

The complaint

Mr S has complained about the quality of a phone he bought using a fixed sum loan agreement with Vodafone Limited.

What happened

The circumstances of the complaint are well known so I'm not going to go over everything again in detail. But, in summary, in July 2022 Mr S bought a phone for around £1,400 using a fixed sum loan agreement with Vodafone. Mr S was due to make £37 repayments towards the agreement for around 3 years.

Mr S contacted Vodafone in January 2023 because of an issue with the phone. I understand the speaker wasn't working properly. Vodafone said Mr S sent it to its repair centre, but it said the phone was out of warranty because of external damage to the screen. Mr S said there was no problem with the screen before it was sent off. Mr S was unhappy with the response, and I understand he also bought a replacement phone (also under an agreement with Vodafone).

Vodafone responded to say the manufacturer had told its technical team that screen issues with the phone weren't covered under warranty, so it would need to be sent to the manufacturer for repair. Vodafone said if its own engineers were to repair this for Mr S it would cost around £600 - £700. I understand it applied a £50 credit to Mr S's airtime account as a gesture of goodwill.

Mr S referred his complaint to another alternative dispute resolution (ADR) scheme and Vodafone made a settlement offer of £150 towards Mr S's airtime. Mr S didn't accept this. I understand the other ADR scheme concluded Vodafone hadn't breached the contract or failed in its duty of care. It also said Mr S hadn't supplied sufficient evidence to justify the claim.

Mr S decided to bring his complaint to our service to consider. Our investigator broadly said he thought there was a hardware fault and that the phone ought to have lasted longer than six months. He said Vodafone had an opportunity to repair but refused. So our investigator said it should collect the phone; end the agreement; refund payments made from January 2023 with interest; and pay Mr S £200.

Vodafone didn't agree. It said it wouldn't repair the phone because of physical damage on it which voided the warranty. It did however offer to arrange the warranty repairs if Mr S were to pay for repair of the damage.

As things weren't resolved the complaint was passed to me to decide.

I decided to contact Vodafone to ask if it was in dispute there was a fault with the speaker, or whether that had not been established because of the alleged damage to the screen. I also asked for evidence from its repair team of the inspection it carried out. Vodafone said it didn't dispute there was an issue with the speaker, but it said due to the damage on the phone the

warranty was voided. It said it couldn't determine what caused the damage to the speaker. And that due to the time that'd passed it didn't hold any evidence of the initial inspection.

Mr S meanwhile sent us photos of the phone from different angles while it was switched off that indicated there wasn't any significant damage to it. He said the phone was returned by Vodafone the first time and it wasn't functioning at all. He said it didn't turn on. We asked Vodafone if he could send the phone in again for inspection. I thought this might provide some evidence on what was wrong with the phone, and what could be done to put things right. Mr S returned the phone, and he says he was told it would be repaired free of charge. It later agreed to replace it with a refurbished phone. I thought this was unusual so asked Vodafone why this happened. And I asked why it changed its position. I mentioned Mr S had bought another phone when he was told the original repair wouldn't be covered, and that he felt he was at a loss.

Vodafone reiterated it didn't hold details from the January 2023 inspection. It said it was possible Mr S repaired the screen through a third party. It said there was no way of knowing. It said there was no reason for its repair centre to make up an issue with a device as any repair costs under warranty are covered by the manufacturer.

I issued a provisional decision that said:

Mr S bought the phone using a regulated fixed sum loan agreement with Vodafone. Our service is able to consider complaints relating to these sorts of agreements.

I can see there's been reference to a claim being made under section 75 of the Consumer Credit Act 1974. From what I can see, Vodafone is the supplier of the phone as well as the creditor. So the necessary relationship for a claim to be considered under section 75 doesn't exist. However, the Consumer Rights Act 2015 [CRA] is relevant to the complaint.

The CRA implies terms into the contract that goods supplied will be of satisfactory quality. 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.

In Mr S's case he bought a new phone, so amongst other things, I'd have expected it to have been in perfect working order, free from even minor defects, and durable. The problem I have is that there's a lack of evidence here for what is or was wrong with the phone. Without evidence that firstly there's a fault, and secondly that the fault makes the phone of unsatisfactory quality, I'm not able to reach firm conclusions on what happened, or that Vodafone needs to do something else to put things right.

It's curious that Vodafone initially refused to repair the phone because of screen damage but almost a year later it has agreed to carry out the repair. I can understand why Vodafone wouldn't have wanted to risk damaging the phone further by dismantling it if there was an issue with the screen. The photos Mr S has shown us [of] the phone, albeit when it was turned off, don't show any obvious signs of damage. But I'm conscious the damage might only have been visible when the phone was turned on. The problem is that Vodafone didn't retain any pictures or supporting evidence from the initial inspection.

I'm looking at a complaint about how Vodafone dealt with a claim for the quality of the goods it supplied under a credit agreement, and not a complaint about the handling of a warranty claim. But Vodafone's argument that there was no incentive to not repair the phone under warranty because the manufacturer would have covered the cost is not unreasonable. Vodafone has also said Mr S may have repaired the screen prior to the second repair attempt. Mr S says he didn't. I'll never know what happened, but whether or not he repaired the phone himself still doesn't give me the evidence the phone wasn't of satisfactory quality when it was supplied. And given Mr S had the phone for over six months before he complained about the fault, it would generally be for him to show that firstly there was a fault, and secondly that the fault made the phone of unsatisfactory quality. Just because Vodafone has agreed to repair the phone doesn't necessarily mean the repair was for a fault that was present or developing when the phone was sold to Mr S. I appreciate Mr S may think he's been put in an unfair position because the phone is now repaired. But I'd still need sufficient evidence to support there'd been a breach of contract.

While I know Mr S will be disappointed. And while I appreciate he didn't send the phone in for repair, he wanted it inspected, I don't have sufficient evidence there was a fault with the phone that made it of unsatisfactory quality. I therefore don't find I have the grounds to direct Vodafone to take any further action.

Mr S didn't agree with the provisional decision. He was unhappy and raised several points. In summary, he said he didn't agree the first phone (phone 1) should have been considered out of warranty when it was sent for repair. He wanted to reiterate the phone failed after 6 months and 2 days which he felt was unreasonable. He clarified Vodafone decided to replace phone 1 instead of repairing it. He said he sent phone 1 off for inspection and he only did that on instruction of the Financial Ombudsman. He was unhappy the evidence he'd need was lost. He said he didn't have any repairs carried out to phone 1 himself. He reiterated he thought he'd been forced into taking out a contract for another phone (phone 2) due to Vodafone's actions. He said this meant he had to pay for two agreements which impacted his finances. And he said it also impacted his health.

I spoke to Mr S and explained my reasoning for not upholding the complaint. Mr S reiterated he was unhappy that he'd lost his opportunity to supply evidence phone 1 wasn't of satisfactory quality. I agreed it was surprising the phone was replaced when it was sent in for an inspection. I explained the Financial Ombudsman wasn't involved in the decision to replace the phone.

Given the circumstances I asked if Vodafone would be willing to offer a settlement to resolve the complaint. I let it know Mr S said he wanted to return the refurbished phone he'd just been supplied. I asked if Vodafone would allow him to return one of the phones.

Vodafone initially responded to say it would be willing to allow Mr S to return phone 2 with a full refund of payments made towards the associated agreement. We put this to Mr S, but he wasn't happy with the resolution. Mr S said he wanted to return the refurbished phone because he'd not had any issues with phone 2 and didn't want to be back at square one if the refurbished phone failed.

Mr S also said he wouldn't settle for less than £1,500 compensation due to the distress and inconvenience caused. He said he wanted to take the matter to court if he didn't achieve the resolution he'd asked for.

I explained I was sorry to hear about the impact the matter Mr S says had on him personally. I could understand he'd waited a long time to get matters resolved, and he was unhappy with things. But, for similar reasons to what I set out in the provisional decision, I explained I didn't have sufficient evidence of firstly the fault with phone 1, and secondly that the fault

was present or developing at the point of sale. I highlighted another ADR scheme also didn't uphold the complaint due to the lack of evidence submitted. I took on board Mr S's point that he'd lost the opportunity to supply evidence because phone 1 was no longer available. I agreed again it was surprising Vodafone decided to replace it when a few months earlier it said it wouldn't repair it. But I said that's not something I could change, or something I directed it to do.

However, after listening to what Mr S had requested, I asked if Vodafone would allow him to return the refurbished phone (with a refund) instead of phone 2 as part resolution of the complaint, and it agreed. We put this to Mr S. He said he was willing to accept the outcome if half his compensation request was met – i.e., £750.

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.

I'd like to thank the parties for their responses. For the same reasons I've given above, I still don't find I have the grounds to direct Vodafone to pay Mr S the compensation he's seeking. While I accept Mr S lost his ability to further support his case, I haven't got sufficient evidence there was a breach of contract. Based on the evidence supplied, I'm not able to conclude Vodafone's initial answer to the claim was incorrect. And this is the subject matter of the complaint that was referred to the Financial Ombudsman.

I therefore don't consider I can direct Vodafone to compensate Mr S for the problems he says he was put to as a result of the way it handled the claim. I think it was for Mr S to demonstrate there was a fault with the phone and that it was present or developing at the point of sale. I don't think he'd shown us enough to demonstrate that when he brought his complaint to our service. I think Vodafone's current offer puts Mr S in a fair position and goes some way to putting things right as a result of the way it dealt with things when Mr S sent in phone 1 for further inspection. I'm not going to direct it to do more.

I should point out Mr S doesn't have to accept this decision. He is free to pursue the complaint by other means, such as through the courts. But if he does decide to accept it, I hope the resolution allows him to draw a line under things.

My final decision

Vodafone Limited has offered to allow Mr S to hand back phone 1 and refund him all payments made under the associated fixed sum loan agreement. I think this offer is fair in all the circumstances.

My decision is that I direct Vodafone Limited to refund Mr S all payments made under the fixed sum loan agreement associated to phone 1 if he decides to accept this decision and return phone 1.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 March 2024.

Simon Wingfield
Ombudsman