

The complaint

Mr B complained about the condition of a phone that was supplied under a fixed sum loan agreement by EE Limited.

What happened

The events of this complaint are well known to both parties, so I'll only briefly summarise them here. Mr B entered into a fixed sum loan agreement with EE for the supply of a new mobile phone in August 2024. The cash price of the phone was around £760. Mr B also entered into a separate service agreement for airtime.

Mr B said he tried to set up his new phone but was unable to transfer data from his old device. He visited another store, but they were unable to help him, so he visited the manufacturer and asked for support.

Mr B said that the manufacturer had told him that the phone was stolen and had a marker restricting its use added before he had acquired it. He visited the store that he bought the phone from but said it referred him back to the manufacturer and nobody wanted to take responsibility.

Mr B said that he was left with a phone that did not work, but he was still paying £21.04 a month. He complained to EE stating that he wanted to end the agreement and move to another provider.

EE accepted that the phone had been reported as stolen before it was supplied to Mr B. It said that the restriction had been removed, and it was not as a result of a data breach, it had been recorded due to an error. EE said it was unable to allow Mr B to hand back the phone and end the agreement. But it said it would provide credit to the airtime account. It issued a final response on this basis in February 2025.

Mr B referred his complaint to the Financial Ombudsman. An investigator here considered the complaint. She said that Mr B had been supplied a phone that didn't conform to the contract, as it was an implied term that the goods should be of satisfactory quality, fit for their intended purpose and as described. She thought that Mr B had asserted his short term right to reject, and he should be allowed to reject the phone, with a refund of his payments plus simple interest and £100 compensation. She explained to Mr B that we couldn't consider a complaint about his associated airtime contract which he'd initially continued to use with another device, or direct EE to let him retain his telephone number.

Mr B accepted our investigator's recommendations. EE did not respond by the deadline, but when pressed it said it didn't respond because it wanted an ombudsman to make a decision.

EE didn't provide anything further about why it didn't agree, so the complaint has been passed to me to make 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules including Consumer Duty, guidance and standards, codes of practice and (where appropriate) what I consider having 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.

I'm making a final decision on this complaint because EE wanted the complaint to be referred to an ombudsman. But EE didn't engage with our investigator after she issued her opinion or provide any material explanation about why it disagrees and wants a decision.

Having reviewed all the evidence from both parties I broadly agree with our investigator for broadly the same reasons. As our investigator has provided a comprehensive view, Mr B has agreed, and I don't have any rebuttal from EE, I will only address what I think are the key matters.

Where the evidence is incomplete or 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, and responsible for a complaint about whether the goods conform to the contract.

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 CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, and safety.

The phone was brand new when it was supplied and cost around £760. So, I don't think a reasonable person would have expected it to have any issues present when it was supplied and they would expect it could be used as intended. The phone wasn't functioning due to the restriction which had been placed by EE, albeit it says that happened due to an error in its process.

The CRA sets out that Mr B can exercise his short term right to reject in the first 30 days if the goods do not conform to the contract. I don't think it is in dispute that Mr B contacted

EE in time, but EE have said he doesn't have the right to return the phone as it was outside the 14-day period set out in the terms. I think it is key to point out that Mr B said he tried to get support from the stores in the 14-day period, and it was only because he had to resort to calling customer services that he was outside that timeframe. But in any case, this isn't a matter of someone changing his mind about the goods, I think everyone accepts that the phone didn't work as it should. So, EE needed to consider his rights under the CRA.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer, must be taken not to have conformed to it on that day. Unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

In this case I think it has been accepted there were problems inherent in the phone and as such they would have been present at the point of supply. So, I'm satisfied that the phone was not fit for its intended purpose at the point of supply.

Mr B attempted to exercise his short term right to reject. And even though EE says that removing the restriction will have brought the goods back to conforming to the contract I can't ignore what his rights were in this situation. I can also understand his concerns that the device was restricted at all, although I've seen no evidence of a data breach. He's maintained that he still wants to exercise his short term right to reject, I don't think it's fair that he hasn't been allowed to do that. So, EE need to do something to put things right and Mr B should have been and should now be able to reject the phone.

Putting things right

Like our investigator I think EE should arrange for Mr B to return the phone at no cost to him. It should end the contract with nothing further to pay. EE should refund Mr B's payments with simple annual interest from the date of payment to the date of settlement. Mr B has told us that he hasn't used the phone, and I've seen nothing to the contrary from EE. Any adverse information reported to the credit reference agencies should be removed.

EE appears to acknowledge that Mr B raised a complaint on 16 September 2024. But it closed that complaint when it couldn't contact him. It might have been more appropriate for EE to communicate its answer in writing if it couldn't reach Mr B by phone. But Mr B had to wait until February 2025 to get a final response, after getting in touch with EE again. It seems that had EE supported Mr B, also giving him clear and consistent information about his complaint and its stance – I think it would have resulted in a better experience and less overall distress and inconvenience. I think the situation would have likely been resolved much sooner as well.

No amount of money can change what's happened. But the compensation I'm recommending is the same as our investigator, and is in line with what's awarded where the impact of the mistake has caused distress, upset and worry – and/or inconvenience that needs a reasonable effort to sort out. Mr B has also agreed with our investigator, and I need to be quick and informal. So, I think £100 compensation is suitable in the circumstances.

Considering all the circumstances, and the other refunds that I've set out, plus out of pocket interest, I think the steps I've set out are a fair and reasonable way to resolve the complaint.

My final decision

My final decision is that I uphold the complaint and direct EE limited to:

- Allow Mr B to return the phone at no cost to him.
- End the credit agreement with nothing further to pay.
- Refund any payments made under the agreement.
- Pay 8% simple annual interest on any refunds from the date of payment to the date of settlement*
- Pay £100 compensation for the inconvenience caused.
- Remove any adverse information reported to the credit reference agencies.

* If EE Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 December 2025.

Caroline Kirby
Ombudsman