

The complaint

Mr M has complained that EE Limited is holding him liable for a credit agreement that was taken out to buy a device.

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 M ordered a new phone from EE on 29 November 2024 to be paid for under an EE credit agreement he'd signed. The phone cost around £866 and the agreement was to be paid back with payments of around £25 for three years. Mr M said he received a parcel on 1 December 2024 in the afternoon. He said the parcel felt light, but he didn't think anything of it. He said when he opened the parcel it contained a razor and not a new device. He said he wondered if this was a free gift and whether the device would arrive later in the week, but he thought it was strange and so tried to contact EE. He said he didn't get a response on the chat function so contacted EE on 2 December 2024 and reported the issue.

EE didn't uphold the complaint. It said it carried out an investigation and that the parcel didn't look like it had been tampered with and that it wouldn't have left the warehouse empty due to weight checks. Mr M referred his complaint to the Financial Ombudsman.

One of our investigators didn't uphold the complaint but Mr M didn't agree. He said he had several questions for EE on whether this sort of thing had happened before and how often. He said the packaging could have been tampered with between the warehouse and delivery. He said someone could have simply used similar packaging with a new printed label on it after switching the goods. He said when he received the package he didn't know it was the device because he didn't expect it to arrive so quickly. He said if the courier had told him it was the device he'd have opened the parcel while they were still there. He said he'd been a customer of EE's for many years and had not complained before.

As things weren't resolved, the complaint has 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 M 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.

Mr M bought the device using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements.

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

The problem I have is that I'm never going to know what happened to the device. 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.

On the one hand, Mr M has been consistent in his testimony. The device wasn't the highest value for that particular type of device. And of course it's possible the device could have been switched for a razor at the warehouse or by the courier.

On the other hand, EE explained that the packages wouldn't have left the warehouse empty due to weight checks that are carried out. It said employees are checked on entry and exit and it highlighted there was no obvious signs of tampering on the package. I contacted it to ask if the photo Mr M provided showed whether the packaging was the same as EE uses to dispatch goods, and EE has said it was consistent with its packaging. It said the weight of the package was as expected as well. EE's notes from the call Mr M made the morning after delivery said the *box hadn't been tampered or damaged as had to remove seal*. Mr M said he didn't expect the device to be delivered on 1 December 2024 and that he'd have done something different if he'd known (because the parcel was light in his opinion). But I'm conscious it looks like, on balance, the courier sent a text in the afternoon that the goods were out for delivery. So arguably he ought to have known, although it looks like they were accepted by someone with a different first name to Mr M.

The evidence isn't conclusive, but I'd like to have been more certain about what happened. It's possible that someone at the warehouse switched the device for the razor and was able to bypass the security. It's possible that a courier was able to switch the device and repackage it in a different but similar looking bag with a reprinted label. But I can understand why EE didn't think either of those things were the most likely thing to have happened.

I'll never know for certain what happened. If there are allegations that either the courier or someone at the warehouse has stolen the device these are very serious allegations. Unlike a court, I'm unable to summon witnesses for cross examination. And EE would have faced similar hurdles. 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. To be clear, that's not to say something definitely hasn't gone wrong but, on balance, I don't think it received enough evidence the device wasn't delivered. I should point out that Mr M 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 M, 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 M to accept or reject my decision before 8 January 2026.

Simon Wingfield

Ombudsman