

The complaint

Mr P complains that he did not receive goods in respect of a credit agreement he took out with EE Limited trading as EE ('EE').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr P took out a fixed sum loan with EE for a phone on 14 February 2025. However, he says the phone wasn't in the box which was delivered on 15 February 2025.

EE investigated and was satisfied the phone was delivered to Mr P.

Mr P escalated a complaint about this matter to this service. Our investigator upheld it but EE disagreed. As a result the matter has been escalated to me for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

The agreement in this case is a regulated consumer credit agreement. As such, this service can consider complaints relating to it. Here I consider the subject matter of this complaint is essentially whether it is fair and reasonable for EE to seek payment under the credit agreement for goods which Mr P says were not supplied. After considering this matter carefully I don't think it is fair for EE to do so. I will explain why.

Mr P says the phone did not arrive – but he does not dispute the box arrived. This makes the matter more complex – as usual parcel tracking covers whether the box was received, and usually not the contents. With this in mind – my role here is not to definitively say whether the phone was in the box delivered to Mr P. Without being there when the box was physically opened I cannot say for certain. However, I can make an on balance finding based on the evidence presented by the parties.

In this case I consider Mr P has provided:

- Credible testimony about what happened on delivery day – in which he explains that his mother took in the box while he was at work but noticed it was unusually light. His mother later opened the box and found it contained the delivery note, screen protector and the phone box unsealed with the phone missing from it. Mr P says when he returned from work later that day he was able to follow this up with EE.
- A video his mother sent to him just after she opened the box where she shows what the package contained – and there being no phone inside.

- Evidence to show that shortly after EE refused to replace the phone Mr P took out another agreement for the same phone with a different provider – this is something he was unlikely to have done had he received his order.

I also note here that EE:

- Has provided evidence to show that Mr P's mother reported the matter to it on delivery day – and then Mr P did the same later on when he returned from work – consistent with Mr P's testimony.
- Has confirmed that the phone was switched on and activated a couple of days after the delivery date – however, it said it can't confirm the location this was in or what account was used to activate it. I think this data would have been important in justifying its decision that Mr P had likely received the phone - but we don't have it. I also note that the phone being switched on a couple of days after the delivery date might suggest that Mr P was not the one who did this.
- Has provided a single perspective low resolution picture of the box being delivered – which is not persuasive (despite Mr P suggesting the box was intact on delivery) in showing that the integrity of it was not compromised in some way previously.
- Has not produced persuasive evidence to show the phone was likely in the box during the packaging stage or what verification checks are made in the warehouse to ensure the weight printed on the mailing label is an accurate reflection of its contents.
- Failed to produce a credible audit trail of weight checks of the box during its journey with the courier – which would go some way to showing the phone was likely present in the box when it left the warehouse and shortly before it was handed to Mr P.

I want to emphasise that one of the key issues here is the lack of supporting information which EE has provided to show the goods were likely not intercepted before the box was delivered (either at the packaging stage or otherwise). I think EE is reasonably in a position to provide credible audit information in relation to Mr P's package to back up its claim that Mr P likely received the phone. As EE has not done this then as a decision maker I have less persuasive information to conclude it more likely than not the phone was in the box delivered. Considering the value of the goods here I don't think it is unreasonable to expect EE to provide more here to justify its decision.

Another key factor to keep in mind here is that our investigator has come to a similar conclusion to me but EE has provided no substantive comments or evidence in response. This lack of persuasive rebuttal to our investigator's view factors into my reasoning here – and considering what I have already said above I conclude in the particular circumstances here it would not be fair and reasonable for EE to seek repayment from Mr P under the fixed sum loan agreement for the phone.

Putting things right

As set out below.

My final decision

I uphold this complaint and direct EE Limited to:

- Cancel the loan at no cost to Mr P – ensuring any associated adverse information (if any) is removed from his credit file;
- refund any payments Mr P has made to the agreement to date; and
- add 8% simple yearly interest to any refunds calculated from the date of payment to the date of settlement.

If EE considers it should deduct tax from the interest element of my award it should provide Mr P with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 March 2026.

Mark Lancod
Ombudsman