

The complaint

Ms L complains about three fixed sum loan agreements she has with EE Limited that were used to buy three brand new mobile telephone devices.

What happened

In February 2024, Ms L took out three separate fixed sum loan agreements with EE, to pay for three different brand new mobile telephone devices. As part of deal offered by EE, Ms L was able to trade in two older used handsets, to reduce the overall cost of the loans.

EE say they sent Ms L details about how to return her used handsets. They say these details included options for Ms L to pay extra postage costs to cover the value of the handsets, if they were lost in the post. Ms L then sent the handsets through the postal service using pre-paid postage labels, provided by EE.

After a few days, Ms L says she noticed that one of her old handsets had reached EE, but the other hadn't. So, she called EE to raise her concerns. Ms L also noticed that EE had applied a charge of £550 to her account, because the planned trade in had failed.

Unfortunately, EE couldn't find the missing handset. But, they successfully claimed £150 from the postal service and applied it to the overall balance of Ms L's fixed sum loan accounts. EE also offered to reduce the balance by a further £300, as a gesture of goodwill. Ms L declined EE's offer and complained. She said the loss of the handset wasn't her fault, so she shouldn't be held responsible for its value.

In their final response to Ms L's complaint, EE said Ms L was aware she could have paid extra to cover the value of the missing handset, but chose not to. EE also withdrew their offer of a goodwill gesture and said Ms L remains responsible for the remaining balance of her loan accounts. Ms L didn't agree and brought her complaint to us.

One of our investigators looked into Ms L's case and found that EE hadn't treated Ms L fairly. Although the investigator agreed that Ms L was made aware of the options to pay extra postage for a higher level of cover, she said that EE had caused confusion when they first tried to resolve the matter. The investigator concluded that EE should pay Ms L £200 for the distress and inconvenience caused.

EE accepted the investigator's findings, but Ms L didn't. Ms L said EE didn't make the postal options clear to her. She said EE should refund the total cost of the missing handset, correct her credit file, and pay her compensation.

The investigator didn't change her conclusions and Ms L's case has now been passed to me to make 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.

I want to acknowledge where I've summarised the events of this 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'd like to assure Ms L 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.

Ms L bought the brand new devices using three regulated fixed sum loan agreements, 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 devices as well as the creditor.

The return of the used handsets

EE have sent us a copy of the pre-paid label and the enclosed instructions they say would have been sent to Ms L. I can see that under 'Posting Method' the instructions say:

"In regards to higher value devices we strongly recommend you use the special delivery option."

The instructions go on to explain that a special delivery costs £7.25 and can compensate up to £500 for lost items.

EE's records show where Ms L spoke to them about trading in her used handsets and where the return packs were sent to Ms L's home address. Ms L has told us she sent both handsets back to EE using the pre-paid envelopes only. So, I think this shows where Ms L received the return packs from EE. And that Ms L didn't use the recommended special delivery service.

Having carefully considered everything, I can see where Ms L was trying to reduce the cost of her new handsets with EE. I empathise with Ms L, in that I can see she took steps to try and secure the best deal before she entered into the loan agreement. But, I think EE took reasonable action to make Ms L aware of the risks involved and the method of postage she should use, considering the potential value of the used handset.

In all the circumstances, I don't think EE caused the loss of the handset Ms L intended to trade, or that they gave Ms L misleading or incorrect information about the process to send them the handset. And I'm persuaded Ms L received those instructions. Overall, I think EE have treated Ms L fairly when they declined to pay her for the cost of that handset, to reduce the overall balance of the fixed sum loan agreements.

Against this background, I think the repayment information about the fixed sum loan agreements should remain on Ms L's credit file. So, I don't think it would be fair to ask EE to remove those details from the information recorded with credit reference agencies.

However, I can see from EE's records where £150 was claimed from the postal service for the lost package and credited to Ms L's account with EE. Although I recognise that this payment doesn't satisfy the cost of the lost device to Ms L, I think it was fair of EE to use it to reduce the overall balance of her account.

I realise that my conclusions mean there will still be an outstanding balance owed by Ms L under the fixed sum loan agreements with EE. So, I remind EE of their responsibility to treat Ms L's financial circumstances with due consideration and forbearance. This may mean looking at Ms L's income and expenditure details to talk about any repayment options they are able to offer her.

Distress and inconvenience

When Ms L first raised her concerns with EE, I can see where she was given conflicting information. I've listened to the calls Ms L had with an advisor from EE and she was told both devices had been received. This was incorrect, as only one was delivered. On a separate occasion, the advisor explained that the whole cost of the missing device would be refunded, before changing the offer to £300. This offer was then withdrawn in its entirety.

Ms L says she is experiencing very difficult personal circumstances and has described the impact the conflicting information has had on her. In light of what Ms L has explained, I think EE confused Ms L and this had an impact on her already troubling personal circumstances. So, I agree that it's fair for EE to make a payment to Ms L in reflection of the worry they caused.

Having considered everything, I think a payment of £200 to Ms L is a fair level of award for the distress and inconvenience she experienced.

The provision of airtime services

Finally, I've thought about Ms L's concerns where she says she hasn't used the airtime services contract. She says it's unfair for EE to expect her to pay for it.

Our service was set up by Parliament under the Financial Services and Markets Act 2000 ('FSMA'). It's important to make clear that as a public body, we don't have a general, 'at large' power to investigate any complaint. We can only investigate what FSMA and rules made under FSMA say we can. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the Financial Conduct Authority ('the FCA') the power to say what complaints we can and can't consider. The FCA has set these out in the Dispute Resolution chapter of the FCA Handbook (also known as 'DISP' or 'the DISP rules').

We can consider some financial complaints against EE because it falls under what is known as our compulsory jurisdiction. But that doesn't mean we can consider every complaint that is brought to us.

DISP 2.3.1 says we can consider complaints under the compulsory jurisdiction if it relates to an act or omission by a firm in carrying out certain activities. We can also look at ancillary activities in connection with them. The provision of an airtime agreement doesn't fall under the list of regulated activities.

So, I don't have the power to consider complaints and ancillary issues relating to the airtime agreements. This means I don't have the power to look into the instances where Ms L says she disputes what airtime she has used.

If Ms L continues to be unhappy with the cost of her airtime service, she may still be able to refer that complaint to the relevant dispute resolution scheme. But for now, I leave it for Ms L and EE to engage with each other about those concerns.

Putting things right

For these reasons, I require EE Limited to pay Ms L £200 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and require EE Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 1 July 2025.

Sam Wedderburn
Ombudsman