

## **The complaint**

Mr W complains EE Limited misled him into entering into a fixed sum loan agreement for a mobile phone device.

## **What happened**

Mr W had an existing agreement with EE. In June 2022, he says he called EE to upgrade his device which led to him entering into a new fixed sum loan agreement for a new mobile phone device. The amount of credit was £720 which was to be repaid in 36 monthly instalments of £20 at 0% interest.

Mr W says he was told during this call that he could end the agreement early. And while he says he understood he'd have to pay the remaining balance due under the agreement at that time, he was told he wouldn't have to pay any other fees or charges. So, Mr W says he agreed to the terms and conditions on this basis.

In January 2024, Mr W says he called EE to discuss upgrading his device. Mr W says EE told him he'd need to pay the remaining amount and fees and charges. Mr W asked EE to listen to the call from June 2022 where he says he wouldn't have to pay any fees and charges, but they said this wasn't possible as they said they no longer had the call recording. Mr W says he would have gone elsewhere had he known that the fees and charges would still be applied. Mr W says from memory, EE told him to pay around £500 to £600 at the point he wanted to upgrade in January 2024.

To resolve things, Mr W has asked EE to pay him £500 compensation for the distress and inconvenience caused to him as well as for EE's failure to find the call recording. Mr W is also seeking redress for call costs of each call he's made to EE and for the parking charges he incurred when he travelled to his local EE branch. Lastly, Mr W also wants EE to honour what he says he was promised during the call in June 2022.

EE say they checked everything carefully and were unable to locate the original sales call from June 2022 as it was no longer available due to the time that has passed. EE say they hold call recordings for up to 12 months for training and quality purposes.

EE also said their terms and conditions don't allow for Mr W to end the agreement early without repaying the remainder of the agreement. EE said Mr W would have reviewed and signed the terms and conditions before entering into the upgrade agreement. EE say their terms set out that if a customer chooses to upgrade their services, they'd need to pay the outstanding balance owing under the existing device agreement before the upgrade can be completed. EE said in April 2025 the agreement is still running and there is currently around £40 left to pay before it comes to an end.

EE also said there was no requirement or obligation for them to reimburse Mr W with any costs he incurred as a result of calling EE and also any parking charges he may have incurred.

Our Investigator looked into Mr W's concerns. In summary, he said he was satisfied that what EE were asking Mr W to repay when he wanted to upgrade his device early, was the remaining balance owed under the agreement. And that he wasn't persuaded EE had acted unfairly in terms of what's expected under Consumer Duty. This was because our Investigator was satisfied the fixed sum loan agreement clearly explained the terms. In relation to the additional charges Mr W incurred, such as the parking fee charge, our Investigator didn't think it was fair to ask EE to reimburse him for this. So overall, our Investigator didn't think EE had done anything wrong.

Mr W disagreed. He questioned why EE didn't have the call recording from June 2022 given it was around 18 months ago. And that EE not being able to locate the call has an impact on fraud prevention which he'd like considered in this final decision. Mr W also said the agreement was done over the phone and he signed it while being on the phone, so he had concerns around the lack of safeguarding to ensure compliance with data protection rules. Mr W also said EE's final response letter lacked critical information which could potentially affect vulnerable customers. 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.

I can understand the difficult situation Mr W is in and I can appreciate Mr W's frustrations. Where the evidence is incomplete, inconsistent or contradictory, as it is here, I've considered what I think was likely to have happened on the balance of probabilities – taking into account the available evidence and the wider circumstances. This complaint involves a fixed sum loan agreement which I can consider. I can't, however, comment on any points about airtime agreements as our service doesn't have the power to consider these.

#### *Call recordings*

I appreciate Mr W is concerned that EE no longer hold call recordings, specifically the one from June 2022 which he says would support his claim that he was told he wouldn't need to pay anything if he chose to upgrade his mobile phone device. Despite making several requests for this, EE have explained that they only hold call recordings for 12 months. EE have also provided evidence to show they've searched their systems for the call recording in June 2022, but they don't hold this.

EE also weren't able to provide a copy of the call that took place in January 2024 as it happened more than 12 months before we requested this evidence in March 2025. I note Mr W's concerns about the potential lack of safeguarding for customers and also EE's compliance with data protection rules as a result of their inability to provide call recordings. Mr W has also mentioned the potential impact this could have on vulnerable customers and also the lack of critical information in EE Limited's final response which could also have an impact on customers.

I'm aware Mr W is frustrated with EE and I want to assure him that I've given careful consideration to what he's said. I think it's important to explain that I can't compel EE to provide evidence they say they don't hold, I can only go based on the evidence available to me. If Mr W has concerns about EE's obligation under data protection, he may want to raise these with the Information Commissioners Office (ICO) as they oversee and enforce data protection laws. I appreciate Mr W's concern about EE Limited's final response letter, however, I can't comment on the potential impact this may or may not have on other customers as I'm only able to look into the circumstances of Mr W's complaint.

*Was Mr W misled into entering into the fixed sum loan agreement in June 2022?*

The crux of Mr W's complaint is that he says he was told during the phone call in June 2022 that the next agreement he entered into allowed him to upgrade his device early, and that any fees or charges wouldn't need to be paid at that point. However, when Mr W came to upgrade his phone in January 2024, he was told he'd need to pay what was owed under his existing agreement, which he says included fees and charges. As I say, it's difficult for me to know exactly what was said without a copy of the call recording to listen to. So, I've made my decision based on the evidence I do have available to me.

Having looked at the type of agreement Mr W entered into on EE's website, under the FAQ's section it says:

*It says I can repay early – are there any charges for that? No, there are no charges for early repayment.*

*Do I really have to pay off any existing Flex Pay agreements before I upgrade, even if I am outside of my 24 month plan term? Yes, that is correct. This helps us to ensure that customers don't fall into difficulty in making their payments.*

The terms in Mr W's agreement also say something similar about if he decided to change or end his services with EE:

*Upgrades - if you choose to upgrade your plan services and/or device you must repay the full outstanding balance owing under your existing device credit agreement before you can complete your upgrade.*

*Leaving us within your plan minimum term - you must repay the full outstanding balance owing under your device credit agreement when you leave our network.*

Based on the above, all Mr W would have been required to pay at the point he wanted to upgrade early was the remainder of the agreement. I understand Mr W has said he was told he'd have to pay around £500-£600 which he says was additional fees on top of the remainder of the agreement, but with the information I have available to me, I don't see that EE's terms would allow for this to happen. The terms don't explain an early termination fee or any other charges would become due, so it's unclear what additional fees and charges Mr W says EE were attempting to charge him for at the time.

It's not unusual for the remaining balance of a fixed sum loan agreement to become due before entering into a new agreement. And a borrower will often be asked to repay this amount in full. I think, on balance, this is what EE were asking Mr W to repay when he contacted them in January 2024 to upgrade.

Having looked at EE's website in further detail for the type of agreement Mr W had in place, early termination fees and the remaining balance of the agreement would become due if Mr W was asking to leave EE altogether. While Mr W says he wanted to leave EE in June 2022 (but was then encouraged by EE to stay), I haven't seen any evidence this was his intention in January 2024 – when he says he was told he'd have to pay around £500-£600 when ending his agreement early.

I appreciate Mr W has pointed to EE's internal notes from June 2022 which say Mr W was referred to EE's retentions team as evidence to prove what he's been saying all along is true – that he was told he wouldn't need to pay additional fees and charges. However, while the notes do mention EE's retentions team, it doesn't say anything further about additional fees

and charges being due and then EE agreeing to remove these from the next agreement Mr W entered into.

Overall, on balance, I don't think EE misled Mr W into entering into the agreement in June 2022. While I understand Mr W has repeatedly said EE told him additional fees and charges were due when he called them in January 2024, I haven't seen any evidence to suggest this was the case – the internal notes don't reflect this and neither does the agreement paperwork.

Mr W says EE have breached Consumer Duty as he feels the information he was provided with in June 2022 was misleading, unsuitable and that EE's behaviour could impact vulnerable consumers. Mr W has said from a Consumer Duty perspective, they've not protected him, nor treated him fairly. However, Consumer Duty applies to products and services from 31 July 2023. So, I don't think it's a relevant consideration here for what EE may have done in June 2022.

Mr W says he doesn't feel we have protected him as a customer from a fair outcome to ensure firms act accordingly. However, we don't act on behalf of either party to a complaint and we aren't here to protect customers. I can only base my decision on the evidence in front of me and I'm required to act impartially, not favouring one party over another. Having considered this evidence carefully, I'm not persuaded EE acted unfairly to Mr W, so I won't be asking them to do anything more.

### **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 Mr W to accept or reject my decision before 11 June 2025.

Leanne McEvoy  
**Ombudsman**