

## The complaint

Ms D complains that the phone supplied by EE Limited (EE) was faulty.

## What happened

On 17 June 2022, Ms D took out a fixed sum credit agreement with EE for the supply of a mobile phone. The agreement was for £672, to be paid over 36 months. It was interest-free. She took an 'Extended Warranty' on the phone.

In March 2024, Ms D says the phone developed a fault – there was black line through the middle of the screen. She visited her local branch of EE which inspected it and gave Ms D a receipt. This said the 'General condition' was 'Good: no markings or dents'. The fault was noted as 'LCD faulty / corrupted'. The branch booked the phone into the local repair centre – which was in a nearby city.

On 3 April 2024, EE's repair centre sent Ms D a repair report. This said the phone was considered out of warranty as it was damaged. It recorded it had 'general/physical damage'. The report quoted a repair cost of £350 including VAT – for out of warranty work. EE provided a photo of the phone – which showed some damage/ marks to the phone's hinge.

Ms D complained to EE. She said the phone wasn't damaged when she handed it to EE. She said this was confirmed by the report from the branch. She says she's seen other reports online about the model of the phone - and problems with the hinge seem to have been common. She says it wasn't fair for EE to be selling the phone if there are known issues with it.

Ms D says she's paid off the balance owed on the finance agreement – by paying £261.48. She says EE should refund that payment and provide a replacement mobile phone.

EE declined Ms D's complaint. The firm said:

- The repair centre saw there was damage to the hinge of the phone, and therefore the warranty was void. The quotation to repair the phone was £350 including VAT.
- Due to the difference between what the store reported and what the repair centre reported, EE offered to pay half of the repair cost - £175 including VAT.
- Ms D didn't accept this offer and so EE withdrew it – and she brought her complaint to our service.
- In its submission to our service EE told us that they'd also agreed to release Ms D from her (separate) airtime agreement without penalty. Ms D accepted this and obtained a Port Authorisation Code (PAC) to enable her to switch providers.

Our investigator looked at what happened and upheld Ms D's complaint. He said:

- He asked EE what the link was between the marks on the device hinge and the fault on the screen. But EE said the marks on the phone invalidated the warranty. He said the marks were cosmetic and could not be linked to a fault with the screen.
- He said there is nothing in the warranty that says that it can be voided because of

- 'wear and tear' and 'cosmetic damage'.
- So, he said the warranty could not be considered invalid by virtue of the wear and tear marks.
- There was no reason why the store wouldn't have seen the wear and tear marks and recorded them.
- Our investigator said EE should repair the faulty screen and return the phone to Ms D – at no cost to her.
- And EE should pay compensation of £150 for the time and inconvenience incurred.

Ms D acknowledged this but EE didn't agree. The firm said:

- It was for the repair centre to decide whether the damage meant the warranty was invalid or not. EE quoted the terms and conditions on the repair quote which said '*Our experts will decide what repairs are needed and whether they're covered by your manufacturer's warranty (the "Warranty")*'
- The repair centre's job is to inspect the device to decide if it is within warranty or not – and in this case, because of the damage, it was considered to be not within warranty.

As EE didn't agree, Ms D's complaint has come to me to review and make a decision.

*I reached a provisional decision which didn't agree with the investigator's view. It said:*

Ms D bought the phone using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements.

The agreement sets out that EE sells the device subject to the terms implied by the Consumer Rights Act 2015 (CRA). The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Outside of those six months, it's for Ms D to show that the goods were not of satisfactory quality when the phone was supplied.

In Ms D's case, she reported a fault with the phone around 20 months after she bought it. This is obviously a lot longer than the six months in the CRA.

I've not been supplied sufficient evidence of what was wrong with the phone, nor that the problem was as a result of something inherent and was therefore the case when the phone was new.

Given how long she'd been in possession of the phone, it would be up to Ms D to demonstrate that the phone wasn't of satisfactory quality at the point of sale. But based on what I've been supplied, I've not seen enough to show the phone wasn't durable, or that it was of unsatisfactory quality at that time.

Ms D complained to EE about how the firm dealt with the warranty claim. But – I'm sorry to say that we cannot consider a complaint about a warranty claim considered by EE. That's

because our rules only allow us to consider specific activities, and the warranty provided by EE or the manufacturer doesn't relate to one of those activities

It's unfortunate that our investigator considered whether the phone should be repaired under the warranty and because of this, Ms D will be disappointed to learn of my decision.

We would've reasonably expected EE to have considered Ms D's claim under the provisions of the CRA in the same way as I have done. Because of this, I accept that Ms D has been given false expectation and will now be disappointed. Because of this, I think it is reasonable that EE pay her compensation of £100.

#### Responses to the provisional decision:

EE agreed with it; but Ms D didn't. She said it was disappointing that I disagreed with the investigator's view. And she provided online links to customer complaints about the make and model of the phone involved – these (broadly) said that the phone was faulty. Ms D says this is evidence that her own phone must have been faulty when it was supplied by EE.

#### **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 considered what Ms D has said. On her first point, I accept the change in outcome must be frustrating for her. But - our process is that where either the firm or consumer don't agree with an investigator's view, an ombudsman (like me) looks at the case afresh again. And that means a different decision may be reached – and that's what's happened here.

On her second point, for me to ask EE to refund her phone (for example) – I must see evidence that her own phone was faulty when it was supplied by EE (or in the period shortly after that). I don't think I can reasonably rely on general online complaints about the phone to conclude that Ms D's own phone was faulty.

I know this is frustrating and disappointing for Ms D, but my final decision is in line with the provisional decision. Which means EE must pay the compensation of £100 to Ms D to close this complaint. **(continued)**

#### **My final decision**

I uphold this complaint. And EE Limited must:

- Pay compensation of £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 29 April 2025.

Martin Lord  
**Ombudsman**