

The complaint

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

What happened

Mr M bought a new phone using a fixed sum loan agreement from EE on 20 September 2023. The cash price of the phone was £470 and the agreement was due to be paid back with 35 payments of £13.05 and a final payment of £13.25.

Mr M said he had issues with the phone within a few days of taking possession of it, so he contacted EE. EE said it spoke to Mr M on 11 October 2023 and completed a diagnostic. I understand an update was carried out and a new SIM was sent. This didn't resolve things and it looks like EE offered Mr M £30 credit as compensation. Mr M spoke to EE again on 13 October 2023 and completed another diagnostic. I understand EE offered to exchange the device for a brand new one given the issues that were being reported. From what I've seen, Mr M didn't want to replace the phone because he'd spent some time setting it up. Instead, he wanted EE to discount his credit agreement. EE said it couldn't do this and so Mr M complained.

EE sent a final response in October 2023 saying it had acted fairly by offering an exchange. Mr M decided to refer his complaint to our service.

Since the complaint was referred, I understand EE also offered to discount Mr M's two-year airtime agreement by 20%. But it seems this was not as a result of problems with the device.

Our investigator looked into things and thought EE's offer to replace the phone was fair. He didn't make any recommendations.

Mr M didn't agree. He reiterated he was paying for a faulty phone, and he didn't want to have to spend a significant amount of time setting up another phone. He said he found the whole experience very stressful.

I issued a provisional decision that said:

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mr M and EE that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr M bought the phone using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements. From what I can see, EE was the supplier of the phone as well as the creditor. But if that's not right, it can let me know in response to this provisional decision.

The purchase of the phone is subject to the terms implied by the Consumer Rights Act 2015 (CRA). The CRA is relevant to this 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.

It doesn't seem to be in dispute there was a breach of contract. EE has said its technical team confirmed the handset was faulty. I've therefore thought about what options Mr M should have had when he contacted EE.

In line with the CRA, as the goods weren't of satisfactory quality Mr M could have asked to reject the goods with a full refund given he was within the short term right to reject period. I can't see this was put as an option to Mr M, so I asked EE about this. EE seems to indicate it didn't present this as an option but said Mr M was within his cancellation period that was set out in the agreement. I'm not sure that's quite right because the notes indicate Mr M contacted EE just outside of the two-week cancellation period. And in any event, the cancellation period is a separate matter to the short term right to reject period. So I think there was likely an opportunity missed by EE at that point.

Mr M was however also able to ask for a repair or replacement. EE offered a replacement new phone. I think this was fair of it to do so. Mr M could have asked for a price reduction if the repair or replacement didn't work but Mr M didn't want to replace the phone because of the time he spent setting it up. Mr M sought another remedy. And I'm conscious it was open to him to claim other remedies for breach of contract – including damages, which is what I think he was essentially looking for. This is also set out in the CRA.

EE has said it wasn't able to discount the credit agreement. That might be the case, but I'm mindful it was also open to it to have simply paid Mr M a fair amount for damages if that could have been agreed. As it turned out, EE declined the complaint because it stood by its replacement offer. Mr M was left in possession of a faulty phone and so decided to bring his complaint to the Financial Ombudsman. It must have been quite frustrating for him. And things could've been resolved sooner.

In the circumstances, while EE gave an answer to Mr M promptly, and it offered a resolution that would have worked for most customers, I think EE ought to have presented all the options to Mr M. Or it should have at least considered Mr M's claim of damages in a way that was viable for it to put right. I'm conscious EE is the expert here and Mr M may not have known all the options available to him when things went wrong.

I'm required to determine the complaint by setting out what I think is fair and reasonable in all the circumstances. That gives me quite a wide scope for how to put things right. I think it makes sense to wrap up a fair sum for what could be considered 'damages' with compensation for the way things were handled. I've thought about how much Mr M has lost out by having a faulty phone, and the impact on him because of the way things were handled. There's no easy way for me to calculate what the phone is worth with the fault, or what the repair cost would be – if there was a cost. Calculating what could be considered fair damages isn't therefore straight-forward without that supporting evidence. But Mr M was willing to keep the phone, so I presume it broadly still functioned as it should. Had the issue been so bad that it deserved a significant reduction in price, Mr M likely wouldn't have wanted to keep it. So I'm not going to propose a significant amount of compensation to put

things right.

In the round, taking into account the nature of the fault; the price of the goods; and the impact of EE not presenting or considering all of Mr M's options, I'm going to propose EE pays Mr M £100 compensation to resolve the complaint.

Both parties broadly accepted the provisional 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.

Seeing as though neither party has submitted anything new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I uphold the complaint and direct EE Limited to pay Mr M £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2024.

Simon Wingfield

Ombudsman