

The complaint

Mr K complains about the information given to him by Hutchison 3G UK Limited trading as 3, when he took out a fixed sum loan to pay for a mobile telephone handset.

For ease, throughout this decision I'll refer to Hutchison 3G UK Limited trading as 3 as 'Three'.

What happened

In February 2024, Mr K says his mobile telephone device broke beyond repair after an accident. He says he would usually spend a substantial amount of time researching the most appropriate handset, to fit in with his job role. But, on this occasion, he decided to go to one of Three's stores and speak to an advisor.

Once at the store, Mr K says he asked the advisor to recommend the handset with the best battery life. And after talking everything through, he took out a fixed sum loan agreement with Three, to pay for a brand new handset.

Mr K says he didn't really use the handset straight away, due to some personal circumstances and a holiday, which meant he wasn't at work. But, on his return Mr K says he found that the handset's battery life wouldn't last the whole working day. He says this disrupted his business activities and caused significant frustration. So, he raised his concerns about receiving incorrect information about the handset with Three.

In their final response to Mr K's complaint, Three explained that all the information about the handset's battery life was available to Mr K, before he chose to buy it. They also said Mr K had the opportunity to return the device within fourteen days, if he was not satisfied with it. But they said he had used the device for around five months, before raising his concerns. Mr K didn't accept Three's response and brought his complaint to our service.

One of our investigators looked into Mr K's complaint and found that Three had treated Mr K fairly. She wasn't persuaded that the information about the battery life was the reason he chose to buy the handset, in view of how long Mr K had used it for. The investigator also found that any descriptions of battery life, would be dependent on how much it is used in any set period of time.

Mr K didn't agree with the investigator's findings and said he wasn't able to test the battery, as he wasn't at work in the days after he bought it. Mr K also maintained that the advisor in the store was aware of what his intended usage of the handset would be.

The investigator didn't change her conclusions and Mr K's complaint 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.

This case is about a fixed sum loan agreement which Mr K took out with Three. These types of loans are regulated financial products, so we are able to consider complaints about them.

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described. The CRA then sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

In Mr K's case, he says that in the past he has researched the best device for his circumstances, when he needed to get a new handset. But, in February 2024 he decided to rely on the advice from a member of staff at the store. Mr K says that regardless of the price, make, or model, he asked the advisor to sell him the handset with the best battery life.

Three's records of the sale of the device and the start of the fixed sum loan agreement do not detail any demands and needs exercise, which may have taken place before Mr K acquired the handset. In other words, there isn't a document to show what was discussed between the advisor and Mr K. So, I have to decide how much weight to place on what Mr K says, when looking to decide if Three gave him incorrect information.

In their submissions to us, Three explained that Mr K had access to all the literature and advice from the store, which told him about all the features of the handset. They say any discussions about battery life had to be tempered by Mr K's knowledge that he would likely use the handset more than an average person. Three also say that battery life depends on what application is being used, as each feature of the device may demand a different amount of power.

I also need to bare I mind that Mr K hasn't said there's a fault with the handset and where it hasn't been inspected by Three or the manufacturer.

Given what Mr K has told us about the frequency of usage he needs from a handset, I think he had a general awareness that he would need to allow some flexibility in whatever he was told about the battery life. That said, I do acknowledge Mr K's frustrations about the amount of daily usage he says he's able to get from the handset.

After considering all the evidence, I think it's likely Mr K had a conversation about the battery life with the advisor at the store. But, I'm not persuaded the advisor gave incorrect information about the features of the handset. Or more specifically, what Mr K could have expected about battery life, considering his usage could be thought of as high. So, I've gone on to think about what happened, after Mr K took out the fixed sum loan agreement.

From looking at what each party to this dispute has said, I can see that Mr K raised his concerns about the battery life in July 2024. This was five months after Mr K entered into the agreement with Three for the brand new handset.

I acknowledge where Mr K has told us that shortly after he got the handset, he spent some time in hospital and then took a three week holiday. He says this meant he couldn't fully test the battery on his device, until his return to work.

But, even after considering Mr K's personal circumstances, I think it would have been reasonable for him to have raised his concerns sooner, if the battery life was the main feature that induced him into getting that particular device. I say this because Mr K has told us he started using the device for his business activities, after he returned from holiday.

However, it still took about four months for him to report his frustrations to Three.

Overall, I'm not persuaded Three gave Mr K some incorrect information, which induced him into taking out the fixed sum loan agreement. So, I think Three have treated Mr K fairly. It then follows that I think it's fair and reasonable for Three to hold Mr K responsible, for the repayment of the remaining balance due under the fixed sum loan agreement.

I realise that my conclusions mean there will still be an outstanding balance owed by Mr K to Three. Mr K hasn't mentioned that he's struggling to keep up with those repayments. But, should that situation arise, I remind Three of their responsibility to treat Mr K's financial circumstances with due consideration and forbearance.

This may mean looking at Mr K's income and expenditure details to talk about the options they are able to offer to him, if he's unable to maintain the scheduled repayments.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 July 2025.

Sam Wedderburn
Ombudsman