

The complaint

Mr T has complained about the way EE Limited administered a fixed sum loan agreement he'd taken out to buy a phone.

What happened

In April 2022 Mr T bought a new phone using an interest free fixed sum loan agreement with EE. The phone cost £962 and Mr T paid a £30 advance payment. The agreement was due to be paid back with 35 payments of £25.88 followed by a final payment £26.20. I understand Mr T also had a separate two-year airtime contract with EE for the phone.

Mr T said he spoke to EE about leaving or upgrading with it and asked how much it would cost if he decided to join another network. Mr T said EE told him the cost and he decided to leave and join another network. Mr T said he later found out his outstanding balance for the device credit agreement and airtime was twice the amount he was told on the phone. He said EE didn't clearly explain things to him. Mr T said he's unhappy he's being asked to pay around £800. He said if EE had explained things properly, he would not have left the network.

Mr T complained and EE sent a final response for his complaint in October 2023 and didn't uphold it. EE said, in summary:

- The early cancellation charge of £180.93 and the device credit agreement balance of £543.80 were correct and due.
- Documents sent to Mr T set out that if he cancelled after the cooling off period but before the end of the minimum term (of the airtime contract) an early cancellation fee would apply, and he'd need to pay the full outstanding balance of the device credit agreement.
- It acknowledged it spoke to Mr T on 11 September 2023 and discussed upgrading the phone. EE said it told Mr T he had 237 days left on his minimum term (of the airtime contract) and around £543 remaining on the device credit agreement. It said it told Mr T the device balance would need to be paid in full before an upgrade. It said there was no discussion of charges for leaving EE.
- Mr T requested a Porting Authorisation Code (PAC) through a self-service system. EE sent him a text with this information that also included details of what would be owed if he left the network.
- It had no record of a call Mr T referred to where he said he was misled about cancellation charges.
- Mr T's number was transferred to another network, and it was disconnected from EE on 15 September 2023.
- The device plan balance of £543.80 was due. And it let Mr T know what was due under the airtime contract.
- It would arrange to supply information under a Data Subject Access Request (DSAR) that had been requested.

Mr T decided to refer his complaint to the Financial Ombudsman. One of our investigators looked into things but didn't uphold it. He said he thought EE had fairly communicated the

amount outstanding under the device credit agreement. He said he'd listened to the call from 11 September 2023, and he thought EE had acted fairly. He also said issues with regards to the airtime contract didn't fall within the Financial Ombudsman's remit.

Mr T responded to reiterate the outstanding balance wasn't explained to him clearly and that if he'd have known he wouldn't have left the network. He said he couldn't afford the lump sum. He also said the 11 September 2023 call was after the relevant one.

Our investigator obtained the previous call, which was from July 2023 but having listened to it he didn't think EE had misled Mr T about what would be owed under the agreement if he were to leave the network. This call related to a billing enquiry.

Overall, Mr T didn't agree. As things weren't resolved, the complaint has been passed 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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mr T and EE that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr T bought the phone using a regulated fixed sum loan agreement, and our service is able to deal with complaints relating to these sorts of agreements. But it's important to note the provision of an airtime contract doesn't fall under the list of activities that the Financial Ombudsman has the power to investigate. So I'm not going to be able to make any findings for how EE dealt with the airtime balance when Mr T decided to leave the network.

I've first looked at the device credit agreement that Mr T agreed to. Under section 21 (Changes to your plan services) it says that if the customer leaves the plan service (airtime contract) within the plan minimum term they'd need to repay the full outstanding balance owing under the device credit agreement when they left the EE network. Seeing as though that term is within the agreement Mr T signed, and it is part of the key information given to Mr T I don't think it was unfair for EE to request the full payment of the device credit agreement balance when Mr T left the network within the airtime term he'd agreed to. I understand he still had over 200 days left within the term.

I've also looked to see if there was evidence EE misled Mr T about the relevant term. I'm conscious EE didn't mislead him on the 11 September 2023 call, which is the day he decided to start the process to leave the network. EE notified him how long he had left on his airtime contract, and that the device credit agreement would need to be cleared if he were to upgrade. Moreover, it sent him a text that day when he requested the PAC and said *As you pay for your device and plan separately, if you were to leave today you'll need to pay £543.8 for your device and £184.05 for your plan (excluding any outstanding add-to-plan product payments) if you end your contract early.* So I don't think EE misled Mr T about what was going to be owed if he left the network on 11 September 2023.

Mr T has said he was misled on another call. He wasn't able to supply a copy of the call himself, but as he said it was a call before the 11 September 2023 one mentioned above our investigator listened to the preceding call from July 2023. I can't see any notes for other calls

from around this time that mentioned Mr T had discussed what would be owed if he left the network. From what I've been shown, the July call preceded the September one, and I agree the call was about a billing enquiry, rather than a discussion about what would happen if Mr T were to leave the network.

Therefore, while I'm sorry to hear Mr T is unhappy, I've not been supplied sufficient evidence to show EE is acting unfairly. It's seeking payment as per the terms of the credit agreement Mr T agreed to. And I've not seen it misled Mr T about what would be owed. There might've been a phone call where EE misled Mr T about the cost of leaving the network, but I've not been able to find evidence of it. So I don't have the grounds to direct it to take any action.

However, I note Mr T has mentioned he can't afford to pay the lump sum. I understand another financial service provider may be seeking recovery of the debt. Mr T may wish to speak to that firm if he's in financial difficulties. The firm will be required to treat Mr T with forbearance and due consideration if he's in financial difficulties. If he's unhappy with how he's treated by that firm and a complaint is raised, it may be one our service is able to consider. But, for the reasons given above, I'm not making any directions for this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 October 2024.

Simon Wingfield
Ombudsman