

The complaint

Mr W complains about the sale of a fixed sum loan agreement with EE Limited that was used to buy a brand new mobile telephone device.

What happened

In October 2022, Mr W took out a fixed sum loan agreement with EE to buy a brand new mobile telephone device. The cash price of the handset was £1,398 and the loan was due to be paid back with thirty-six payments of around £38.

Mr W says that at the time he took out the loan, he had just returned from living abroad for several years. He says he was used to being able to upgrade his handset every twelve months, so wanted the same kind of deal from EE. Mr W says that the sales advisor from EE had told him he could upgrade his handset free of charge, every year. So, he agreed to enter the contracts for the handset and the airtime services on that basis.

Around ten months later, Mr W spoke to EE about an upgrade, but it wasn't completed. Mr W says this was because he was too busy with his work, to follow things up. However, in September 2024, Mr W contacted EE again and asked about changing his handset.

EE explained to Mr W that he needed to repay the outstanding balance of his fixed sum loan, to upgrade his handset. Mr W told EE about his recollection from the telephone call with the sales advisor from two years previously. But, EE refused to allow Mr W to change his handset without settling his existing loan first. So, Mr W raised his concerns with EE and asked them to listen to a recording of his call with the sales advisor from 2022. Mr W also asked EE to send him some information under a Data Subject Access Request (DSAR).

In their response to Mr W's concerns, EE said their call recordings are deleted after twelve months. So, they couldn't listen to a copy of the telephone call from when Mr W took out the loan for the handset. EE also told Mr W to call back another time to raise his DSAR.

EE explained that the terms and conditions of Mr W's fixed sum loan were sent to him, when the loan was agreed and they don't suggest Mr W was entitled to a free annual upgrade. Instead, EE said Mr W's contract says that the loan needs to be settled, before an upgrade can be processed. Mr W didn't accept EE's response and brought his concerns to our service.

But, before we could reach a finding, EE wrote to us with a proposed settlement. Although they didn't change their approach to the main part of Mr W's complaint, they agreed they could have handled Mr W's DSAR better. They offered to pay Mr W £50 for the trouble they had caused.

One of our investigators looked into Mr W's complaint and found that EE's offer was fair. She wasn't persuaded that EE gave Mr W incorrect information about the fixed sum loan agreement and said their approach to the handling of the DSAR was reasonable.

Mr W didn't agree with the investigator's findings and said he had relied on what EE's sales

advisor told him and was used to the mobile telephone contracts he had taken out overseas. Mr W also said that EE didn't take enough care to explain the agreement into which he was entering.

The investigator didn't change her conclusions, so Mr W'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 W 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 creditor.

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 W's case, he says he was told during his initial call with the sales advisor, that he could upgrade his handset, every year free of charge. EE have said that although a deal, similar to what Mr W has described, was available to their customers in 2022, it wasn't the plan Mr W chose. So, I've looked at the notes recorded at the time from Mr W's discussions with EE and what was sent to him after his loan application was accepted.

EE say they delete their telephone calls after twelve months. Given Mr W's fixed sum loan agreement had a three year term, I acknowledge why he is frustrated with EE's call retention policy here. But, I'm also aware that like most businesses, EE needs to comply with the relevant data protection guidelines and rules.

Those rules aren't something which we have the power to decide. However, I think it's reasonable for EE to have set periods for when they retain different types of communication with their customers. And I don't think EE treated Mr W unfairly by deleting the recording of the sales call, after keeping it for a year.

Nonetheless, we do have a copy of EE's notes about the sales call with Mr W, from October 2022. Having thought very carefully about those records, I cannot see where Mr W was offered, or took out an agreement with the benefits he has described. Instead, I can see where the fixed sum loan agreement he was given, related to a specific set of terms and conditions.

EE records show that the terms and conditions were sent to Mr W on the same day as he signed the fixed sum loan agreement for the handset. Within those terms was a document called 'Key Information'. Under the section called 'What happens if I change or end my plan services?' it says:

"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."

After taking into consideration the terms of Mr W's agreement with EE, I think Mr W was made aware that completing an upgrade to his handset, would mean repaying the full balance of his loan first. I accept that Mr W says EE should have brought this detail more to his attention. But, I think the Key Information document is something they asked Mr W to read, before entering into the agreement. So, I think EE treated Mr W fairly here.

Furthermore, I cannot see where Mr W raised a concern when he called EE to ask about an upgrade to his handset, several months after taking out the fixed sum loan. In all the circumstances, I think this adds weight to EE's argument that they didn't give Mr W incorrect information before he signed the loan agreement forms.

Aside from looking at what Mr W was told us at the start of the fixed sum loan agreement, I've also thought about what Mr W says about his personal circumstances in 2022. He says he hadn't lived in the United Kingdom for several years and was used to how he'd taken out mobile telephone handset contracts abroad.

I do not doubt Mr W's experiences with other providers of telecommunications services. But, when looking at how EE have treated him, I think they gave Mr W the relevant information for him to decide whether or not to accept the offer of the loan to buy the handset in 2022. I've not seen any evidence to persuade me that EE should have treated him differently, because of any vulnerability. So, I think EE fulfilled their obligation to Mr W when the fixed sum loan agreement was signed.

Overall, I'm not persuaded EE gave Mr W incorrect information, which induced him into taking out the fixed sum loan agreement for the handset. On balance, I think it was likely Mr W was made aware that his loan would need to be repaid, before EE would look to upgrade his handset. So, I think it's fair for EE to continue to hold Mr W responsible for the repayments due under the fixed sum loan agreement.

Although not the crux of Mr W's complaint, he also raised his concerns about how he was treated when he made a DSAR to EE. I can see from EE's records where he spoke to them about this, when talking about the outcome of their review, of the sale of the loan. It seems Mr W was asked to make a second call and raise a DSAR with another advisor, instead of EE sorting his request there and then.

I agree that it is likely to have caused Mr W frustration, by having to make a separate call. EE have acknowledged that, during our investigation and have offered to make a payment to Mr W in recognition of the trouble they put him to.

After looking at all the evidence, I agree that it's reasonable for EE to make a payment to Mr W. Having thought carefully about the impact on Mr W and level of that award, I think EE's offer to pay Mr W £50 is fair.

Putting things right

For these reasons, I require EE Limited to pay Mr W £50 for the distress and inconvenience they caused, when they told him he would need to call them back to raise a DSAR.

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 W to accept or reject my decision before 23 October 2025.

Sam Wedderburn
Ombudsman