

## **The complaint**

Mr M is unhappy with a phone he bought from EE Limited using a fixed sum loan agreement, and says he wants a different replacement phone.

## **What happened**

Mr M bought a new phone from EE Limited in April 2025. The phone had a cash price of £1,150 and Mr M took out a fixed sum loan agreement to pay for it, also with EE Limited. The parties are both familiar with the events of this complaint, so I've only briefly summarised them here.

Around November 2025, Mr M says he noticed the battery was draining quickly, and the phone overheated when he charged it. He says he reported the problem to EE Limited, who said it could send the phone for a repair. But it said Mr M would need to back up his data and perform a factory reset first.

Mr M didn't think this was a reasonable option. He provided screenshots of the battery health settings in the phone, which he says show the problem was a hardware issue. He said this meant he didn't need to factory reset the phone. Mr M said there was a lot of sentimental data on the phone, and he didn't want to risk losing this during a data transfer or repair. He also said he'd lost faith in the phone after reading similar stories online – and so he wanted EE Limited to replace it with another handset of the same value to the phone he purchased.

EE Limited considered Mr M's complaint but said it had offered him a fair resolution to repair the phone. It explained it needed him to follow the reset process to protect his data during the repair, and this might resolve the issue. Mr M didn't accept EE Limited's response and brought his complaint to our service.

Our Investigator said she thought it was plausible there was a fault with the phone based on the evidence, but it wasn't clear if this fault was inherent when the phone was supplied to Mr M. She said it was reasonable for EE Limited to want to inspect the phone to establish the cause of the fault and rule out other issues such as damage. So, she thought EE Limited's offer to repair the handset was fair.

Mr M didn't agree. He said the Investigator had failed to consider the Consumer Rights Act 2015 (CRA) and that the fault is a safety concern. He said she hadn't taken into consideration that a repair would cause significant inconvenience. Mr M said he would need to pay to store his data on the cloud for a repair and would be left without a phone for a significant time. He also said the Investigator hadn't given fair weight to his evidence of the battery draining or that this was a flagship model, costing over £1,000 and less than a year old.

Mr M asked for an Ombudsman to make a final decision on the complaint. Before the case reached me, our Investigator confirmed with EE Limited that it might be able to offer a loan phone to Mr M while his was repaired. This was put to Mr M to consider, but he didn't respond. As such, the complaint has now been passed to me for 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.

Having done so, I agree with the outcome reached by the Investigator, for broadly the same reasons – and I'll explain why.

Mr M has made several detailed points in his complaint. I've considered everything he's said and all the information on the file. But in my decision, I don't intend to refer to everything or address every point made. I mean no discourtesy by this, instead I will focus on what I see as being the key outstanding points following the Investigator's outcome, and the reasons for making my decision.

The phone in the dispute was supplied to Mr M and financed with a fixed sum loan agreement. This is a regulated consumer credit agreement which means the Financial Ombudsman can consider complaints relating to it.

The CRA is relevant to this complaint, as it implies terms into the contract setting out that goods must be of satisfactory quality and as described.

Mr M first reported a fault with the battery in the phone just over six months after it was supplied to him. He also provided EE Limited with screen shots for the battery diagnostics on the phone, which he says support there is a fault with the phone. EE Limited hasn't disputed the phone is faulty, and I think it's made a fair conclusion based on the evidence Mr M provided.

In order to require EE Limited to put things right, I'd also need to be persuaded the fault is as a result of the phone being of unsatisfactory quality when it was supplied to Mr M. This means EE Limited would need to consider if the fault is caused by a defect present or developing at the time of supply, or if the phone isn't reasonably durable. There are a lot of factors that could have contributed to the fault too – such as damage or misuse. While EE Limited has taken Mr M's evidence of the phone's diagnostics onboard, this may not be conclusive.

As EE Limited hasn't inspected the phone, and there isn't an independent report of the fault either, I can't reasonably say if Mr M's claim for a remedy should be successful. EE Limited would need to inspect the phone in order to review the claim further, and it has offered to do this. So, I don't think it's unfair for Mr M to allow EE Limited the opportunity to diagnose cause of the fault before it can offer a fair remedy in line with the CRA, if appropriate.

In any event, if there was evidence showing the fault means the phone wasn't satisfactory quality when supplied, I think EE Limited's request to attempt a repair first isn't unreasonable – and I'll explain why.

Section 23 of the CRA says that when goods aren't of satisfactory quality, Mr M can require EE Limited to repair or replace them. But he can't require either remedy if it is impossible or disproportionate, including if the costs imposed by one option are unreasonable when compared to the other.

EE Limited says it wants to attempt to repair the phone and first, it would reset the phone to factory standard. It says this is to prevent Mr M's data being accessed during the repair, but also because the reset may resolve the issues without the need for further repair or investigation. If this doesn't resolve things, it would then inspect the phone and attempt a repair, in order to make the phone conform to the contract.

As EE Limited thinks a repair is possible and I think it's likely this involves lower costs when compared to a replacement, I think this is a reasonable option for EE Limited to take to resolve the breach of contract. My understanding is that phones are complex devices and even if EE Limited didn't reset the device, it's possible Mr M's data would be lost in the course of the repair. I've noted the manufacturer also says a factory reset can resolve battery charging issues in its online troubleshooting guide – so I don't think it's unreasonable for EE Limited to want to perform a factory reset as part of the repair process.

I understand Mr M says he will face significant inconvenience if he has to reset his phone or send it for a repair. I appreciate that phones are now a core part of modern life, and Mr M has shared his reasons for worrying about losing some of the data on his phone. I think there will always be some level of inconvenience involved here, so I've thought about whether EE Limited has offered to mitigate this impact.

EE Limited said it is a personal choice for Mr M to use cloud storage, so it wouldn't cover any additional storage costs. But, it said Mr M should be able to get a loan handset from an EE store while the repair takes place, and the store would be able to help him safely transfer his data across. I think this would be a reasonable way to minimise the impact on Mr M, and so I see no reason why Mr M and EE Limited can't work together to arrange this if Mr M goes ahead with the repair.

I understand Mr M has concerns about the safety of the battery and the device itself, but I've not seen evidence to persuade me that the issue can't be repaired as EE Limited suggests. In any event, I think it's reasonable for EE Limited to be able to physically inspect the phone, so it can confirm the best way to proceed.

Further to this, I understand Mr M wants EE Limited to replace the handset with one of a different make, but similar value to the phone he purchased. As I think a repair is a suitable remedy under the CRA, I don't think I need to direct EE Limited to replace the phone instead. In any event, I'm mindful that the explanatory notes for Section 23 of the CRA say "*a replacement would usually need to be identical, that is of the same make and model*" – so I think requiring EE Limited to replace the phone with a different make and model may not be in keeping with the CRA.

In addition, EE Limited says it can't change the phone listed on the finance agreement, so wouldn't be able to provide a different handset as a replacement. I therefore don't think I can fairly direct EE Limited to do something it's told me it isn't able to do.

Having considered all the evidence on the complaint, while I understand Mr M will be disappointed, I don't think EE Limited is treating him unfairly. I therefore won't be telling EE Limited to provide a different phone as a replacement.

I think it's now for Mr M and EE Limited to come together and find a way forward if Mr M wants to send the phone to EE Limited for a repair. If Mr M remains unhappy after EE Limited has tried to make the phone conform to the contract, I think this would need to be considered as a new complaint.

### **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 Mr M to accept or reject my decision before 8 May 2026.

Hannah Dunkley

**Ombudsman**