

The complaint

Miss O complains that EE Limited is charging her for a mobile phone that she returned. She wants EE to stop charging her for the phone and to refund the payments she has made.

What happened

On 24 January 2024, Miss O entered into a fixed sum loan agreement with EE to acquire a mobile phone. Miss O decided to return the phone and contacted EE. She was sent an email about the returns process and a pre-addressed envelope. Miss O used the pre-addressed envelope for the return and sent this from her local post office. However, in February 2024, EE told her that the envelope it received was empty.

EE issued a final response letter dated 15 February 2024. It explained that Miss O took out an agreement for a phone and when she decided to return it, she was sent a returns label. The return was received but when this was processed EE said the package was empty. It said it wasn't possible that the package was opened and emptied after it had been delivered.

Miss O wasn't satisfied with EE's response and referred her complaint to this service.

Our investigator noted that EE had said Miss O wasn't provided with a pre-paid envelope and that she needed to raise her claim with the postal service. It said if Miss O could provide a receipt showing the weight of the package that was returned it could reconsider its position. It also said the package was only insured up to £500. In contrast, Miss O said that she returned the phone in the envelope provided through her local post office and received a certificate of posting. She said she wasn't required to pay for the postage and wasn't aware of the need for additional insurance. She contacted the postal provider and received a letter saying that as the special delivery envelope was taken out on EE's account and pre-paid, EE needed to submit the claim.

Our investigator didn't find that EE had made Miss O reasonably aware of the need to pay for additional insurance cover when returning the phone. He also accepted that Miss O hadn't paid for the phone to be returned and that the package therefore hadn't been weighed. He couldn't say for certain whether the return was pre-paid or just pre-addressed but on balance he thought the postal provider accepted it as pre-paid. He couldn't say why EE didn't receive the phone back but was satisfied that Miss O had followed the return instructions. Based on this he upheld this complaint and recommended that EE cancel the agreement as if the phone had been returned and said that any payments Miss O had made should be returned along with 8% interest and any adverse information relating to the agreement be removed from her credit file.

EE didn't agree with our investigator's view. It said that the investigation by the postal provider hadn't been concluded and Miss O could potentially benefit from this. It also raised concerns about the validity of the response provided to it by the postal provider.

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.

Miss O entered into a fixed sum loan agreement with EE to acquire a phone. The agreement was dated 24 January 2024. EE's system notes show that Miss O requested to return the phone on 26 January 2024. Miss O was sent information about the returns process and a 'silver bag' to return the phone in.

Miss O has provided proof of the postage taking place in the evening of 30 January 2024. EE has confirmed that the silver bag was received, and Miss O has an online confirmation of the delivery taking place on 2 February 2024. The photographs of the silver bag that was returned to Miss O show the EE return address and that the bag is from Miss O as well as the relevant postal stickers. In correspondence dated 12 June 2024, EE was unable to locate any usage of the phone or its location. On balance, based on the evidence provided, I accept that Miss O hasn't had the benefit of the phone and that she returned it using the silver bag provided.

While I am accepting that Miss O returned the phone, EE has said this wasn't received. I cannot say why this happened, and note EE's comment about it not being possible that the package was opened and emptied after it had been delivered. I have therefore considered the role of the postal provider. Miss O was sent the returns silver bag and used this to send her phone back. She took this to her local post office and received a certificate of posting. Miss O said that she wasn't required to pay for the postage. Given this I find it reasonable that the package wasn't weighed, nor any evidence of its weight provided to Miss O.

EE has said that the silver bag provided was a non-prepaid bag and therefore Miss O needed to make a claim with the postal provider. Miss O contacted the postal provider which said that the return was by a special delivery envelope taken out with EE's account with the postal provider and was pre-paid. Therefore, EE would need to make a claim for any loss. While there is still a dispute about whether the return bag was prepaid or not, given Miss O didn't make a payment for postage, I find it reasonable to accept that when she returned the phone she believed the postage to be paid for. Miss O has then acted on EE's advice to contact the postal provider and has had her claim declined and been told EE must make the claim. Therefore, I find that Miss O has done what would be reasonably required of her to pursue the claim with the postal provider and has provided the outcome of this to EE.

EE has also raised the issue of insurance. I have looked at the information on EE's website about silver bag returns and this doesn't mention insurance or the need to provide this for the return. The postal provider's website information about special delivery packages notes compensation cover up to £2,500 which was above the cost of the phone. Therefore, I do not find I can say that Miss O should have been reasonably aware that she needed to pay for additional insurance when returning the phone.

In this case, I find on balance that I accept Miss O did follow the returns process as instructed. I have nothing to suggest that Miss O has benefited from any use of the phone, and I find her actions support her testimony that the phone was returned on 30 January 2024. Miss O has acted on the advice of pursuing a claim with the postal provider but has been told that EE need to pursue this. Taking all of this into account, while I acknowledge that EE hasn't been able to confirm receipt of the phone, I find the fair outcome to this complaint is for Miss O's agreement to be cancelled in line with the approach taken for a returned phone and any payments she has made to be refunded. I also think that interest should be added to these refunds to reflect the cost to Miss O of not having this money while she didn't have the benefit of the goods. Also, if any adverse information has been recorded on Miss O's credit file in relation to this agreement, this should be removed.

I note EE's comment that Miss O still has an outstanding claim with the postal provider, but

based on what Miss O has provided from the postal provider this doesn't seem to be an option at this point. I wouldn't expect Miss O to benefit financially from this situation and so as I am upholding this complaint, I would now not expect her to re-open any claim with the postal provider.

Putting things right

I find the fair outcome to this complaint is that EE:

- cancel the agreement as if the phone had been returned.
- refund any payments Miss O has made along with 8% simple interest per year* calculated from the date of payment to the date of settlement.
- remove any adverse information relating to the agreement from Miss O's credit file.

*HM Revenue & Customs requires EE to deduct tax from any award of interest. It must give Miss O a certificate showing how much tax has been taken off if she asks for one.

My final decision

My final decision is that EE Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 20 February 2025.

Jane Archer
Ombudsman