

## **The complaint**

Ms M has complained about the quality of a mobile phone supplied under a fixed sum loan agreement with EE Limited.

## **What happened**

Ms M entered into a fixed sum loan agreement with EE in May 2024. She bought a phone which cost around £760 and agreed to make 24 payments of around £32.

Ms M said that she contacted EE in November 2024 because the phone had developed a fault. She said that it kept switching itself off and on again and the battery was draining quickly.

Ms M said she was initially told to take it to a store for a same-day repair, but found the store was closed and no other stores were nearby.

Ms M complained that the phone was not fit for purpose. She said that the phone was less than six months old, and she relied on it heavily. EE explained Ms M could attend another store and offered £50. Ms M arranged for the phone to be collected so it could be inspected and repaired by EE.

Ms M said the phone had an extensive repair including a new internal board, a new battery, a software update and a new SIM case. The phone was given a new IMEI number.

Ms M acknowledged that she had a temporary phone, but it didn't have the same features as the phone she was paying for. She said as a disabled person she needed the functionality of the phone.

When the phone was returned, she said the same fault recurred only a week later. She said the manufacturer advised it should be replaced. She contacted EE to make a further complaint.

EE said that it would offer a further repair. Ms M said she asked EE what further repair could be carried out and they didn't know.

Ms M said that reliance on the temporary phone wasn't helpful on a long-term basis. She said that she relies heavily on functionality, and in particular accessing navigation when driving. She said that she had to cancel her plans at Christmas because of this and would spend the time alone.

EE said that Ms M could either approach the manufacturer or follow its repair process. It said that the repaired device had been in use since it was returned, and it couldn't find any service failings.

An investigator here considered the complaint. She recommended that EE reconsider offering a replacement or allowing rejection, but ultimately said that a further repair was fair. As an agreement between the parties couldn't be reached, the complaint has been passed

to me to make a decision.

I issued a provisional decision which said:

*When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules including Consumer Duty, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.*

*I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. EE is also the supplier of the goods under this type of agreement.*

*The Consumer Rights Act 2015 ("CRA") is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory."*

*The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The other relevant circumstances might include things like whether the phone was new or used, and the cash price.*

*The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the phone of unsatisfactory quality.*

*I think both parties agree that there were faults with the phone, which made it not of satisfactory quality. Considering this was a brand-new phone, and the faults were reported within the first six months, it seems unlikely that needing a complete new internal board and battery is a matter of wear and tear. It suggests something more fundamental was wrong with the phone. I don't have anything which indicates the cause of the fault, as the evidence is not definitive, but on balance I think it wasn't of satisfactory quality when it was supplied. A repair is a suitable remedy under the CRA in this sort of situation. I think that EE did what I would expect and gave Ms M options to have the phone collected, inspected and repaired. This seems to have happened in a reasonable amount of time. But Ms M asserts that the repair has failed.*

*I wrote to Ms M to ask her for some evidence to show that the repair had failed, such as a video demonstrating that the phone didn't work as expected, screenshots to show that she was using an alternative device, or any independent evidence from the manufacturer.*

*Unfortunately, Ms M said that she wasn't able to provide anything as she was focusing on her health. She's asked me to continue with the information that I have. I'm sorry to hear*

*about that and I wish her a speedy recovery.*

*EE provided evidence which appears to show that the repaired device is still in use by its network, and it didn't have any record of its network being used by an alternative temporary device. Based on what I've seen it does appear that the phone has been in use in recent months and has used data. It doesn't seem that the amount of data used is explained by switching the phone on and off to check for software updates, it seems more likely data used by a normally functioning device. I have to note that I'm not an expert in mobile phone diagnostics and somewhat reliant on the evidence put before me.*

*The CRA sets out that (outside the first 30 days) if the phone isn't of satisfactory quality, there's been a repair attempt, and the phone still doesn't conform to the contract, Ms M should have other options such as rejection. The problem here is there isn't sufficient evidence that the repair has failed. So, it's difficult for me to say that EE haven't acted fairly by offering to inspect the phone again. Although I think it could have more clearly explained that if the fault was replicated it could then allow other remedies available in the CRA, such as replacement or the final right to reject. But I don't currently have sufficient evidence to say that Ms M should be allowed to exercise her final right to reject the phone or that EE needs to provide a replacement.*

*But if Ms M is able to provide evidence to EE to show the repair has failed, or if she allows EE to inspect the phone again and she's unhappy with how she's treated, then she might be able to make a further complaint and we may be able to consider that. But for this complaint I need to consider how EE acted based on the evidence presented to it.*

*EE have also indicated that it can work with Ms M if she requires additional support, or she's diagnosed with an illness or disability which might impact her ability to use their service. I've included a link to EE's website information about this here. Ms M appears to have already disclosed that she needed additional support and the nature of her disability, so I think this is something that EE could have already discussed with her, if it needed it recorded explicitly.*

*Had EE supported Ms M, also giving her clear and consistent information about what she needed to do to assist with the diagnosis of the failed repair – I think it would have resulted in a better experience and less overall distress and inconvenience. I think the situation would have likely been resolved much sooner as well. EE have said that Ms M needs to follow their repair process again, but I don't think it made it sufficiently clear that it needed evidence to show that the initial repair had failed, and it was prepared to inspect the phone as part of its process. It could have also explained what Ms M's options were if it agreed the repair had failed, as set out in the CRA.*

*As I've said earlier, a repair is a suitable remedy under the CRA, and EE have done what is expected in repairing the phone. But it's also clear that Ms M has experienced inconvenience, upset and stress because she was supplied with a phone that wasn't of satisfactory quality. I can see that EE offered £50 because Ms M couldn't attend a local store due to its closure. But Ms M was also without the phone for a period of time, and she's explained the impact of the functionality on her day-to-day life.*

*I've thought about compensation for what has happened. I have to make it clear that I don't have sufficient evidence that the repair has failed, so I'm not making an award for that. But I think there was a breach of contract because the phone that was supplied was not of satisfactory quality. I've also explained that EE could have been clearer about what it needed to demonstrate the failed repair and what Ms M's options were. As the expert, it could have been a bit more informative. It didn't have evidence of a post-repair fault, but it could have thought more carefully about the language it used when Ms M reached back out for help.*

*It would be hard to imagine it wasn't inconvenient for Ms M to be without the phone that she was paying for while it was being repaired. I appreciate that she has had access to a replacement phone, but it wasn't like for like and it wasn't provided by EE. The phone has had a major fault and a repair, and it isn't clear that EE got to grips with the additional support Ms M needed, or were able to clearly articulate what her options were in this situation. But I think Ms M has made more than a reasonable effort to sort things out and her personal circumstances and health meant that problems with the phone were an additional worry. So, I think that further compensation of £150 seems a fair way to resolve this complaint.*

Ms M responded and said she was happy with the provisional decision and had no more information to provide. EE didn't respond to the provisional decision by the deadline.

I'll now go on to make my 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.

I'd like to thank Ms M for responding promptly to the provisional decision. As EE Limited didn't respond, I'm making a final decision to afford her the protection of a legally binding decision.

On the basis I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

Therefore, my final decision is the same for the reasons set out in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint in part, and direct EE Limited to pay Ms M £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 July 2025.

Caroline Kirby  
**Ombudsman**