

The complaint

Mr B complains that he was supplied with goods which weren't of satisfactory quality under a fixed sum loan provided by EE Limited ("EE").

What happened

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

In August 2023, Mr B acquired a brand-new phone from EE, with the balance of the phone being provided by EE under a Fixed Sum Loan Agreement. The agreement was for 36 months.

In April 2024, the fingerprint sensor on the phone stopped working. Mr B called EE, who arranged an appointment for him to attend his closest store for assistance.

Mr B attended at the specified time but was kept waiting for someone to help him. The store manager checked Mr B's phone and said it would need to be sent away to EE's approved repair centre, for an assessment to be made. At this time, the store manager completed a repair booking confirmation form, and stated that the phone was in good condition, with no markings or dents. Mr B and the store manager then signed the confirmation.

A few days later Mr B was contacted by the repair centre to say the phone was cracked and damaged, and the repairs wouldn't be covered under a warranty. They quoted Mr B £300 to repair the phone and return it to him.

Mr B called EE to complain about this. Mr B says he was passed around between people at EE, and he reminded them of his health concerns and vulnerabilities. EE asked him to return to the store to speak to the store manager. Mr B returned to the store, but the manager wasn't available, so a new appointment was made.

Mr B attended the rearranged appointment at the specified time and has said he was again kept waiting for a significant amount of time before being spoken to. The phone had been returned to the store at this point, and Mr B and the manager both inspected it. Mr B has said it was clear the phone had been damaged after he'd left it at the store to be sent away.

EE weren't able to help with Mr B's concerns and he was expected to pay for the repairs in order to get his phone back. EE directed Mr B to our service.

Our investigator upheld Mr B's complaint. She said she was satisfied the phone wasn't of satisfactory quality and the fault shouldn't have occurred after only eight months. She said the booking repair confirmation noted the phone was in good condition prior to it being sent to the repair centre, and the damage to the phone now prevented Mr B from being able to arrange an alternative inspection to prove when the damage might have occurred. She asked EE to end the agreement, remove any adverse information from Mr B's credit file, and pay him £150 compensation to reflect the inconvenience and trouble he'd been caused while making his complaint.

EE didn't agree. They said Mr B didn't have any evidence to confirm what the store manager had said to him, and the physical inspection of the phone in store wouldn't have been a thorough assessment of its condition.

As EE didn't agree, it's 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

As the Fixed Sum Loan Agreement entered by Mr B is a regulated consumer credit agreement this service can consider complaints relating to it. EE are the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr B entered. Because EE supplied the phone under a Fixed Sum Loan Agreement, there's an implied term that it is of satisfactory quality at the point of supply. That means the phone should meet the standard that a reasonable person would find acceptable, taking factors such as age and price paid into account.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspect of the quality of the goods.

But, on the other hand, satisfactory quality also covers durability. Durability depends on various factors, of course, but in Mr B's case the phone was brand-new when supplied. It's fair that a reasonable person would expect its components and functions to be fault free for a considerable period of time.

Our investigator has explained that she thinks the phone, on balance, wasn't of satisfactory quality when it was supplied to Mr B. I agree in this case. There is no doubt there are faults with the phone – the repair report confirms those faults. But I'm not persuaded, from what I've seen, that I can conclude the phone was of satisfactory quality when it was supplied to Mr B. I'll explain why.

The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods did not conform to the contract at the point of supply. Unless the supplier, EE in this case, can prove otherwise.

However, in Mr B's case it was eight months from supply when he notified EE that the fingerprint sensor wasn't working on the phone. Ordinarily, under the CRA, it would have been for Mr B to show the phone wasn't of satisfactory quality when it was supplied by him. But EE offered to send the phone away in Mr B's case, to ascertain why the fault had occurred and if it could be repaired.

When the available evidence is incomplete, or contradictory, I have to make my decision based on the balance of probabilities. That is, what I think is most likely to have happened in the circumstances.

EE have said they disagree with our investigator's opinion as Mr B doesn't have any evidence of what the store manager told him when he was in store to return the phone for repair. But I think that expectation is too high in this case. I also think there is evidence to support Mr B's comments.

Mr B reported to EE, in store and over the phone, that the fingerprint sensor on his phone had stopped working. That is recorded on the repair booking confirmation too, which was completed by the store manager. Also included on the repair booking confirmation is a description of the general condition of the phone – which is recorded as 'Good: no markings or dents'.

EE have stated that the store manager would only have taken a cursory glance at the condition of the phone prior to sending it for inspection and repair, so would have missed the damage subsequently reported back from the repair centre. But the photos provided from the repair centre show some significant damage to the outer and back casing of the phone, along with some dents and scratches – and I'm more persuaded than not that the store manager would have noticed the damage seen in the photos if they had been present when Mr B presented his phone. So, it follows that I have to believe the phone was in the condition reported on the repair booking form, and that its condition was good, with no markings or dents.

The phone is now damaged, and Mr B doesn't have the opportunity to try and show the fingerprint sensor not working is proof that the phone wasn't of satisfactory quality when it was supplied. He's been denied that right by the condition of the phone now – so I have to make my decision based on the information available to me.

I've mentioned above that satisfactory quality includes the durability of the goods, and that Mr B, as a reasonable person, should be able to expect the phone to be fault free for a considerable period. In this case I don't consider eight months to be a considerable amount of time for a brand-new phone to develop a fault with the fingerprint sensor, so I'm more satisfied than not, based on what I have to consider, that the phone wasn't satisfactorily durable when it was supplied to Mr B.

Mr B has been frustrated by EE's handling of this matter. I think the best thing now is for EE to end this agreement with nothing further for Mr B to pay. If they have reported any adverse information on Mr B's credit file in relation to this agreement, they should remove it.

Mr B has also explained in some detail his problems with the service he received from EE. He was asked to attend the store on a couple of occasions, even though he has mobility problems, and he was also kept waiting while in store for an excessive amount of time. EE are aware of Mr B's health concerns and vulnerabilities, and I think they've exacerbated some of those concerns with their handling of his complaint about his phone. For that, EE should pay Mr B £150 compensation.

My final decision

For the reasons above, I uphold this complaint. EE Limited must:

- end the agreement with nothing further for Mr B to pay;
- remove any adverse information from Mr B's credit file, in relation to this agreement;
- pay Mr B £150 to reflect the distress he was caused by the poor customer service he received.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 December 2024.

Kevin Parmenter
Ombudsman