

## **The complaint**

Ms M has complained that EE Limited (“EE”) is holding her liable for credit agreements she took out to buy new phones. Ms M says she received different phones to the ones she’d ordered.

## **What happened**

Ms M ordered two new phones using fixed sum loan agreements from EE on 18 November 2024.

The first phone (“Phone 1”) cost £572 and the agreement was to be paid back over two years, with 24 payments of around £24.

The second phone (“Phone 2”) cost around £489 and the agreement was also to be paid back over two years, with 24 payments of around £20.

Ms M says she received a package on 20 November 2024, but did not open the package at the time as Phone 2 was a Christmas present for her son, and Phone 1 was to be used by Ms M after her son had received her Christmas present.

Ms M then had to move out of her home temporarily. So Ms M was not at home during Christmas, when her son opened the package which should have contained Phone 2. Instead of the expected phone model which had been ordered, a newer model of the phone was present in its place.

The package containing Phone 1 remained unopened until January 2025, when Ms M returned home and opened the package to find a different brand of phone than the Phone 1 she had ordered. At some point later Ms M found out Phone 1 and Phone 2 were not legitimate.

Ms M contacted EE to explain what had happened and EE issued a final response in February 2025 explaining that the phones Ms M had said she had wrongly been sent were not supplied by EE, and so EE did not uphold Ms M’s complaint.

Ms M brought her complaint to the Financial Ombudsman and our investigator did not uphold the complaint. Unhappy with the investigator’s view this has been passed to me for a 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.

I should first point out that where the evidence is incomplete or inconclusive, 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. And I'm required to resolve the complaint quickly and informally.

EE is seeking payment under two regulated fixed sum loan agreements, and our service is able to consider complaints relating to these sorts of agreements. From what I can see, EE is the creditor as well as the supplier here. So I think I can consider Ms M's claim that EE breached the contract by not supplying the agreed goods to her. And I can consider whether EE is acting fairly in asking her to pay where there's a dispute about the delivery of the goods. The Consumer Rights Act 2015 broadly implies terms into the contract that the goods must be delivered into the physical possession of the consumer.

In reviewing the complaint EE have provided evidence from the courier that two packages were received by Ms M in November 2024. A photo from the delivery shows two packages being delivered to a property, with the door of the property being open to show they were handed over. The delivery history confirms a PIN was provided by Ms M for the packages. So I'm satisfied two packages from EE were delivered to Ms M's address.

However, Ms M doesn't dispute that she received packages from EE in November 2024, but instead disputes what was contained within the packages she received, so I've considered this further.

Ms M states that she feels the packages she received from EE were tampered with and resealed before being delivered to her. She feels the photo provided by the courier shows the packaging bags were folded over several times at the top, which she feels suggests they had been tampered with before reaching her.

The issue here is not straightforward as it involves goods effectively going missing or being replaced. And underlying this, if Ms M is alleging the courier, or someone in the warehouse has tampered with the goods, this is a very serious allegation. In coming to my findings I have to keep in mind that I am unable to compel witnesses or investigate in the manner a court or other authorities might be able to. These are the same evidential challenges that EE would have faced.

I've looked in detail at the photo provided by the courier, and I'm not persuaded it shows the packages were tampered with. I say this because I can't see any tears in the packaging bags, and the top of the packaging bags being folded over wouldn't automatically mean the package had been tampered with and could just have been the technique used to seal the package on this occasion.

In any event, I think it's reasonable to say that if the packaging bags themselves appeared noticeably tampered with at the point they were delivered to Ms M, I would have expected this to have been raised by Ms M immediately upon receiving the packages. I say this even if it was not Ms M's original intention to immediately open and use the phones upon their delivery. So I don't agree there's clear photographic evidence that the packages had been tampered with here.

So unfortunately, there's a lack of evidence. On the one hand, EE has said the IMEI codes show that they didn't supply the phones that Ms M has said were actually delivered to her. It says the right phones were sent, that there's no clear sign of the delivery packaging having been tampered with, and that there was a considerable amount of time between delivery and the issue being raised, which would make it harder to investigate what happened.

On the other hand Ms M has given understandable and plausible reasons for the delay in contacting EE about these issues, has pointed to there being no benefit to her from what has happened here, and I note the phones involved in this dispute not the highest value out there.

I've taken onboard everything Ms M has said here, and I'm sorry to hear about the difficult circumstances that led to her having to leave her home for a period of just under two months shortly after the packages were received.

Whilst I'm sympathetic to Ms M's circumstances, I do still have to consider that Ms M was not in possession of the packages for a considerable period of time following their delivery. This fact makes it much more difficult to know what happened with those packages after they were delivered. It is important to note that I am not saying definitely what happened here or indicating that Ms M did something wrong. There are of course several possibilities of what could have happened, including the phones being switched by the courier, or by someone at the supplier's warehouse. However the packages were left unopened, out of Ms M's possession, for some time. The longer it went on, the harder it would've been to investigate and the more possibilities for what could have happened come about.

Rather than definitively deciding if the correct phones were sent to Ms M, my decision is about whether EE is acting fairly in holding Ms M responsible for repaying these two credit agreements based on the evidence it had available to it. And I don't think it has acted unfairly considering:

- the nature of the dispute, and the defence and serious allegations made by Ms M
- the length of time from the date of delivery of the packages, and when the issue was raised with EE, and the fact the packages were out of Ms M's possession during this period of time
- had the packages been obviously tampered with, EE would've expected this to have been raised straight away.

Overall, EE wasn't unreasonable in concluding the correct phones were sent to Ms M and I therefore don't think EE has acted unfairly. I accept it is of course possible that the packages were tampered with and in making this finding I'm not suggesting that Ms M has lied about not receiving the correct phones.

Instead, I don't consider EE was provided with enough persuasive evidence to conclude it's more likely the wrong phones were supplied to Ms M.

I know this will come as a disappointment to Ms M and I am sorry to hear about the stress this situation has caused her. However, my role here is limited to informal dispute resolution looking at EE's actions here.

### **My final decision**

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 14 January 2026.

Jonathan Wistow  
**Ombudsman**