

The complaint

Mr H argues EE Limited treated him unfairly by requiring him to continue to make payments towards a fixed sum loan agreement. This loan agreement was used to purchase a device.

What happened

On 7 March 2025 Mr H entered a fixed sum loan agreement to purchase a mobile phone device. The cash price of the device was around £1,108 and Mr H was due to repay the agreement in 36 monthly instalments of just under £31 per month.

The following day, on 8 March 2025, EE attempted to deliver the device via a third-party courier but was unsuccessful. Mr H says he was home so doesn't understand why the package wasn't delivered at this time. He contacted EE and said the attempted delivery wasn't accurate and he was worried the courier was stealing his device or being lazy. Delivery was attempted again the following day and was successful.

Mr H argues that inside the package was the device outer packaging, however the device, power lead and sim removal pin weren't inside. He complained to the courier company and to EE on the day the package was delivered. Mr H said that when the parcel was passed to him on his doorstep, it felt light and that the courier said, "good luck with a smile and wink." He also says that the outer parcel packaging was intact, however the internal packaging wasn't, and the device was missing.

EE considered Mr H's argument but didn't agree. It said that the delivery photograph shows the device was delivered as expected and there was no evidence of tampering. It said once the box is sent for delivery it is in a sealed bag and was weighed at the time of dispatch. Mr H also weighed the package after it was delivered and opened. He argues that the package weighed significantly less than the dispatch weight. Ultimately, EE didn't uphold his complaint in relation to this matter.

Mr H referred his complaint to our service. One of our investigators considered the complaint and upheld it. They thought the evidence provided by EE was insufficient and so it was most likely that Mr H didn't receive the device as he claims. EE didn't agree and so the complaint has been passed to me to consider.

For context, EE gave Mr H inaccurate information during its investigation of the complaint and has given compensation to Mr H for this. This issue appears to be resolved and hasn't been referred to our service. So, this won't be considered as part of this decision.

I issued a provisional decision where I said:

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

Where issues are in dispute and the matters are finely balanced, as they are in this case, I make my decision on the balance of probabilities. This means I must decide the complaint based on what I think is more likely to have occurred.

Mr H bought the brand-new device using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements. From what I can see, EE was the supplier of the device as well as the provider of the finance. And as explained above, Mr H alleges there was no device in the package. Therefore, that EE hasn't provided the goods which the fixed sum loan agreement funded.

EE has provided a screenshot to show the package was weighed prior to leaving the warehouse and weighed 0.414kg or 414g. Mr H has provided a photograph of the weight of what he alleges was delivered which was the packaging without a device. This shows the packaging without the phone weighed 138g. This was significantly less than the weight of the package when it left the warehouse. This suggests that it's more likely a phone was initially included in the packaging when it left the warehouse as EE argues.

The package was shipped using a third-party courier service. Delivery was attempted on 8 March 2025 and was unsuccessful. It was attempted again on 9 March and was successful. However, I don't know what happened during this period. Both parties agree that the outer packaging for the device was intact. However, Mr H argues that the device could have been stolen and repackaged after leaving the warehouse. EE argues that this didn't happen and the presence of the outer packaging being intact demonstrates it wasn't tampered with. Ultimately the evidence I have is inconclusive and so I accept either scenario is possible. However, looking at the delivery photo, I'm not persuaded that this supports Mr H's argument that delivery label has been removed and reapplied. And as the outer packaging remains intact, on balance I don't think the evidence shows it's more likely than not that the courier tampered with the package prior to delivery.

Turning to Mr H's testimony, I can see he telephoned EE shortly after the package was delivered to report that he hadn't received the device. However, I note Mr H was already suspicious of the courier company. Following the unsuccessful delivery of the package the day before, Mr H had already raised the possibility of the courier stealing the device to EE. In addition, when Mr H received the package, he said he noticed that it was light in weight. Mr H also said the delivery person wished him good luck and winked and smiled at him. In the context of the concerns Mr H had about the weight of the package and the credibility of the courier company more generally, I think this should have caused Mr H concern.

However, I can't see Mr H took any additional precautionary steps prior to opening the package such as contacting EE or filming the opening of the package. Whilst I accept this isn't a requirement, in the context of the facts of this case, I think taking some additional steps would have added to the credibility of Mr H's argument.

Ultimately, I'm not persuaded that Mr H's account of the events is most likely to have happened. I'm not saying definitively that they didn't occur in the way Mr H has said. However, in order to uphold his complaint, I need to be persuaded that what he's said was more likely than not to be the case. And unfortunately, the evidence I do have doesn't support Mr H's account of the events. I therefore cannot conclude that it's unfair for EE to continue to hold Mr H responsible for the loan agreement he entered into.

EE confirmed it accepted my provisional decision. Mr H disagreed with my provisional decision and made a number of points in response.

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.

Having done so, I'm still minded not to uphold this complaint for the reasons set out in my

provisional decision, which forms part of this decision. To summarise:

- Mr H bought the brand-new device using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements. From what I can see, EE was the supplier of the device as well as the provider of the finance. And as explained above, Mr H alleges there was no device in the package. Therefore, that EE hasn't provided the goods which the fixed sum loan agreement funded.
- The evidence EE has provided of the weight of the package when it left the warehouse suggests the device was most likely in the package at this time.
- Both parties agree that the outer packaging was intact when it was delivered to Mr H. And the delivery photo doesn't suggest to me that the outer label was removed and then reapplied in the way Mr H has alleged. So I think there's insufficient evidence that the package was tampered with prior to delivery.
- It's clear Mr H had suspicions about the courier service prior to delivery. However, upon being further concerned by the comments made by the delivery person and the weight of the package, Mr H took no additional precautions. I appreciate Mr H has said he wasn't aware he should have recorded himself opening the package. This wasn't required, but it was one of a number of potential steps Mr H could have taken. Ultimately his testimony is that he had real reason to suspect the device wasn't inside, but he made no further efforts to evidence this. Taking everything into consideration, I'm not persuaded Mr H's version of events is most likely to have occurred.

I appreciate that this will be disappointing to Mr H and I'm sorry to hear about his wider circumstances and the challenges he's experiencing. However, based on the evidence available in this case, I'm not persuaded I can uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint against EE Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 March 2026.

Claire Lisle
Ombudsman