

The complaint

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

What happened

On 9 December 2024 Mr S entered a fixed sum loan agreement with EE to purchase a mobile phone device. The cash price of the device was £1,083. It was due to be repaid over 36 months, at a monthly repayment of around £30 per month.

A device was delivered to Mr S' address on 12 December 2024 via a third-party courier service. A one-time passcode was used which was sent to Mr S' mobile phone number. Mr S says that the following day he opened the package and raised a complaint. He argues he had been sent the wrong device. He gave an International Mobile Equipment Identity ("IMEI") number to EE for the device he says was delivered and EE has confirmed that this IMEI number is for a non-branded phone. Therefore, not the device EE says it sent.

Mr S says he was working on 14 December however, on the following day he went into an EE store and showed representatives of EE the phone he says was delivered. Mr S says that at this time he believed he had simply been sent the wrong model of the mobile phone device. The records from the time demonstrate that the device Mr S showed representatives in store, was not the same as the one ordered. Mr S was told that the phone presented was made to look like an earlier version of the brand ordered, but that it was a "fake phone".

EE investigated Mr S' complaint, but didn't uphold it. It said that Mr S had confirmed the packaging wasn't tampered with when it spoke to him and its delivery photos also showed the packaging wasn't damaged. It also said the weight of the parcel prior to delivery was consistent with having contained the device. Furthermore, it argued that bringing another device into store doesn't prove that Mr S was initially sent an incorrect device and that there was no evidence to support that an incorrect handset was delivered. So ultimately EE didn't uphold his complaint.

In addition, EE said the device it says it sent to Mr S was activated and unlocked on 28 December 2024. At this time, the device was connected to another telecommunications provider in another European country. EE has argued this doesn't conclusively show that Mr S didn't receive the correct device, as he could have sold it to a third party.

Unhappy with EE's response, Mr S referred his complaint to our service. One of our investigators considered the complaint and upheld it. They thought on balance that there was sufficient evidence to conclude Mr S was not sent the correct device. EE disagreed and asked for an ombudsman to consider the complaint.

I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr S 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.

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. And where evidence is incomplete or contradictory, I make my decision on the balance of probabilities. I will therefore consider what is most likely to have happened.

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into certain contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as described. The CRA then sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

Both parties agree that the package was delivered intact and the photographs EE has provided of the courier delivery supports this. So, it's likely that the package wasn't intercepted and opened after it left EE's warehouse and prior to delivery.

EE has said that the package was weighed prior to leaving the warehouse and the weight was consistent with what it would expect if the correct item was inside. Whilst I appreciate this, I'm mindful that Mr S maintains he did receive a device. I therefore don't agree that the weight of the package is conclusive to show that the correct device was inside the packaging. I imagine that both the replica device and the actual device were likely to weigh a similar amount.

EE has alleged that the correct device was placed in the packaging however, it hasn't provided persuasive evidence to demonstrate this such as CCTV of the correct device being placed into the tamper proof packaging or images showing this. So, I am left with limited evidence about what occurred. Mr S has more recently provided photographs of the device he says was delivered and which he took into branch around the time of the events in question. Again, this doesn't definitively show that this was the item which was delivered, but it does add weight to Mr S' argument.

Turning to Mr S' actions following delivery of the package, I note that shortly after receiving the package, Mr S contacted EE to complain that he had been given the wrong device. I have reviewed a call which took place between Mr S and EE just after he reported receipt of the incorrect item (with the initial call being unavailable). He is naturally quite distressed and although Mr S uses some language I don't endorse, he was consistent with how I would expect someone in these circumstances to behave. He provided the IMEI number for the device he says he received on the day of raising his complaint. And he subsequently took that device into branch three days later to try and discuss the matter with EE in person which EE's notes confirm.

EE has queried why Mr S waited around a day after delivery before reporting the issue to it. I put this to Mr S recently who initially thought he did report it on the day of delivery. However, he has since checked his messages and realised it was the following day. Mr S has said he opened the package the following day and reported it when he discovered the incorrect item. It's not uncommon for someone to open a package the following day and Mr S has been clear that when he discovered the issue, he contacted EE.

Mr S has maintained that he received the incorrect item, in packaging which wasn't tampered with. And that he quickly contacted EE upon realising he received the incorrect device. From everything I've seen, he's engaged with EE during its investigation and with our service throughout to resolve the matter. He has also shown EE the device that he has said was delivered and provided photographs of this to our service.

I'm also mindful that EE has said around two weeks after the package was delivered, the correct device was subsequently in use in another European country. Whilst it's possible, as EE has argued, that Mr S received the correct phone and sold it, I'm not persuaded that it's most likely that this is what happened. I think in the context of the other information I have available, this adds credibility to Mr S' argument that he didn't receive the correct device.

So having carefully considered all the available evidence, I'm persuaded it's most likely that Mr S received the incorrect device he has stated he received from EE. I'm persuaded by his account of the events which are plausible in the context of the other evidence I have available. So, I think EE has breached the contract with Mr S by supplying him with a device which wasn't as described. I'll address below how I think EE should put things right.

To put things right I thought Mr S should be released from the loan agreement with nothing further to pay. I thought he was entitled to reject the goods and receive a full refund for the repayments made towards the loan agreement. In addition, that he should receive compensatory interest on that amount and all entries relating to this agreement should be removed from his credit file. And I thought that Mr S should make the device available for EE to collect.

I asked both parties to provide anything further in response to my provisional decision. Mr S confirmed he accepted my provisional decision. EE didn't provide a 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, as neither party has provided anything further, I see no reason to depart from the findings reached in my provisional decision. So, it follows that I uphold this complaint.

To summarise:

- The device was financed by a loan agreement, and our service is able to consider complaints relating to these types of agreements.
- The Consumer Rights Act 2015 implies certain terms into this contract, including that the goods should be as described.
- I think the evidence set out in my provisional decision demonstrates it's more likely than not that Mr S received the incorrect device. So, he didn't get goods which were as described and EE has breached the contract. Mr S should therefore be compensated for this.

Putting things right

Where there's been a breach of contract, the CRA says that the consumer has a right to ask for a price reduction or reject the goods and claim a refund if a repair or replacement doesn't work.

I think the most pragmatic solution in this case is for Mr S to be able to reject the device which was received and exit the fixed sum loan agreement with nothing further to pay. I also can't see that he has derived any benefit from the device which was delivered. EE has said in branch that this is a replica device and has listed a number of quality issues with the device. Mr S has also said in the time the complaint has been ongoing he has used alternative devices. So, as he hasn't received a benefit from the device delivered, I think EE

should refund all payments Mr S has made towards the loan agreement. To compensate Mr S for the loss of access to those funds, EE should also add simple interest at 8% to the refund of those payments from the date of payment to the date of settlement.

Given I think the loan agreement should be ended and all payments refunded, I am essentially unwinding the loan agreement. So, I don't think it's fair that the entry of this loan should remain on Mr S' credit file. Particularly as, the loan agreement was a result of the incorrect device being sent and Mr S received no benefit from it. So, I think it's fair that EE should remove any reference to this loan from Mr S' credit file.

Mr S still has the device received and I don't think it's fair he keeps it when he is rejecting the goods. So, I think Mr S should make the device available for EE to collect.

I appreciate this has been a distressing matter for Mr S, but I consider the above represents fair compensation so I'm not going to make any further award.

To summarise, to put things right I require EE to:

- Allow Mr S to exit the fixed sum loan agreement and return the item he received from EE at no additional cost to him.
- Refund all the repayments to Mr S, that he has made under the fixed sum loan agreement and add 8% simple interest to this amount from the dates the repayments were made to the date of settlement.
- Remove the fixed sum loan agreement from Mr S' credit file.

If EE deducts tax from any interest it pays to Mr S, it should provide Mr S with a tax deduction certificate if he asks for one.

My final decision

My final decision is that I uphold Mr S' complaint against EE Limited and require it to put things right in the way I've detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 March 2026.

Claire Lisle
Ombudsman