

The complaint

Miss H complains EE Limited mis-sold her a mobile phone she acquired under a fixed sum loan agreement.

What happened

In August 2023, Miss H entered into a fixed sum loan agreement for a mobile phone device. The total amount of credit was around £160, to be repaid in 24 monthly repayments of around £6.

Miss H said as she went abroad a lot, she needed her phone to be able to hold two SIM cards and that she emphasised this need during the sales phone call in August 2023.

Miss H says she left the mobile phone in its box until she went into store in February 2024 when she asked for help transferring data from her old device to the new one. Once the transfer of data had taken place, Miss H then realised that only one physical SIM card could be inserted into the phone. So, she called EE Limited and they told her that that one of phones dual SIMs would need to be an eSIM – this is also known as an ‘embedded’ SIM and is a virtual version of a SIM card, rather than a physical SIM card.

Miss H says she wasn’t told this when she took out the agreement for the phone at the end of August 2023 and that she ought to have been informed of this. Miss H says she was mis-sold the phone as it didn’t suit her needs. And that had she been told about the dual SIM not being two physical SIM cards, she wouldn’t have got the phone. Miss H says she didn’t know the phone could hold an eSIM as well as a regular SIM card. Miss H also says she’s been told an eSIM is known to deactivate itself, which isn’t fit for purpose when she goes abroad. Miss H wants a phone that meets her requirements of holding two physical SIM cards and to compensate her for the time she’s spent on this issue.

EE Limited said during the sales call in August 2023, Miss H asked if the phone was dual SIM compatible and the advisor said it was. EE Limited recognised the phone did hold a dual SIM, but that one was an eSim. EE Limited said Miss H didn’t enquire about the SIM card being an eSIM. EE Limited said Miss H’s SIM card could be converted to an eSIM whenever she wanted and that this doesn’t affect the functionality of her phone. However, EE Limited acknowledged there was inconvenience caused to Miss H when they didn’t return her call and applied a credit of £30 to her airtime.

Our Investigator looked into Miss H’s concerns. In summary, he said he didn’t think EE Limited had misrepresented the phone to Miss H – the advisor said during the sales call that the phone held dual SIM and so, a false statement of fact hadn’t been made which then induced Miss H into the contract. Our Investigator also said while Miss H said she wasn’t aware of an eSIM, it wouldn’t have been reasonable that the advisor knew this when there were no further discussions that took place about this during the call. So, our Investigator didn’t think EE Limited did anything wrong.

EE agreed to our Investigator’s view, but Miss H didn’t. She said she asked enough questions to the advisor for it to be obvious she needed a dual SIM phone – one that holds

physical SIM cards and not a virtual version of one. Miss H also said the advisor ought to have mentioned the phone holds one physical and one eSIM card and also should have arranged for her to be sent an eSIM card, as they would've seen from her account that she doesn't have one. Miss H said she thinks this is quite an important feature of the phone which should have been mentioned to her. Miss H also said she asked EE Limited's advisor questions about whether the phone was dual SIM because this mattered to her. So, the complaint has 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.

Miss H acquired the mobile phone device through a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I have to decide what, if anything, EE Limited should do to resolve this complaint. To do that, I'll decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. In this case, relevant law includes Section 75 of the Consumer Credit Act 1974 (CCA) and whether there has been a misrepresentation by EE Limited.

The crux of Miss H's complaint is that she was mis-sold the mobile phone device because even though EE Limited told her the phone was a dual SIM, they didn't tell her that one SIM was an eSIM. Therefore, it wasn't fit for how she wanted to use it and she wouldn't have got the phone.

Misrepresentation

I've first considered whether there has been a misrepresentation by EE Limited. A misrepresentation is when:

1. a false statement of fact has been made; **AND**
2. this false statement induces a customer to buy a product or enter into a contract.

I've listened to the call that took place at the end of August 2023 where Miss H entered into this agreement. At the start of the call, Miss H ran through the contract information she'd been given by EE Limited, on a previous call the previous week. Miss H then went on to say *"this is a dual SIM, so I wanted the second SIM unlocked, and he said yes. Is that correct, it is unlocked immediately?"*. The advisor then responded and said *"let me just check if this is a dual SIM phone....yes [names the specific model of the phone] is a dual SIM phone."* Miss H then asked again if it was unlocked and the advisor confirmed it was.

Miss H made further reference to the phone being a dual SIM phone later in the call. Having considered this carefully, and in line with the two-part test mentioned above, Miss H asked the advisor a question about the mobile phone being dual SIM and the advisor confirmed it was. Therefore, I'm not satisfied part one of the test has been met as I'm not persuaded a false statement of fact was made – the advisor confirmed the phone to be dual SIM which is a true statement. I don't need to consider part two of the test and whether I think Miss H was induced into entering into the agreement as I'm not satisfied part one of the test has been met. With that said, I don't think there has been a misrepresentation here.

Should EE have done more?

I can understand Miss H's point that she wanted a mobile phone that could hold two physical SIM cards and that this was an important feature for her. Miss H said the advisor ought to have pointed out to her before taking out the fixed sum loan agreement that this wasn't a feature of the phone. So, I've thought about if EE could have done more with the information they gave to Miss H. And if I think they acted unfairly in any way. But having considered things carefully, I don't think they have, I'll explain why.

While Miss H made reference during the call about the phone being dual SIM, I don't think the advisor would have known Miss H wanted a phone that could hold two physical SIM cards rather than one physical and one eSIM. I say this because Miss H mentioned it being a feature, but I didn't hear her expand on her reasoning for wanting a dual SIM phone as she said she did.

Additionally, I don't think the advisor would have known Miss H didn't know that the dual SIM she referred to wasn't two physical SIM cards. Miss H started the call knowing which phone she wanted as she referred to its features and also referred to wanting to draw down on the contract option that she was previously told about by EE Limited.

Miss H didn't ask questions about the dual SIM feature of the phone and I understand her point that she thought it would be physical SIM cards as she didn't know about eSIMs. While I appreciate this, and while I understand Miss H's point that the advisor was the person with the knowledge in the circumstances here, given Miss H had already chosen the phone she wanted and seemingly knew about the dual SIM feature, I don't think it was unfair for the advisor not to mention that the phone can only hold one physical SIM card. As I say, I don't think the advisor would have known Miss H didn't know this based on what she said.

From listening to this call, Miss H referred to a previous call between her and EE Limited the week before. EE Limited can't provide a copy of this call recording, which is unfortunate. While I haven't seen any evidence to persuade me EE Limited misled Miss H about the dual SIM, even if I were to accept Miss H wasn't told something she ought to have been told, given Miss H wanted the phone to have a specific feature to be able to use it abroad, I think it's fair to say there was some onus on Miss H to check the phone had what she wanted within a reasonable period of time. Miss H would have had a cooling off period which she could have enforced had she noticed the phone didn't have two physical SIM card ports. I understand Miss H said the advisor ought to have seen from her account that she didn't hold an eSIM card. But from listening to the call, the purpose of it was to draw down the contract she'd previously been told about by EE Limited. So, I don't think it was unreasonable the advisor didn't mention this.

For reasons explained above, I don't think the fixed sum loan agreement was mis-sold to Miss H.

I acknowledge Miss H has made a point about eSIMs not working as they should and have been found to deactivate themselves. Miss H hasn't said she's experienced this herself and if she has, she'd need to raise this concern with EE Limited.

I note EE Limited credited Miss H's airtime account with £30 as a result of a missed call back. Miss H hasn't mentioned being unhappy with this, but I can appreciate there would have been inconvenience caused to Miss H. Without any other evidence, I see no reason to ask EE Limited to do anything more. So, I won't be directing EE Limited to pay more compensation for this missed call.

My final decision

For reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 13 May 2025.

Leanne McEvoy
Ombudsman