

The complaint

Miss H has complained EE Limited (EE) acted unfairly when declining her request to reject a phone.

What happened

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

In September 2024, Miss H bought a new phone from EE for around £900. She paid £100 as an upfront payment and borrowed the rest of the money from EE by means of a new fixed sum loan agreement. Miss H agreed to repay the loan by paying EE 35 monthly instalments of £21.94 and a final payment of £22.10.

In February 2025, Miss H contacted EE to make them aware the device had developed a fault, saying a crease had appeared where the phone folded and the LED display had stopped working from the crease and this was continuing to spread across the screen – which was significantly impairing her use of the phone. EE arranged for the phone to be repaired free of charge. The repair report says the repair involved the replacement of the screen, the rear case, an internal component and a part that holds internal parts in place.

It's my understanding Miss H was then able to use the phone without issue for around the next three months. But in May 2025, Miss H contacted EE to make them aware the phone had developed what she thought was the same fault. EE offered to carry out a further repair, but Miss H declined this offer. As a gesture of goodwill EE then offered a 'good as new' replacement, but Miss H also declined this offer, saying she'd lost all confidence in that make and model. Miss H said she either wanted to return the phone and for the credit agreement to be cancelled or for EE to replace her phone with an equivalent value phone made by a different manufacturer.

EE declined to do as Miss H asked, so she complained to EE about the issues she'd experienced with her phone and because the repair had led to the loss of important data and sentimental photographs - as the phone was reset.

EE didn't uphold Miss H's complaint. They maintained their offer to either repair or replace the phone comprised of a fair and reasonable resolution, although EE withdrew this offer at a later date. EE also said the repair booking documents Miss H received warned that she should back-up the phone before she gave it to them.

Unhappy with EE's response, Miss H asked the Financial Ombudsman to consider the matter saying she wanted to reject the phone and she should also be compensated for the distress and inconvenience.

Our Investigator upheld the complaint. In summary, they believed EE should have explained to Miss H that for them to agree to Miss H's request to reject the phone (under the Consumer Rights Act 2015 (CRA)), the cause of the current fault would need to be

established. But because of the poor communication by EE, it meant the phone wasn't inspected at the time. The Investigator also believed it was unlikely the cause of the fault could now be fairly determined due to the passage of time and because Miss H had continued to use the phone. However, the Investigator did think EE had made it sufficiently clear to Miss H that the repair could lead to loss of data and it was for Miss H to have ensured the phone was backed up.

To put things right, the Investigator recommended that EE, end the agreement with nothing further to pay, arrange for Miss H to return the device at no cost to her, remove any negative information from Miss H's credit file, refund the £100 deposit and provide a refund of 30% of the payments Miss H had paid from 6 May 2025 with EE adding interest.

Miss H responded to the Investigator's findings by saying that while she was '*happy with the decision*' she '*was hoping for more back for what I've paid towards the phone. Such as a full refund from what I had paid after making the complaint*'.

EE responded by saying, '*we are unable to accept this and request for it to be reviewed by an Ombudsman*'. The Investigator asked EE to explain why they didn't agree with what she'd said. But to date, EE hasn't done so. However, Miss H has informed us that since 5 December 2025 she's had to stop using the phone saying, '*the volume buttons have gotten stiff*'. The Investigator responded by notifying both parties that in addition to how she had previously recommended the complaint be resolved, she thought it would be fair for EE to also refund the entirety of the monthly instalments Miss H had paid for the credit agreement since the start of December 2025 plus interest. EE hasn't responded to this amended view.

As a resolution couldn't be reached between Miss H and EE, the complaint has come to me to decide.

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.

Miss H bought the phone using a regulated fixed sum loan agreement, and the Financial Ombudsman can deal with complaints relating to these sorts of agreements.

Miss H has raised several complaint points involving the CRA. As EE is both the supplier of Miss H's phone and credit agreement, I'm satisfied I can consider these issues as EE is responsible for the quality of the phone it supplied under the credit agreement.

CRA

Alongside the specific terms of the purchase contract, the CRA is of particular relevance to this complaint. It says that under a contract to supply goods, there's an implied term that '*the quality of the goods is satisfactory*'. In summary, this means the goods must 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 phone was brand new so I think it's fair to say it should have been in perfect condition, free from minor defects.

Among other things, 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 as to have not 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.

There's also guidance on the CRA that says:

- the consumer has the following statutory remedies available when their core goods rights under the Act aren't met (goods must be of satisfactory quality, fit for a particular purpose and should match a description, sample or model) or if the goods include digital content which does not meet the Act's requirements for digital content.
 - Short term right to reject – within the first 30 days;

And (running in parallel to the short term right to reject and extending beyond the 30 days)

- 1st tier remedies: free repair or free replacement; then (if the matter is not resolved after one repair or replacement – or more if the consumer wishes to have more than one).
- 2nd tier remedies: either the final right to reject or a reduction in price.

Section 24(8) of the CRA also clarifies that, '*If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered...*'.

Has there been a breach of contract?

What I need to decide here, is whether I think there has been a breach of contract. Based on the available evidence, I think, on balance, it's more likely than not that there has been. I'll explain why.

Miss H first reported the phone had developed a fault in February 2025 – which was five months after she bought it. EE agreed to repair the phone. I'm not sure if EE agreed to do so as a gesture of goodwill or under any warranty. However, it was possible the fault arose because the phone wasn't of satisfactory quality (as set out by the CRA) at point of delivery. And if this was the case, then EE repairing the device was a first-tier remedy available under the CRA.

The repair report shows extensive repairs were carried out. But it makes no mention of what caused or likely caused the problem with the screen to occur. But I note EE didn't charge Miss H for the repair. So, while I can't be certain, I think it's fair to say this would likely indicate EE didn't have any concerns about the phone having been damaged due to user error or action. I don't think a reasonable person would have expected a device that cost this much to have developed faults so soon after purchase that weren't down to user error. I think it indicates the phone wasn't durable.

With regards to the loss of data and photos, I agree with what the Investigator said about this in their findings. I appreciate backing up the phone may have proved difficult for Miss H to achieve due to the problems with the screen. I also understand why the loss of the data, especially the sentimental photos, would have been distressing and inconvenient for Miss H. I don't know if Miss H sought any help in backing up the phone prior to her giving it to EE. But in any event, it seems EE provided warnings to say the repair may lead to the loss of data. And it appears Miss H hasn't disputed the Investigator's findings on this aspect of her

complaint. Based on what I've seen, I don't require EE to do anything more in relation to this complaint point.

Miss H notified EE in May 2025 that she believed the same fault had happened again. EE offered to either carry out a second repair or to replace the phone with a good as new phone of the same make and model. I appreciate this offer may have worked for other customers, but Miss H declined this offer saying she wanted EE to either send her a like phone made by a different manufacturer or to reject the phone.

The device Miss H bought was new. In the circumstances, I think it was reasonable for Miss H to have believed it would work without issue for more than a few months. And given Miss H had previously given EE an opportunity to fix any problems with the phone, I appreciate why Miss H no longer wanted that phone. In the circumstances, I think Miss H had reasonable concerns about the durability and quality of that particular device. And given what EE communicated to Miss H at the time, I also appreciate why Miss H believed that if she returned the phone to EE, it would only lead to an unwanted outcome.

Things have moved on in the eight months since May 2025. Miss H says she continued to use the phone. This is understandable as the use of a mobile phone is an integral part of daily life for many people. Miss H has told us she stopped folding the phone to prevent the issue with the screen from getting worse, so I think it's fair to say Miss H tried to mitigate the issue. However, I think it's fair to say this may still have caused the phone to suffer further damage. I say this because it seems the phone was carried and kept in the open position – any knocks or movement are likely to have caused unintended stress where the phone folds. Indeed, Miss H has said she stopped using the phone in early December 2025 because the issue with the screen continued to develop and other faults occurred – which meant it was no longer practical for her to continue to use it.

Based on what I've seen, I think it's fair to say the photos Miss H provided to EE in May 2025 show the phone was again experiencing a problem with the screen and they appear to show the same (or a very similar) issue as was shown by the photos taken in February 2025. As such, I think EE ought reasonably to have considered the possibility that the first repair may have failed to fix the underlying issue. At the very least, I think it would have been reasonable for EE to have explained to Miss H that for them to agree to her request to reject the phone, the phone would first need to be inspected, as this would likely allow for the root cause of the problem to be determined. I think that had EE made this sufficiently clear to Miss H it's likely she would have agreed to this, and the phone would have been inspected at the time.

EE mentioned more recently about them arranging for the phone to be inspected. I accept this would potentially enable the current fault(s) to be identified. But given the passage of time and noting how the phone continued to be used and was kept in the open position, it's not clear that an inspection would be able to fairly determine if one (or more) of the now present faults were caused due to an inherent manufacturing defect or user action. I'm also mindful that Miss H has bought a new phone.

It isn't in dispute that a fault occurred with Miss H's phone within five months of delivery, which EE arranged to be fixed. Both parties also seem to accept the phone subsequently worked without issue for around the next three months, with EE accepting the phone suffered another fault in May 2025.

Overall, I think the available evidence supports there is a good chance the phone Miss H received was suffering from an issue that was present or developing at point of delivery. And I think it's fair to conclude the repair carried out in February 2025 failed to fix the underlying problem – which would explain why the fault recurred so soon after the repair took place.

What I haven't seen, is any evidence to support the problem was caused due to something Miss H did. On balance, I think it's reasonable for me to find the phone wasn't of satisfactory quality at point of delivery.

Under the CRA, EE had one opportunity to either repair or replace the phone. Miss H could have allowed EE more opportunities, but she chose not to do so. Miss H wanted to reject the phone. Given I've found the phone wasn't of satisfactory quality at point of delivery and because the first repair failed, under the CRA, on balance, I think Miss H was entitled to reject the phone. So, it follows, I think there has likely been a breach of contract under the CRA – which I consider EE can be held accountable for as the supplier of Miss H's phone and the linked credit agreement.

Putting things right

Miss H doesn't want to keep the phone or receive a good as new replacement given she's lost all faith in that make and model - I appreciate why this is the case given Miss H says the phone failed twice within eight months of purchase, and she's now bought another phone.

Miss H has said she's happy to send her phone back to EE on the condition they send her a replacement phone provided it's made by a different manufacturer. For this outcome to work, it would depend on what stock EE has available and both parties agreeing on a phone that has equivalent features and value. Potentially, this may require lengthy discussions and even then, a mutually acceptable agreement may still not be reached. Due to this uncertainty, I don't consider it would be reasonable for me to say this is how the complaint should be resolved.

Miss H has also said she is willing to return the phone to EE, but she thinks she should get back some of what she's paid for it. For the reasons I've explained above, I think Miss H has the final right to reject the phone. So, I've thought carefully about how this should be fairly done bearing in mind what the CRA says (under section 24(8)) about fair usage.

Having taken account of all the information that's been provided by Miss H and EE, I think the remedy proposed by our Investigator represents a fair way for this complaint to be resolved.

EE needs to arrange for the phone to be returned to them at no cost to Miss H. Upon receipt of the phone, EE should close the linked credit agreement on the basis there is nothing more for Miss H to pay and arrange for any adverse loadings they've applied to Miss H's credit record for the credit agreement since May 2025 to be removed.

Miss H says her use of the phone has been impaired since May 2025, with the fault progressing to the point where she had to stop using the phone in December 2025. So, I think it's fair Miss H is compensated for this. The difficulty here is deciding on what would comprise of a fair way for this to be calculated – there is no set formula that covers this type of scenario.

The credit agreement provided a means for Miss H to borrow some money from EE to help her cover the cost of the phone – which was also supplied by EE. But this doesn't necessarily mean the monthly instalments Miss H will pay for this agreement comprise of a true reflection of what the phone will cost over its working lifetime. How long a phone should last before it stops working, or becomes obsolete, is subjective and dependent on a wide variety of factors.

By way of further explanation, a phone that cost £890 and was expected to last for two years would, on average, cost £445 per year or around £37 per month. But if the same phone was

expected to last for five years if would only cost £178 per year or around £15 per month. By comparison, Miss H has paid monthly instalments of £21.94 for her credit agreement.

Having done some research, it seems Miss H's phone was expected to work without issue for between two to four years so, on average, for a period of three years. Coincidentally, on this occasion, this is the same term as Miss H's credit agreement. So, I think it's fair to say the monthly instalments Miss H has paid to date for the credit agreement broadly represent a fair amount for the phone's usage given it's expected lifespan.

I don't know to what extent the issue with the screen prevented Miss H from using the phone from 6 May 2025. But Miss H has clarified she was still able to use the phone at this point. Miss H has also explained the phone's faults progressed to the extent she stopped using it from 5 December 2025. It seems reasonable to believe the fault's impact would have increased during this period. But I've not seen anything to show if the change was gradual, sudden or happened in fits and starts. In the circumstances, I think it's fair for me to use a mean average percentage rate to compensate for Miss H's impaired use of the phone during this period, and I think 30% represents a fair amount. So, for simplicity, I instruct EE to refund to Miss H 30% of monthly instalments Miss H paid for the credit agreement between the start of May 2025 and the end of November 2025.

I also consider it would be fair for EE to refund in full the entirety of the monthly instalments Miss H has paid for the credit agreement since the start of December 2025. This allows for Miss H saying she's not been able to use the phone at all since then.

I also think it's fair EE refund to Miss H the £100 upfront payment. There's an argument the deposit could be reduced pro-rata, but given the sums involved, and as I think EE could have handled things better, it seems fair to refund the whole thing. But it's also why I'm not persuaded to award an additional distress and inconvenience payment. However, EE should add interest (at 8% simple per year) to the refunded amounts.

In summary, to put things right, I require EE to:

- arrange for the phone to be returned to them at no cost to Miss H.
- following receipt of the phone, EE should arrange:
 - for the linked credit agreement to be ended on the basis there is nothing more for Miss H to pay.
 - for any adverse loadings relating to the credit agreement that have been applied to Miss H's credit record since May 2025 to be removed.
 - to refund to Miss H the £100 upfront payment she paid at point of sale.
 - to refund 30% of the monthly instalments Miss H has paid for the credit agreement between the start of May 2025 and the end of November 2025.
 - to refund the entirety of the monthly instalments Miss H has paid for the credit agreement since the start of December 2025.
 - for interest (at 8% simple per year) to be added to all the refunded amounts.

This should be applied from the date the respective payments were received by EE to date of settlement.*

*HMRC usually expects EE to deduct a sum for tax from the interest figure and if Miss H wants a certificate showing the deduction it must give her one.

My final decision

My final decision is that I uphold the complaint and direct EE Limited to resolve it in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 24 February 2026.

Carl Bibby
Ombudsman