

The complaint

Mr M complains about the balance of a fixed sum loan agreement he has with Hutchison 3G UK Limited trading as Three.

What happened

In April 2023, Mr M took out a fixed sum loan agreement with Three to pay for a brand new mobile telephone handset. I'll call this handset 'Device One'. The cash price of Device One was £1,158 and Mr M made an upfront payment of £60. Under the terms of the loan, Mr M was required to make monthly repayments of around £30, over a period of three years.

About five months later, Mr M wanted a different handset and used Three's online chat facility to choose a different device. He says that during that chat, Three told him they wouldn't charge an upgrade fee. And he assumed that meant his existing loan for Device One would simply end with nothing further to pay. Mr M subsequently took out a new fixed sum loan with Three, for brand new handset. I'll call this handset 'Device Two'.

However, in September 2024, Mr M says he realised that Three hadn't ended his loan for Device One and had continued to send him repayment notices. Because Mr M thought there had been a mistake, he raised his concerns with Three.

In their final response to Mr M's complaint, Three explained that Mr M hadn't traded Device One back to them, or repaid the outstanding balance. They said they hadn't told Mr M his initial loan would be closed, so Three continued to hold Mr M responsible for the balance of the fixed sum loan agreements for each device. Mr M didn't accept this and brought his complaint to our service.

One of our investigators looked into Mr M's complaint and found that Three had treated Mr M fairly. He said Three had waived any upgrade costs, when he chose Device Two. The investigator didn't think this meant the loan for Device One would end and that Mr M was aware he'd need to pay for that handset.

Mr M didn't agree with the investigator's findings and said he would not have entered the second fixed sum loan agreement, had he known he was still responsible for the first loan. He said Three had given him incorrect information, which led him into signing the loan agreement forms for Device Two.

The investigator didn't change his conclusions and Mr M'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 M took out with Three. This is a regulated financial product, so we are able to consider complaints about it.

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 M's case, he says he was given incorrect information during an online chat with Three in September 2023. He says Three told him they would waive the upgrade fee and didn't say he'd need to continue to repay his existing fixed sum loan agreement. Mr M argues that had Three given him the correct information about his existing loan, he would not have entered into the new finance agreement. So, I've considered the evidence surrounding the online chat.

Three haven't been able to provide a copy or transcript of the discussion they had with Mr M. However, Mr M has provided us with segments of the online chat with Three, where he asked questions about upgrading his device.

From looking at Mr M's evidence, I can see where Three told him that they would waive the upgrade fee. But, it's not clear from the chat what the upgrade fee is. Additionally, Three made reference to Mr M's existing device, in that they said he could trade it with them and have the value paid to his account. Three have also told us that as part of their sales process at the time, their advisor had a script to relay to customers in similar circumstances to Mr M. They say the advisor was required to tell Mr M that he would now have two loans to repay, instead of just one.

Because we don't have Three's transcript of the chat with Mr M, I cannot say whether or not their advisor delivered the full sales script. But, after considering the segments we do have, I'm not persuaded that Mr M could have taken from that conversation that his existing loan would end. I say this because the chat referred to fees, rather than a loan or the balance Mr M owed to Three. I also think the chat draws Mr M's attention to the process to trade his existing device with Three, with the proceeds added to his account.

On the face of it, I'm not persuaded Three gave Mr M incorrect information about the costs involved with upgrading his device. But, I think there are other circumstances to consider, to help decide if Mr M was misled by Three.

During our investigation, Three sent us information about the repayment history for Mr M's loan for Device One. This loan started in March 2023 and Mr M took out the loan agreement for Device Two in September 2023. Therefore, the initial loan had been active for around six months and there was an outstanding balance of around £800 for Mr M to pay. I don't think the outstanding balance was insignificant, considering the cash price of Device One was £1,158.

So, I don't think it was reasonable for Mr M to assume that Three would write this amount off, or that the loan to pay for Device One would end. I acknowledge Mr M's point about other telecommunications deals he has heard of. But, given the online chat he had with Three and the outstanding balance of the loan, I don't think Mr M could have expected that would happen with his agreement with Three.

The repayment history also shows where payments were missed towards the loan for Device One. I can see that Three sent Mr M text messages, emails and letters, almost every month from April 2023 through to November 2023. So, I think Three made Mr M aware of the

need to repay his initial loan, shortly before and immediately after he took out the loan for Device Two. I think it follows that Three made it clear to Mr M, that there was still an onus on him to make the repayments towards the loan he took out in April 2023.

I've thought carefully about the outstanding balance, the correspondence from Three and Mr M's discussions about a trading his previous device. Having done so, I'm persuaded Mr M had an awareness of the need to either use the proceeds of the trade to repay his existing borrowing, or that the loan would still need to be repaid despite the upgrade.

Overall, I'm not persuaded Three gave Mr M incorrect information, which induced him into taking out the fixed sum loan agreement for Device Two. On balance, I think it was likely Mr M was made aware that his previous agreement still needed to be repaid. So, I think it's fair for Three to continue to hold Mr M responsible for the repayments due under both fixed sum loan agreements.

That said, I empathise with Mr M, where he says he no longer has Device One. This means he doesn't now have a device to trade against the balance of initial fixed sum loan agreement. I also acknowledge the difficult circumstances Mr M has told us about.

However, following my findings Three may start to contact Mr M to arrange for the repayment of the balance of the loans. In doing so, I remind Three of their responsibility to treat Mr M's financial circumstances with due consideration and forbearance. This may mean amongst other things, Three carefully considering Mr M's income and expenditure to put together an affordable repayment plan, if he needs such an arrangement.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2025.

Sam Wedderburn
Ombudsman