

The complaint

Mr A has complained that EE Limited is holding him liable for credit agreements that were taken out to buy devices.

Mr A has had representation at times but, to keep things simple, I'll refer to Mr A throughout.

What happened

The circumstances of the complaint are well known to the parties so I won't go over everything again in detail. But, to summarise, Mr A entered into two fixed sum loan agreements with EE to buy two devices on 19 November 2024. The devices cost around £1,700 each, and the agreements were due to be paid back with monthly repayments of around £48 over three years.

The devices were delivered on 22 November 2024, although Mr A had said he was told it would be next day delivery. Mr A said the devices were missing from the inner packaging. He said he contacted the police and obtained a crime reference number. Mr A said he was also unwell and the situation was impacting him adversely. He requested a refund of what he'd paid towards the airtime and handsets and cancellation of the agreements.

EE completed its own investigation and thought there was sufficient evidence the devices were delivered so it didn't uphold the complaint. Mr A decided to refer it to the Financial Ombudsman.

One of our investigators looked into things and asked Mr A more about what happened. In summary, he said:

- He was initially told it would be next day delivery so was confused it took a few days for the goods to arrive.
- He was at work on the date of delivery, but he informed his son about the delivery. He said after delivery his son contacted him to say the parcels felt light and the packaging looked tampered with. His son couldn't reach the courier because they'd sped off. Mr A said he returned home to open the parcels to find them empty.
- With regards to the outer packaging bags, he ripped them open and didn't pay attention to the slits on them because the main focus was for him to find why the parcels felt light. He also said he'd worked in a warehouse before and knows how parcels can get damaged.
- He contacted EE straight away.
- He'd continued to make repayments to protect his credit file.
- The phones were gifts for himself and his partner.
- He provided a crime reference number.
- He'd been in contact with Action Fraud and Citizens Advice.
- He had pictures of the empty boxes.
- Other customers had reported similar issues.

Mr A said he no longer had evidence of the outer packaging the devices came in and that the only pictures he had were of the device boxes. Following on from that he said he found photos of the outer packaging with slits on them.

Our investigator didn't think EE's answer was unfair, but Mr A didn't agree. In summary, he reiterated points he made before. He didn't think EE had investigated the complaint properly. He said EE had ignored the fact other customers experienced the same issue. He also found it illogical that EE had blacklisted the phones which suggested it accepted he didn't have the devices. He said he was still being charged for devices he hadn't received, and the parcels were tampered with in a way that couldn't be seen on the delivery photo. He said photos were taken a few days after delivery because his phone was being repaired. He showed a text message from the police on 2 December 2024 with the crime reference number he'd provided. He questioned why EE thought the number wasn't valid.

As the complaint wasn't resolved, it's 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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mr A and EE that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. I need to consider the individual circumstances of Mr A's dispute.

I'm sorry to hear Mr A has been unwell. I can't imagine how he must be feeling, but I thank him for taking the time to bring his complaint.

Mr A bought the devices using regulated fixed sum loan agreements, and our service is able to deal with complaints relating to these sorts of agreements. But events that primarily relate to the airtime agreements are not generally the sorts of complaints the Financial Ombudsman deals with.

Mr A is alleging there was a breach of contract because EE didn't supply the devices he'd paid for, and so it was unfair in holding him liable for the associated credit agreements.

The problem I have is that I'm never going to know with absolute certainty what happened to the devices. The evidence is incomplete. And EE would have faced those same evidential challenges. Where the evidence is incomplete or inconclusive I must reach my decision on the balance of probabilities.

EE has said Mr A raised a similar issue previously in April 2024. So it's very unusual the same sort of thing happened again. But I've considered the merits of what happened in relation to the November 2024 delivery. I appreciate Mr A was concerned the delivery took a couple of days. It's not totally clear why that was but the courier provided details of the tracking journey. EE said there were no visible signs of tampering on the outer packaging based on the photos taken at delivery. I can understand why it said this from reviewing those photos, but I also take on board Mr A's point that he said there were slits in it which were not visible from the angle the photos were taken.

EE didn't think the crime reference number it was originally provided was correct. The crime reference number EE recorded on 27 November 2024 doesn't match the reference number

Mr A showed on a text message from 2 December 2024. It's not clear why that was. But I don't think I need to undertake further investigations on it to reach a view on the complaint.

EE explained that the packages wouldn't have left the warehouse empty due to weight checks that are carried out. It said they would have been subject to manual weight checks before being given to the courier. It said the manual checks aren't recorded but it was satisfied the declared weight meant the package left its warehouse with the device in. I'd like to have seen further evidence, but that sort of evidence isn't always available.

It's curious Mr A initially said he didn't have photos of the outer packaging but later said he did. It's also curious he said his son told him the packages were light and looked like they'd been tampered with but he also said he 'just ripped them open and didn't really pay attention to the tamper' because he was more concerned about the weight. Moreover, the photos Mr A supplied don't look like the packages were ripped open.

The evidence isn't conclusive, but I'd like to have been more certain about what happened. I don't think the fact EE blacklisted the phones means that it accepts they weren't sent. It seems like that's simply the process it follows when it's told devices have been lost or stolen. I don't think that was unfair. But it's also able to carry out a separate investigation.

As I said above, I'll never know for certain what happened. If there are allegations that either the courier or someone at the warehouse has stolen the devices these are very serious allegations. Unlike a court, I'm unable to summon witnesses for cross examination. And EE would have faced those same challenges. So it's difficult to reach firm conclusions in the informal forum that I'm able to investigate this complaint.

Overall, I don't think I've seen enough to safely conclude that EE's answer was unfair. While some evidence isn't available, on balance I think EE reviewed what it had available, and I don't think it was unfair in not cancelling the credit agreements. That's not to say something hasn't gone wrong but, on balance, I don't think it received enough evidence the devices weren't delivered. I should point out that Mr A doesn't have to accept this decision. He's free to pursue the complaint by more formal means such as through the courts, where witnesses may be able to be called and cross examined. While I know it'll disappoint Mr A, I'm not going to direct EE to take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 October 2025.

Simon Wingfield
Ombudsman