (CCA). She also thought it had caused some delays in answering Mr M's claim and thought it should pay him £50. But she didn't think the report was conclusive enough to determine the failure. She said if the cause was a manufacturing defect, she thought it likely would have become apparent sooner. She said the onus was on Mr M to demonstrate the fault was present or developing at the point of sale. She said there was nothing to say the phone should last for the length of the fixed sum loan. So she didn't make recommendations in relation to the quality of the phone.

VMMF agreed, but Mr M didn't. He said the CCA was applicable, and the phone should be expected to last the length of the associated finance agreement. He said the compensation was unreasonable. And that the phone wasn't durable. He said a £1,000 device should be able to withstand at least 36 months of use. He again highlighted there was no physical damage to the phone. He said both age related degradation and manufacturing defects would be covered under the Consumer Rights Act 2015 (CRA).

As things weren't resolved, the complaint has been passed to me to decide.

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.

Mr M bought the phone using a regulated fixed sum loan agreement and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, section 75 of the CCA makes VMMF responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The CRA is also relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality (which includes their durability). The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer 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.

It's important to note that I'm considering a complaint against VMMF, not the supplier – even though they have some sort of connection. So I have to consider VMMF's obligations as a provider of financial services – in this case its liability for breach of contract under section 75.

I can understand why Mr M is unhappy that he paid around £1,000 for the phone and it went wrong after around two and a half years. It's a lot of money to spend, and while goods don't last forever, they are supposed to be durable.

While I can understand Mr M's point, I've not seen the CCA or the CRA set out that goods need to last as long as the associated finance agreement. A consumer could choose pay for the goods straight-away, or in theory enter into an agreement for longer than three years. The length of the finance agreement doesn't determine the expected or minimum lifespan of the goods in this case.

It's not in dispute there's fault with the phone. And I agree, given how long it took for the fault to manifest, that it was for Mr M to show the fault was present or developing at the point of sale. If there was a manufacturing defect, I can understand why VMMF would have thought it would have manifested sooner than around two and a half years after supply. But I take the point that sometimes problems take a while to unearth. Mr M supplied a report, but the report doesn't offer definitive findings. It says that the issue could be related to a manufacturing defect, electrical overstress, age-related degradation or thermal stress. It's hard to reach firm conclusions on the cause of the issue based on the report Mr M provided.

I appreciate it would be impossible for Mr M to show that the phone was only ever charged with the original charger and that it's never been subject to electrical or thermal overstress. The inspection says it's challenging to pinpoint the cause the failure. But it's not my role to determine what caused the phone to fail. It's my role to consider how a financial service provider – VMMF – dealt with the claim based on the evidence that was submitted. I'd like to have been more certain the fault was present or developing at the point of sale. Given the evidence that was submitted, on balance, I don't think VMMF's ultimate answer to the claim was unfair.

Finally, it doesn't seem to be in dispute the claim wasn't as easy to raise for Mr M as it should have been. He was passed between departments. VMMF didn't consider the claim under section 75. And I think this has caused some delays and has led to some overall inconvenience for Mr M. I think the £50 compensation broadly seems like a fair way to reflect that. I make no further directions.

My final decision

My final decision is that I uphold this complaint and direct Virgin Media Mobile Finance Limited to pay Mr M £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 May 2024.

Simon Wingfield
Ombudsman