

The complaint

Mr M says EE Limited ('EE'), irresponsibly lent to him. Mr M says he has mental health problems, and he thinks that EE should have known this and not lent to him.

Mr M's complaint has been brought by a representative and I've mostly referred to Mr M and the representatives' comments as being from Mr M for ease of reading.

What happened

This complaint is about a device finance agreement Mr M started to purchase a mobile phone. Mr M has complained about some other loan agreements he started to purchase other electronics products from the same business. As our Investigator explained these are not regulated credit agreements and so the Financial Ombudsman cannot consider complaints about them.

In July 2024 Mr M borrowed £1,191.33 over a period of 36 months. He was due to repay £33.09 a month over the term making a total to repay of £1,191.33. The agreement had no interest.

Mr M has complained to EE about the agreements he had entered into. EE considered this complaint and it said, as a gesture of goodwill, that it would allow Mr M to exit the contracts for the other electronics products without a termination fee. But it didn't uphold his complaint about the device finance agreement for the phone – and about which this decision focusses on. EE said this was because it wasn't aware of Mr M's mental health problems when he started it and so it couldn't have factored them in. Mr M didn't agree with this, and brought his complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Mr M's complaint. He thought that EE couldn't fully show that it had made proportionate checks, but from what he had found about Mr M's situation, if it had made proportionate checks, it still would have lent. He wasn't persuaded that EE knew about Mr M's mental health problems, so it wasn't able to act on them.

Mr M didn't agree with the Investigator. He said that:

- EE could not give a proper total about what they considered Mr M owed.
- Our Investigator hadn't properly considered a third party's statement about Mr M's situation and mental health.
- EE should classify mental illness in terms of financial hardship, and it should have seen that Mr M was experiencing problems.
- EE didn't provide any evidence of the checks it did and so they cannot be relied on. It should have held on to this information for a longer period.

There was some further correspondence, but no new issues were raised. And I've noted that whilst Mr M and his representative do still want an Ombudsman to consider the complaint they have said they will accept the outcome.

Because of this matter has been passed to me to make 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.

We've set out our general approach to complaints about unaffordable or irresponsible lending on our website, and I've taken this into account in deciding Mr M's case.

The details of this complaint and the circumstances of the lending are well-known to both parties, so I won't repeat them again here. The facts about what has happened, and what was lent, aren't in dispute, so I'll focus on giving the reasons for my decision.

I can't say that the checks EE did before providing the credit were reasonable and proportionate, given what it lent and what it likely knew about Mr M's financial situation.

This is because EE has explained that it would have asked Mr M some questions about his financial situation and this would have included getting information about his income and expenditure, and whether he could afford to repay the monthly amounts. It also would have looked at some information held about him at the credit reference agencies.

However, EE says that it only holds the information it obtains for a short time, and so it hasn't provided anything to evidence the checks it carried out. So, I can't reasonably say what checks it did do, and whether they were proportionate or what those checks showed it. It isn't fair to assume they were. So, I've also looked at the information I've been provided about Mr M's circumstances at the time, to understand what EE may have been told.

Having done this I don't think it would have been clear to EE, had it made better checks, that Mr M would be unlikely to be unable to sustainably repay what he was being lent. I'll explain why.

When looking at the information I've been provided about Mr M's financial circumstances I've borne in mind that the loan was for a relatively modest amount and was interest free. The monthly repayments were correspondingly modest. And I've looked at this from a financial perspective at first, I'll consider the mental health aspects that Mr M has raised later in the decision.

Mr M has explained that he wanted the phone to help with his business. I understand he also had some benefit income. I think he would have told EE this and it would have been reasonable to have assumed he had an income. Given the size and type of loan agreement, I think it would have been reasonable to rely on what Mr M said.

EE said it looked at Mr M's credit reference agency data. Whilst it doesn't have this information, Mr M has provided an up-to-date copy of their credit report. As this also shows historic data, I'm satisfied this will give a good indication of what EE would've likely seen on the credit file it obtained when it considered his loan application.

This report shows that Mr M had other credit when he applied for finance with EE and he was maintaining all the payments to this. Mr M hadn't had any recent financial difficulties. Overall, there's nothing on this report that shows me EE should've declined his application, or that it should've been unduly concerned about his current financial position. I think it shows that it would have been reasonable to assume that Mr M would have been able to repay the modest repayment to the new loan, from a financial perspective.

I'm not upholding Mr M's complaint that the loan was irresponsibly lent for financial reasons.

I think it's reasonable to say that the most important issue Mr M has complained about is his mental illness and capacity to take the loan at the time of sale. Mr M has provided significant detail about this. I have read all of this and I'm grateful that he felt able to share it, I'm not going to reproduce any of it to protect Mr M's privacy.

Mr M, and the letter he has provided from his member of parliament, has outlined some of the Financial Conduct Authority ('FCA') rules about mental capacity and lending and some acts of parliament that relate to mental health and capacity. I don't disagree that these broadly say that a business should be equipped to deal with customers that have problems such as Mr M's, and it should deal with these appropriately.

But there are other aspects, laws and guidance about mental capacity that are also important. The FCA's guidance on mental capacity is given in the regulations about consumer credit ('CONC'), and is made with reference to the Mental Health Act 2005. CONC 2.1 gives the rules surrounding mental capacity. And this says in CONC 2.10.4:

'A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.'

And CONC goes on to say that even where there is lack of capacity the business should not automatically restrict credit, but should assist the consumer to make a reasonable decision about the credit. This is to ensure that people are not denied access to credit where it would be beneficial for them to have it, as the lack of access to credit can cause significant hardship itself.

I think this is important here in that the information I've seen doesn't show that EE was informed about Mr M's mental health problems in 2024. Both the timeline of events EE had provided, and Mr M's medical and other details concentrate on events that took place in 2025 and beyond. And I note that part of Mr M's initial complaint was essentially that EE repeatedly lent to him for other electronics products after this device loan was started, and this went on to cause problems for Mr M. But I can't reasonably consider this here as it concerns events that took place after this loan.

Added to this I don't think it would have been clear at the time this contract was started, in July 2024, that Mr M's health problems were such that he wouldn't have understood the agreements, or that it would have been wrong to lend to him. Not least of this is that he already had credit agreements that he was able to pay.

I appreciate this is a far from straightforward situation and I've noted that Mr M has had problems from a much earlier time than this, and his representative has described his capacity as 'fluctuating'. But even so this doesn't demonstrate that EE was, or should have been, aware of this in 2024. And that it should have not lent because of this.

I hope Mr M understands my reasons for making the decision and I'm not treating his problems as trivial; they clearly are not. It's more that I don't think there is enough to say that EE shouldn't have lent due to them.

EE did, and does, have a responsibility to treat Mr M with forbearance and take into consideration his situation. But I think it has tried to do this, and I've noted that Mr M has acknowledged this in his latest correspondence. Even if not all the information it provided was what Mr M wanted at certain times.

Mr M has provided several statements from people like his member of parliament, and a pawnbroker. As he's said a pawnbroker has provided commentary in which they said that they noticed '*something was off*' with Mr M and helped him. I've not discounted these, but they are both not part of the lending process itself, and are sometime after the sale of this loan. I don't think they detract from what I've said above.

I'm not upholding Mr M's complaint that EE shouldn't have lent due to Mr M's mental capacity.

This means I don't think EE did anything wrong when it provided the device finance agreement to Mr M.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think EE lent irresponsibly to Mr M or otherwise treated him unfairly. I haven't seen anything to suggest that s.140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I don't think EE acted unfairly in any other way.

I know this isn't the outcome Mr M hoped for. But for the reasons above, I'm not asking EE to do anything to put things right.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2026.

Andy Burlinson
Ombudsman