

## **The complaint**

Miss W complains about the balance of a fixed sum loan agreement with EE Limited.

## **What happened**

In September 2024, Miss W took out a fixed sum loan agreement with EE, to pay for a brand new mobile telephone device. The cash price of the device was around £860 and after making an advance payment, the agreement was due to be paid back with thirty six payments of around £23.

The handset was delivered by EE's courier the following day. But, Miss W was at work, so the package was taken in by a neighbour and collected later by Miss W's partner. When Miss W returned home, she says this was the first opportunity for her to open the package.

Miss W says she was only at home for a short space of time, so didn't pay too much attention to the handset, other than trying to switch it on. However, Miss W says the device had no charge and because she didn't have the time to sort it out, she decided to leave things until the next day.

Once Miss W had checked the handset the day after the delivery, she says she discovered it wasn't the make of device she had ordered. And after speaking to EE, she found out it was a replica handset. In other words, it wasn't a functioning mobile telephone device. So, she complained to EE.

In their final response to Miss W's complaint, EE said a device matching the International Mobile Equipment Identity (IMEI) number was packed and shipped to Miss W using a tamper proof package. They also said the courier's delivery photograph didn't show any signs of the package being opened, when it was given to Miss W's neighbour.

Overall, EE said the correct handset was delivered to Miss W and held her responsible for the repayments due under the fixed sum loan agreement. Miss W didn't agree and brought her complaint to this service.

One of our investigators looked into Miss W's case and found that EE had treated Miss W unfairly. He was persuaded that EE had made an error at their warehouse and sent the wrong handset to Miss W.

So, the investigator asked EE to remove Miss W from the fixed sum loan agreement and refund the repayments she had made with interest added. The investigator also said EE should remove the loan account from the details held about Miss W with credit reference agencies.

Miss W accepted the investigator's findings, but EE didn't. They said the package delivered to Miss W hadn't been tampered with and that they were confident the correct device had left their warehouse.

The investigator didn't change his conclusions, so Miss 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.

Miss 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 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*

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.

EE's courier has provided a photograph of the package being handed to Miss W's neighbour. I can see from the photograph that the package seems to be intact, free of any damage and without signs of it being opened. I can also see where the delivery labels look undisturbed.

In her evidence to us and EE, Miss W supports what the courier's photograph appears to show. She said that although she wasn't specifically looking for any signs of tampering, she didn't see anything out of the ordinary with the condition of the package, when she collected it from her neighbour.

Having thought about what all parties say about the package, I agree with EE, in that it's likely the package wasn't intercepted and opened, after leaving their warehouse and arriving at Miss W's home address. So, I've thought about the evidence we have to show what was placed within the package, before it was handed to the courier.

In their submissions to us, EE have explained that a device with an IMEI number matching the device sent to Miss W, was placed into their tamper proof package. They say that device is no longer at their warehouse. EE also say they have looked at CCTV recordings of the packing process for Miss W's handset. They continued to say that although inconclusive, it shows a device being packaged in line with their process.

EE haven't provided the CCTV recording to us, or any images showing what make of device, or IMEI number that was placed into the package. Although helpful, I find I cannot place significant weight on the commentary of the EE's CCTV recordings.

On the other hand, Miss W has provided us with several photographs of the items she says was inside the package. I can see from the various angles Miss W has taken the photographs from, that the item looks like a replica mobile telephone handset. EE have also looked at Miss W's photographs and confirmed that the item Miss W took images of is a replica of a make, different to what was ordered.

So, I'm persuaded that Miss W's photographs show a device that is different to the handset financed using the fixed sum loan.

Furthermore, during her complaint Miss W says she was told by her case handler at EE, that the warehouse that processed her order, also has a stock of replica handsets for most manufacturers. Within their records, I haven't seen a note to say when Miss W was told this. But, I'm also aware that EE haven't disputed what Miss W says, when asked for comment by the investigator.

It then follows that there was a possibility for the wrong item to have been placed inside the package at EE's warehouse.

Having considered everything, I think the evidence supports Miss W's view that she didn't receive what she had ordered from EE. However, to help me decide if it's fair for EE to hold Miss W responsible for the balance of the fixed sum loan, I've also considered the steps taken by Miss W, when she first reported her concerns to EE.

#### *Miss W's actions following the delivery of the package*

Miss W has described what happened on the day of the delivery from EE. She has given her reasons for why her neighbour took in the package and why she didn't have time to fully check the device when she returned home from work. I've thought carefully about those reasons and the dates involved. Having done so, I think Miss W's recollection of events matches with EE's records, for when she first raised her concerns.

Additionally, I can see from the documents provided by both sides, where Miss W promptly provided all that she was asked, from the start of EE's investigation until she received their final response. And all that Miss W has said has remained stable throughout her case with EE and this service.

EE have explained that the handset with the IMEI number matching to Miss W's order, hasn't been used on a UK based network and is blocked from doing so. Miss W's actions support this, where she has shown that she continues to use her previous device. Although I acknowledge EE's comments about a possible sale and use abroad, I can see where Miss W has reported her concerns to the police. While I'm aware this point isn't conclusive to Miss W's case, I think it shows how serious she has taken what has happened.

I've also seen from EE's records where Miss W has kept the repayments to the fixed sum loan up to date. Miss W says she has done this to avoid any adverse information from being recorded on her credit file. And it doesn't show that she accepts the correct handset was delivered to her. Having thought carefully about this, I'm persuaded by what Miss W says and she has maintained this position throughout her complaint with EE.

Overall, I think Miss W has been very consistent when explaining the circumstances and presenting her evidence to EE and our service. I also find Miss W's explanations and evidence credible. I'm persuaded that the package wasn't opened by any party between it leaving EE's warehouse and arriving at Miss W's home address. But, I think it's reasonable to place more weight on what Miss W says about the item she says she received.

In the very specific circumstances of this complaint and on balance, I think EE sent Miss W the incorrect item in September 2024. So, I think EE have breached the contract they have with Miss W. Where there's been a breach of contract, the CRA says that a customer has the right to ask for a price reduction or to reject the goods and claim a refund, if a repair or replacement doesn't work.

I've concluded that EE breached their contract with Miss W and that a replacement wasn't offered. It then follows that Miss W is now entitled to reject the goods EE sent to her and claim a refund. So, I've gone on to consider a fair way to settle Miss W's complaint.

## *Summary*

Because I think Miss W is able to reject the item EE sent to her, I think EE should allow Miss W to exit the fixed sum loan agreement with nothing further for her to pay. I also think it would be unfair for Miss W to keep the item EE sent to her. So, I think EE should arrange for Miss W to return the item at no extra cost to her.

I've also found that Miss W hasn't had any use of the item sent to her, or the handset EE says was delivered. So, I think it's fair and reasonable for EE to refund all the repayments made by Miss W towards the fixed sum loan agreement.

Miss W has been without the use of the funds from the repayments she 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 Miss W to suffer from any adverse information EE may have recorded with credit reference agencies. And because I don't think Miss W 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 Miss W's name.

## **Putting things right**

For these reasons, I require EE Limited to:

1. Allow Miss W to exit the fixed sum loan agreement and return the item she received from EE, at no additional cost to her;
2. Remove any information about the fixed sum loan agreement, from the details held with credit reference agencies;
3. Refund all the repayments to Miss W, 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 Miss W 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 Miss W, they should provide Miss W with a tax deduction certificate if she asks for one, so she 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 Miss W to accept or reject my decision before 1 August 2025.

Sam Wedderburn  
**Ombudsman**