

## **The complaint**

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

## **What happened**

In March 2024, Mr D says his mobile telephone handset was stolen. So, he called EE and took out a fixed sum loan agreement with them to buy a brand new device. The cash price of the device was £1,028 and after making an advance payment of £200, Mr D was scheduled to make monthly repayments of about £23 over a three year period.

As part of Mr D's discussions with EE, they also provided him with a new airtime services contract. However, EE didn't cancel Mr D's previous airtime service contract, meaning he was paying for the handset loan and two separate airtime agreements.

After Mr D received his bill from EE, he contacted them to raise a query. He says he didn't need two airtime agreements. To resolve things, Mr D wanted to keep his original airtime contract and cancel the more recent plan. EE didn't agree, so Mr D raised a complaint and said he would not have bought the new handset, if EE had told him he'd need to have a second airtime services contract.

In their final response to Mr D's complaint, EE said that the sale of the handset and airtime agreement was carried out correctly. EE also said they didn't offer a deal to Mr D, where he would only have one airtime agreement. Mr D didn't accept EE's response and brought his complaint to us.

One of our investigators looked into Mr D's complaint and found that EE had treated Mr D unfairly. She listened to the sales call between EE and Mr D. She said that when asked, EE's advisor didn't make it clear what the position was with Mr D's airtime agreements. The investigator concluded that EE gave Mr D incorrect information, which led him into entering the fixed sum loan agreement.

To put things right, the investigator said EE should cancel the unused airtime services contract and refund any payments Mr D has made. Although Mr D agreed with the investigator's findings, EE didn't. They didn't think Mr D had specifically asked for his previous airtime agreement to be cancelled, or that he was unaware of what he was agreeing to.

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

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.

Mr D says he contacted EE when he discovered that his handset had been stolen. He says he told EE he wanted a new handset and to cancel his existing airtime services contract. In other words, Mr D wanted to move forward with a new device and airtime plan. On the face of it, I think what Mr D asked for makes sense. His stolen handset contained the SIM card and it's reasonable that he didn't want to continue paying for airtime, which he couldn't use.

The crux of Mr D's complaint is that EE didn't explain to him that he still had his previous airtime plan in place. And had he known that, Mr D says he would not have entered into the fixed sum loan agreement in March 2024.

On the other hand, EE say their sales advisor did make Mr D aware that upon entering the new loan, he would have two airtime plans running at the same time. So, I've gone on to consider the call recording of Mr D's conversation with EE, when he reported his handset as stolen.

Having listened to the entire call from Mr D's conversation with EE, it seems it just concerned a straightforward sale of a loan for the handset and a new airtime agreement. Mr D mentions the theft of his previous handset and the price he'd like to pay for a new device and airtime plan combined.

However, the advisor does allude to the airtime services contract Mr D had. This implies that the advisor thought that plan had come to an end, or had been cancelled. Other than this, the advisor does not mention Mr D's existing airtime plan again. The call recording also reveals where Mr D tried to clarify what he will be paying for and asks questions about his existing airtime plan. But, neither the advisor nor Mr D get to the answer, which created some confusion on both parties.

Furthermore, at no point in the telephone call, did Mr D tell the advisor he would have need for two airtime plans. Overall, I think the recording of the sales call is persuasive and explains what happened. On balance I think Mr D left the conversation without a clear answer as to the fate of his existing airtime service contract.

To help me think further about EE's responsibility towards Mr D, I've looked at the steps he took when he became aware that his initial airtime plan hadn't been cancelled.

EE's records show they sent a statement to Mr D in May 2024, which itemised where Mr D was responsible for two airtime services contracts. Those records also show where Mr D raised his concerns with EE shortly after receiving the statement. This is consistent with the timeline Mr D has outlined during his complaint with us.

So, I think Mr D raised his concerns with EE, at the earliest opportunity from when he became aware that his previous airtime contract wasn't cancelled.

Overall, I think what Mr D has explained is consistent and credible. I find it follows that Mr D wanted a new handset following the theft of his previous device and he would have no need for two airtime contracts. I think it's reasonable that Mr D relied on EE being the experts to help in his circumstances and that they had a responsibility to probe further, about the position of his existing airtime plan.

Having considered all the evidence, I'm persuaded Mr D attempted to talk about his existing airtime plan in the sales call with the advisor. But, the advisor didn't cover that off when pressed by Mr D and gave him the impression that everything was sorted. I also think Mr D contacted EE to raise his concerns at the first reasonable opportunity,

In all the circumstances, I think EE misrepresented the position of Mr D's initial airtime service contract. I'm also persuaded that Mr D would not have entered the fixed sum loan agreement for the new device, if he had been told that the initial airtime plan was to remain in place. So, I think Mr D was induced to take out the loan, due to that misrepresentation and that EE now owe Mr D a remedy.

Ordinarily, the remedy here would be for Mr D to hand back the device and exit the loan agreement at no further cost. This would allow him to start again with EE, or another provider. But, Mr D has explained he is otherwise satisfied with the service from EE. And EE haven't said differently. So, I think it's reasonable that Mr D continues to repay the fixed sum loan as planned.

However, Mr D is still currently left with two airtime services contracts. These types of contracts are not regulated finance agreements. So, I do not make any findings about their performance or the level of service they provide.

But, I can make a finding on Mr D's finance agreement for the handset, and the settlement that follows from any mistakes with how he entered into that loan agreement.

So, I think it's fair and reasonable for EE to allow Mr D to exit the airtime agreement which he hasn't used since March 2024. Because Mr D will not have used that airtime contract, I think it's fair for EE to refund the repayments Mr D has made towards it since March 2024, to the date of settlement of this complaint.

### **Putting things right**

For these reasons, I require EE Limited to:

- Allow Mr D to exit the airtime services contract that he hasn't used since March 2024 and cancel it; and
- Refund any repayments to Mr D that has made towards the unused airtime services contract, from March 2024 to the date of settlement of this complaint.

### **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 D to accept or reject my decision before 27 October 2025.

Sam Wedderburn  
**Ombudsman**