

The complaint

Miss A complains that EE Limited ('EE') misled her in relation to a finance agreement she entered for a phone.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

In June 2022 Miss A entered into a fixed sum loan with EE to finance a phone. Miss A says before she entered the agreement EE told her that she could upgrade the phone at no additional cost as long as she returned it.

Miss A called EE in October 2023 to upgrade but it refused. EE says what Miss A says about the way the agreement works is incorrect. And that Miss A has to pay off the finance agreement in full before a device upgrade can take place.

Miss A is unhappy about this and escalated a complaint to this service. Our investigator did not uphold the complaint so the matter was referred to me for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I note that our investigator has mentioned Section 75 of the Consumer Credit Act 1974. But I don't consider this applies here because EE is both the supplier of the handset and the finance provider. However, despite this, I can still consider what is effectively the same complaint about misrepresentation against EE. Because in arranging finance for Miss A (as it had done here as a credit broker) it needs to give her accurate information about the way the agreement operates.

I consider that in order to make a decision on this complaint I need to look at two key elements:

- Did EE give Miss A false information about her ability to upgrade the handset?; and
- if it did, has this caused Miss A to enter an agreement she otherwise wouldn't have?

Did EE give Miss A false information?

I note that the policy around upgrades is clear in the loan agreement terms and conditions which Miss A signed to say she was happy with. It says:

'Upgrades - if you choose to upgrade your plan services and/or device you must repay the full outstanding balance owing under your existing device credit agreement before you can complete your upgrade'

This information is also repeated in the key facts information that Miss A was provided as part of the sales paperwork. So my starting point is that an agent seems unlikely to have told Miss A that she could upgrade at no cost by simply returning the handset at any time. And while Miss A says she recalls being told this, as she acknowledges herself, it was a long time ago and therefore is difficult to remember exactly what was said.

It certainly is not helpful that we don't have a recording of the sales call where Miss A agreed to take out the loan for the handset. And the EE system notes are limited in showing exactly what was discussed when the loan was agreed. As a result of this I cannot completely rule out that an EE agent told Miss A something it should not have done over the phone. However, I have gone on to consider if this fairly changes things here in any event, and I don't think it does. I will explain why.

Did the phone conversation fairly make a difference here?

Even if I were confident Miss A was given false or misleading information on the phone (and that isn't clear) – in order to fairly uphold this complaint I would also need to be satisfied that said information was key to Miss A's decision to enter the agreement. So important to her in fact that she would not have proceeded with it otherwise.

I am not persuaded that at the time Miss A entered into the fixed sum loan deal for the handset that a free upgrade later was as important as this. Because the contract she signed is very clear that she cannot upgrade for free. And had this been crucial I expect she would have double checked the paperwork, seen it wasn't the case (it is reasonably prominent and even a cursory look would have shown this) and then used her 14 day cooling off period to cancel. But she didn't do this.

Furthermore, Miss A in her testimony has not persuaded me that this was forefront in her mind and that it definitely would have caused her to walk away from this deal at the time (she says she 'might have' chosen another option). Nor has she shown that she could have got a more favourable finance deal with a free upgrade built in elsewhere in any event.

While there is an element of uncertainty in respect of what occurred on the call, all things considered I do not think it would be fair and reasonable to say that a misrepresentation has been made out here. It follows that I am not going to ask EE to do anything more.

I know my decision is likely to disappoint Miss A. However, she does not have to agree with it. She can reject my decision and is free to pursue her case against EE through other avenues if she wishes.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 2 December 2024.

Mark Lancod
Ombudsman