

The complaint

Mr K has complained about the quality of a mobile phone supplied under a fixed sum loan agreement with EE Limited trading as EE.

What happened

Both parties are familiar with the events of this complaint, so I've summarised these here.

Mr K entered into a fixed sum loan agreement with EE in July 2022. He bought a phone which cost around £1,060 and agreed to pay an upfront payment of around £30 followed by 36 payments of around £28.

Mr K said that the original phone was replaced by EE because of battery issues in July 2023. He said it was replaced with a later model, but the replacement also had battery issues, and it would lose power during the day. He settled the agreement in June 2024.

EE sent the phone off to be inspected and repaired, but Mr K was told that the battery was checked and there wasn't a fault. This happened a further three times and he maintained he was told it would be repaired or replaced. He said the battery capacity reduced to 88%.

Mr K complained to EE in October 2024. He said the phone had been sent to the repair centre on several occasions and he was unhappy that the fault couldn't be replicated, and that he'd been told he would get a repair or replacement.

EE said that the fault couldn't be replicated and ultimately it didn't uphold his complaint. Mr K referred his complaint to the Financial Ombudsman. An investigator here considered the complaint. She didn't uphold the complaint and didn't recommend EE take any further action.

Mr K disagreed and asked for an ombudsman to make a final decision. In summary he said:

- The phone was tested but had only had a software update.
- The phone didn't hold charge, and the battery life was 88%.
- He was told he was entitled to a replacement battery or phone.
- He was stuck with a phone he couldn't use.
- He'd reported the issue within the warranty period
- He'd taken all the steps he was asked to do but felt let down

The complaint has 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.

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When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules, 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, free from minor defects, safety, and durability.

Mr K was supplied with a brand-new phone, so I'd expect it to be free from faults for a considerable time and also to be sufficiently durable.

Essentially Mr K's complaint is that EE Mobile has breached its contract with him by supplying goods that are inherently faulty.

The CRA says that goods must conform to the contract within the first six months. So, if the goods are found to be faulty within the first six months; it's assumed that the fault was present when the goods were supplied, unless there's compelling evidence to suggest otherwise. Outside of those six months, it's for Mr K to show that the goods were not of satisfactory quality.

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.

Mr K's original phone was replaced due to battery issues. He's said this isn't relevant to his latest complaint. But I mention it here as context to explain how his latest phone was supplied. I don't have a lot of information about the problem with the original phone, but I think it's reasonable to assume that EE accepted liability because the phone was faulty. It provided a brand-new replacement along with £150. A replacement is a suitable remedy

under the CRA, although it would normally be a like for like replacement instead of brand-new.

But Mr K hasn't been able to provide sufficient evidence that there is a fault with the replacement phone that he's been supplied. So as a starting point I have a lack of evidence here. Mr K could have supplied evidence in a number of ways but usually some independent evidence from a technician, such as a phone repairer or the manufacturer might be suitable. Because there is a lack of evidence of the fault with the phone, I'm unable to make a finding that the phone wasn't of satisfactory quality when it was supplied.

The issue here is not straightforward as it likely requires an expert opinion on what has caused the issue Mr K is experiencing. The expert that saw the phone on each occasion hasn't been able to replicate the fault. I can understand Mr K's frustration, but I have to keep in mind that I am unable to compel witnesses or investigate in the manner a court might.

I understand that Mr K said that he was told he'd get a repair or a replacement phone. I've no reason to doubt what he's told me. But I find it likely that EE might have told him that it would repair or replace the phone if it was found to be inherently faulty. As no fault could be found then I don't think EE's stance is unreasonable.

I'm sorry to disappoint Mr K but I don't find I have the grounds to direct EE to repair or replace the goods. Taking into account that Mr K reported the latest fault around 24 months after the supply of the original device under the finance agreement; I don't think it would be fair to expect EE to repair or replace the device considering its obligations under the relevant legislation. So, I don't require it to do anything further in relation to the loan agreement Mr K had with it.

If Mr K is able to get further evidence which supports his assertion that the goods are inherently faulty, such as a diagnostic from the manufacturer, then he'll be able to supply this new material evidence to EE to consider afresh.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 October 2025.

Caroline Kirby
Ombudsman