

The complaint

Mr H complains about the balance of a fixed sum loan agreement with EE Limited.

What happened

In December 2024, Mr H took out a fixed sum loan agreement with EE to pay for a brand new mobile telephone device. The handset had a cash price of around £1,300 and Mr H was required to make monthly repayments of about £36 over a three year period.

The following day, EE's courier delivered a package to Mr H's home address. They say the package contained the new handset. But, after opening the package, Mr H says that although it contained the correct box for the device, the wrong handset was inside the box. He says EE had sent him an older device that was severely damaged. Shortly after the delivery, Mr H called EE to complain.

In their final response to Mr H's complaint, EE said the images provided by the courier and Mr H didn't show any signs that the packaging had been tampered with. They said they were satisfied Mr H had received the correct device, so continued to hold him responsible for the repayment of the loan. Mr H didn't accept EE's response and brought his complaint to this service.

One of our investigators looked into Mr H's complaint and found that EE hadn't treated Mr H fairly. He was persuaded that the images provided by Mr H show where the package had been opened and resealed. The investigator also considered the steps Mr H had taken to report what had happened to be consistent and credible. So, on balance, he thought it was unfair for EE to hold Mr H responsible for the repayment of a device he didn't have.

To put things right, the investigator asked EE to allow Mr H to exit the agreement and return the older device at no extra cost. He also asked EE to refund any repayments Mr H had made towards the loan with interest added. And to remove any adverse information about the loan from the information held with credit reference agencies.

Although Mr H accepted the investigator's findings, EE didn't. They said it is difficult to prove what was, or wasn't in the package when it was delivered to Mr H. EE also questioned why Mr H's photographs were used as evidence, instead of the images from their courier.

The investigator didn't change his conclusions, so Mr H'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.

Mr H bought the brand new device using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements. From what I can see, EE was the supplier of the device as well as the provider of the finance.

When the evidence is incomplete, inconclusive, or contradictory, as it is in this case, I make my decision on the balance of probabilities. That is, what I think is most likely to have happened given the available evidence and the wider circumstances.

The delivery of the package

Both Mr H and EE agree that the package was delivered to Mr H's home address by the courier, on the date he planned to receive it. The dispute in Mr H's case is about what was inside the package when Mr H opened it.

On the one hand, EE say a device with the matching International Mobile Equipment Identity (IMEI) number was placed into the package at their warehouse, before it was handed to the courier. They say the weight of the package was as expected, when it left the warehouse. Additionally, EE say the handset they sent to Mr H was activated in January 2025, shortly after Mr H raised his concerns with our service.

EE also say the images taken by their courier do not show where it may have been tampered with, while out for delivery. Furthermore, they say Mr H confirmed that the package didn't look like it had been opened when it was passed to him by the courier.

On the other hand, Mr H has told us that after closer inspection of the packaging, he noticed the outer plastic packaging had been opened and resealed. Mr H has provided photographs of the area of the package he has focussed on, to demonstrate what he says he can see.

Mr H has also explained that the white device box, meant to contain the handset, wasn't wrapped in a transparent plastic film with a security seal. And where a severely damaged handset was in the device box instead of the handset he ordered and paid for. To support what he says, Mr H has again provided photographs of the device box and the handset he says was delivered to him.

I acknowledge that the images Mr H has sent to us, are from after he took the package into his house and opened it. I also accept that the images provided by the courier don't clearly show the same damage as Mr H has identified. But, I'm also mindful that in the courier's images, their hand is placed directly over the part of the package, that Mr H believes has been opened and resealed. Moreover, I can see that during our investigation, EE have agreed that in Mr H's photographs, it does appear that his assumptions about the resealing of the package are correct.

Having thought carefully about all the evidence, I don't think the weight of the package when it left EE's warehouse is particularly significant in Mr H's case. I say this as the weight on the label is designed to let the courier know what the package could weigh up to, rather than its actual weight. I also don't think the activation of the device supports either argument, seeing as EE haven't been able to tell us where the device was activated, or to which account.

But, I think the images provided by Mr H are persuasive and are supported by the comments EE have made about them. On balance, I agree that Mr H's photographs show where the plastic packaging has been opened and then resealed. It then follows that I think it's likely the package was tampered with, before it was delivered to Mr H.

I accept that EE's records of Mr H's comments soon after the delivery contradict his later thoughts. But, I don't think Mr H's comments to EE are decisive. Instead, they appear to show that he cannot be sure that the package didn't show signs of being opened, at the point of the courier handing it over.

Having considered everything, I think the evidence supports Mr H's view that the package

was opened and resealed. However, to help me decide if it's fair for EE to hold Mr H responsible for the balance of the fixed sum loan, I've also considered the steps taken by Mr H, when he first reported his concerns to EE.

The steps taken by Mr H

Mr H has described what happened on the day of the delivery from EE. He says he took in the package from the courier and opened it almost straight away. The courier had already left the area once Mr H says he realised he'd been sent a damaged and incorrect device.

But, I can see from EE's records that he contacted them within twenty five minutes of the delivery, to report what had happened. Considering the timescales involved, I think Mr H's actions here were reasonable.

Additionally, I can see from the documents provided by both sides, where Mr H promptly provided all that he was asked, from the start of EE's investigation until he received their final response. And Mr H's testimony has remained consistent throughout his case with EE, the police and this service.

EE have explained that the handset with the IMEI number matching to Mr H's order, hasn't been used on a UK based network and is blocked from doing so. Although I acknowledge EE's comments about possible use abroad and where they say the device was activated shortly after Mr H brought his complaint to us in January 2025.

Mr H has shown us paperwork to demonstrate that he reported his concerns to the police. While I'm aware this point isn't conclusive to Mr H's case, I think it shows how serious he has taken what has happened. I can also see where Mr H has continued to use a handset given to him by a family member. And that EE haven't previously supplied him with a device matching the item Mr H says was in the package.

EE's records show where Mr H has kept the repayments to the fixed sum loan up to date. Mr H says he has done this to avoid any adverse information from being recorded on his credit file. I don't think this proves where the correct handset was delivered to Mr H. Having thought carefully about this, I'm persuaded by what Mr H says, in that he doesn't want to suffer negatively due to any missed payment information.

Overall, I think Mr H has been very consistent when explaining the circumstances and presenting his evidence to EE and our service. I also find Mr H's explanations and evidence credible. I'm persuaded that it's likely the brand new device destined for Mr H was removed between it leaving EE's warehouse and arriving at Mr H's home address.

In the very specific circumstances of this complaint and on balance, I don't think Mr H received the handset within the package delivered by the courier. So, I don't think it would be fair for EE to hold Mr H responsible for the repayment under the fixed sum loan agreement he took out with EE, in December 2024.

Summary

Because I think Mr H didn't receive the brand new handset from EE, I think EE should allow Mr H to exit the fixed sum loan agreement with nothing further for him to pay. I also think it would be unfair for Mr H to keep the item he did receive. So, I think EE should arrange for Mr H to return the item at no extra cost to him.

Furthermore, I've found that Mr H hasn't had any use of the item sent to him, or the handset EE says was delivered. So, I think it's fair and reasonable for EE to refund all the

repayments made by Mr H towards the fixed sum loan agreement.

Mr H has been without the use of the funds from the repayments he has made towards the fixed sum loan agreement. So, I also think it's fair for EE to add interest at 8% a year simple to the refund of repayments, from the date they were paid, to the date of settlement of this complaint.

In light of my conclusions about the ending of the agreement and the refund of repayments, I don't think it would be fair for Mr H to suffer from any adverse information EE may have recorded with credit reference agencies. And because I don't think Mr H received the correct device from EE, I think they should remove any information they may have passed on to those agencies, about the fixed sum loan agreement in Mr H's name.

Putting things right

For these reasons, I require EE Limited to:

1. Allow Mr H to exit the fixed sum loan agreement and return the item he received from EE, at no additional cost to him;
2. Remove any information about the fixed sum loan agreement in Mr H's name, from the details held with credit reference agencies;
3. Refund all the repayments to Mr H, that he has made under the fixed sum loan agreement, from the start of the agreement to the date of settlement of this complaint; and
4. Add interest at a rate of 8% a year simple to part three of this settlement, from the dates the repayments were paid, to the date of settlement of this complaint.

EE must pay these amounts within 28 days of the date on which we tell them Mr H accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If EE deducts tax from any interest they pay to Mr H, they should provide Mr H with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require EE Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 December 2025.

Sam Wedderburn
Ombudsman