

The complaint

Mr H complains that EE Limited is holding him liable under a fixed sum loan agreement for an iPhone 16 he didn't receive.

What happened

On 26 March 2025 Mr H ordered an iPhone 16 and entered into a fixed sum loan agreement with EE. Mr H agreed to pay monthly instalments of £34.65 over 36 months.

The package was delivered by courier on 30 March 2025, but Mr H noticed that the box felt lighter than it should and on inspection he found that the box had been opened and glued together again.

Mr H contacted EE straightaway with his concerns. He also reported the matter to the police.

EE issued a final response on 5 April 2025. It said it wasn't upholding the complaint because the parcel had been weighed before leaving the warehouse and the delivery image from the courier didn't show that the box had been tampered with.

Mr H wasn't happy with the response and brought his complaint to this service.

Our investigator upheld the complaint. They said that having considered all the available information, on balance they didn't think the device was in the package when Mr H took delivery of it. The investigator said the fixed sum loan agreement should be unwound.

EE didn't respond to the investigator's opinion, so I've been asked to review the complaint.

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.

In order to uphold this complaint, I need to be satisfied – on the balance of probabilities – that Mr H didn't receive the iPhone.

EE Limited is responsible for the delivery of the item, which means that if an issue arises whilst the item is with EE's nominated courier, EE is responsible.

EE has stated that the item was sent in a tamper proof box. The courier has provided photos of the package at the time of delivery to Mr H. Mr H received 4 packages from the courier that day, and it's difficult to see the condition of the box containing the iPhone clearly. I can't see the sides or underside of the box, so it isn't possible to say whether those parts of the box have been tampered with. But from what I can see of the top side of the package, the seal looks intact.

I've also looked at the evidence provided by Mr H. Mr H says he noticed that the package felt too light for an iPhone and when he inspected the box, he found that one of the seals was slightly open and there was excess glue around it. Because of this, Mr H didn't open the

box but instead contacted EE straightaway and also reported the matter to the police. Mr H has provided photos of the box and a copy of his crime reference letter.

Based on what I've seen, Mr H's photos support what he says about the seal looking as if it may have been tampered with and glued together again.

EE has rejected Mr H's complaint on the grounds that the package was weighed when it left the warehouse and that based on the photos provided by the courier the box doesn't appear to have been tampered with.

EE hasn't provided any evidence to show the condition of the package as it went on its journey from EE to the courier.

Mr H has acted in accordance with the instructions on the package, which advise the recipient to reject the package if it is damaged. Mr H says wasn't able to reject the package at the point when the courier delivered it as he received four packages that day and didn't have time to examine each parcel before the courier left. I find this a plausible explanation.

I'm persuaded that Mr H's actions in contacting EE and reporting the matter to the police on the day the package was delivered was consistent with what he thought was a package which had been tampered with. It's also relevant that Mr H had ordered three other iPhones from EE all of which had been delivered and received by Mr H without issue earlier that week.

On balance, and whilst I can't say exactly what happened to the package, based on the balance of probability I don't think Mr H received the item he ordered from EE. I don't think he should be liable under the fixed sum loan agreement for a phone he hasn't received.

Putting things right

To put things right EE Limited must:

End the agreement with nothing further to pay

Refund any payments Mr H has made towards the agreement together with 8% simple interest per year for each refund from the date of payment to the date of settlement

Remove the agreement from Mr H's credit file

My final decision

My final decision is that I uphold the complaint. EE Limited must take the steps I've set out above.

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

Emma Davy
Ombudsman