

The complaint

Mrs S has complained that EE Limited (EE) is holding her liable for a credit agreement that was taken out to buy a device.

What happened

In July 2025, Mrs S entered into a Fixed Sum Loan Agreement with EE for the supply of a new device. The total cash price of the goods under the agreement was £1,197.84 and the agreement had a term of 36 months, with payments of over £33.00 due each month.

The device was due to be delivered to Mrs S the day after she ordered it and she requested a delay of the delivery by four days. Shortly after the package was delivered, Mrs S spoke with EE on the phone and reported that she had opened the packaging to find that the device was missing and just a screen protector was inside. The advisor asked if the packaging showed any signs of tampering or holes and she said no, explaining that she had noticed the packaging was light.

EE investigated and said having checked the evidence provided by the courier which showed the parcel was delivered with no signs of tampering, there was insufficient evidence to support Mrs S's claim that the device was not included in the package, and so it didn't uphold her complaint. It didn't share this information with Mrs S until she called a few days later to get an update. Mrs S raised a complaint and EE maintained its position.

Unhappy with the response, Mrs S referred her complaint to this service for an independent opinion. Our Investigator considered the complaint and said that he wasn't persuaded that Mrs S received the phone and therefore he didn't think it was fair of EE to seek repayment for the Fixed Sum Loan Agreement. He said that he wasn't persuaded the evidence showing the weight of the package when it was dispatched could be accurate, as it was too low for the expected contents. He also said that the delivery image showed the label curling upwards and that as the packaging below the label didn't look right, he couldn't be sure the device was in the package. He noted how quickly Mrs S reported the issue and that the delayed delivery increased the likelihood that the package could've been tampered with. He asked EE to end the agreement, refund any payments made and remove all details of the agreement from Mrs S's credit file.

Mrs S accepted, but EE did not and so the complaint was passed to me to decide. I issued a provisional decision as I reached a different outcome to our Investigator. In that I said:

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

Where evidence is incomplete, inconsistent or contradictory, as some of it is in this case, then I've based my findings on the balance of probabilities, i.e. what I think is most likely in the circumstances of this complaint.

My summary above and comments below will focus on what I consider to be the key points to this complaint. Whilst I've considered everything in detail, if I don't comment

on a particular point, it's because I don't feel that I need to in order to reach a fair answer on this complaint. It's not meant as a discourtesy, but instead it reflects the informal nature of this service.

Mrs S acquired the device via a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. EE provided Mrs S with the loan to finance the purchase of the device. It was also the supplier of the device, so it was responsible for its delivery.

It's important to point out that the scope of what I'm able to practically investigate is to an extent limited with this sort of complaint, given it's impossible to know what was inside the parcel. I need to decide whether EE acted fairly, based on the evidence presented to it.

The relevant legislation in this case is the Consumer Rights Act 2015 which says that unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the physical possession of the consumer, or a person identified by the consumer to take possession of the goods.

It's not in dispute here that a parcel was delivered to Mrs S and she was in possession of that parcel. The photographs provided from the delivery show a parcel was delivered, which matches the one that Mrs S opened. I've listened to the call that took place shortly after the parcel was delivered and during that Mrs S confirmed that the parcel had not been tampered with or had any holes in it. EE investigated further by reviewing the delivery images, which it said showed no signs of tampering and found that the parcel had passed all weight checks. As a result, it didn't request any further evidence from Mrs S and decided to not uphold the complaint. I think this was a fair conclusion to reach as there was no plausible explanation as to why the device would be missing at that stage, given the delivery picture didn't show any obvious signs of tampering, something that Mrs S confirmed when she was in possession of the parcel.

I appreciate Mrs S had concerns about how long it took for EE to investigate and provide a response. Having listened to the call, I'm satisfied that Mrs S was not given a timescale for a response when she reported the issue, however it seems that a decision had been reached and not communicated to Mrs S until two days later, when she called to request an update. It seems that EE could have provided an answer sooner, but given this delay caused was just two days, and that EE provided its final response the following day, just four days after Mrs S first raised her concerns, I don't think this has been detrimental to Mrs S, or resulted in a different outcome being reached and so I don't intend to ask EE to do anything more.

Whilst I consider EE's investigation and response to have been fair, based on the information it was provided with, new evidence has since come to light. Mrs S has explained that a few days after delivery she noticed a tear below the label and has provided further images of the packaging, taken over two months after delivery. Mrs S said she was unable to take photographs at the time, as she didn't have a phone to take them with. She also explained that not having the phone caused her stress and had a massive impact on her family's day to day life, as she was uncontactable in the event of an emergency, which caused anxiety. She also said she could not receive key messages from her children's school because she did not have access to a phone to receive these messages. Since then Mrs S explained that she always had use of her telephone number, but she used it on an old broken phone, so she could not use it as much.

This new information was put to EE for comment. EE said that Mrs S had told it that the packaging had not been tampered with and it doesn't appear that Mrs S reported to EE any tampering to the packaging when she noticed it a few days after delivery. EE questioned Mrs S's testimony in which she said she didn't have a phone to take pictures with at the time, given she was able to make calls to EE on the day of delivery and a few days later, as well as receiving one time pin codes via message. I've thought very carefully about this and I can understand EE's concerns and why it has maintained its position, in light of these inconsistencies and because Mrs S didn't report any tampering of the parcel to it when she became aware of it.

I acknowledge that the delivery picture does appear to show some stretches, folds and the edge of the label on one side isn't as smooth as the others. I can appreciate why EE didn't consider this to be unusual, or outside of wear expected during delivery, given the delivery was delayed and the parcel was loaded on and off vans and cages at the warehouse as it transitioned through the delivery process during the delayed delivery. As a result, I don't think it was unreasonable for EE not to ask Mrs S for more pictures of the packaging at the time, given Mrs S didn't report any tampering or damage and given that the delivery image didn't appear to show any obvious signs of tampering. And in any event, Mrs S said she didn't have a phone to take the pictures with, so it doesn't seem that she would have been able to take and send any pictures until some time later, had EE requested them. However, given Mrs S has since provided these images, I have considered them alongside the other evidence provided.

In my opinion, the packaging in the delivery photograph and photographs provided by Mrs S look different, as the more recent images show more marks, creases and the label is peeled away from the packaging in one corner. Whilst that's not unusual, given the over two month time difference, it would make it very difficult for EE to be certain that the parcel had been tampered with prior to delivery. EE has said the delivery image showed no signs of tampering and I can understand why it reached this conclusion, given the delivery image does not appear to show the signs of damage that would be needed to access the contents and Mrs S's own testimony around the lack of tampering. I appreciate that the images Mrs S supplied do show the label raised in one corner, and a large tear behind the label, but as the delivery image does not reflect this and given how long after delivery those images were taken, I'm not persuaded that EE's conclusions were unfair.

EE has been unable to confirm the weight of the parcel when it dispatched it and throughout the delivery journey. I acknowledge it would be helpful if EE was able to provide this evidence, or video or photographic evidence of the contents of the parcel on packaging, but unfortunately it is unable to provide this. I don't think EE's inability to provide this information confirms that the device was not present in the parcel at delivery. EE has provided some conflicting information about the parcels weight, as its systems show a weight of 259g and the packaging shows a weight of 0.5kg, neither of which match the 90g weight that Mrs S provided of the parcel, including the contents. But given EE has confirmed it did not weigh the parcel, I don't think this sheds any light on the contents of the parcel before it reached Mrs S and if anything it seems to show that additional contents were in the packaging when it was dispatched.

I'll never know for certain what happened. There are allegations that the device was stolen at some point during delivery and these are very serious allegations. Unlike a court, I'm unable to summon witnesses for cross examination, a challenge that EE would also have faced. It's difficult to reach firm conclusions in the informal forum

that I'm able to investigate this complaint in. I think it's fair EE would have wanted to be more certain the goods weren't delivered and I'm satisfied that it considered the information Mrs S gave before providing an answer.

Overall, having considered all the information available to EE, I'm not persuaded its answer was an unfair one, when it said there was insufficient evidence to support that the device was not included in the package, and as a result it has held Mrs S liable for the payments due under the agreement. That's not to say something hasn't gone wrong but, on balance, I don't think EE received enough evidence the device wasn't delivered. I should point out that Mrs S doesn't have to accept my decision and instead is free to pursue the complaint by more formal means, such as through the courts, should she wish to. It follows that I do not intend to ask EE to do anything more."

EE accepted, however Mrs S did not. She said the delivery photograph showed the parcel was light in nature and not bulky and as such it did not contain a heavy item. She said it wasn't immediately obvious that the device was not included and she contacted EE immediately to report the issue. She also said that there was no obvious sign of damage to the packaging, apart from a curl to one corner of the label and along one side and it wasn't until some time later that she noticed the tear below the label, as it was only visible from inside the packaging. She confirmed she still had the packaging and offered it for examination. She said she felt the enquiries carried out didn't take account of issues that could occur between dispatch and delivery and that a thorough investigation had not been carried out.

She said that if the matter were considered by the courts, that it would be fair and reasonable to conclude that the package had been tampered with before delivery and that she did not tamper with it. She said she felt it was unfair that she was being asked to pay for goods that she did not receive.

The complaint was passed back 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.

I've considered Mrs S's response to my provisional decision but I've not seen anything to cause me to depart from the conclusions, given that she has not provided any new information. As such, all that she said has already been considered and there isn't much more I can add to what I already set out in my provisional decision.

Whilst I appreciate Mrs S's strength of feeling, I can also appreciate why EE would have wanted to see more evidence, given the information Mrs S provided to it about the packaging not showing any signs of tampering. The delivery photograph isn't consistent with photographs taken many months later and given the inconsistencies in testimony EE raised concerns about and that the delivery image does not appear to show the signs of damage that would be needed to access the contents, I can understand why EE would have needed to be more certain that the device wasn't included within the packaging. As such, I'm not persuaded that EE treated Mrs S unfairly. And by her own admission it wasn't instantly obvious that the device was missing when she received the parcel, something EE also wouldn't have known from the delivery picture alone.

It follows then my final decision is the same as my provisional decision above.

I should point out that Mrs S doesn't have to accept this decision and instead is free to pursue the complaint by more formal means, such as through the courts, should she wish to.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 March 2026.

Daniella Roberts
Ombudsman