

The complaint

Ms H has complained about the quality of a phone she bought using a fixed sum loan agreement with Tesco Mobile Limited

What happened

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But in summary, in June 2020 Ms H bought a new phone for around £600 under a fixed sum loan agreement with Tesco Mobile. It looks like Tesco Mobile is also the supplier of the phone. Ms H made a £180 advance payment and was due to pay back the loan agreement with monthly repayments of around £12 for three years.

In January 2023 Ms H contacted Tesco Mobile because of a fault with the phone.

Tesco Mobile said, in summary, that the manufacturer provided a 12-month warranty for the phone, and for faults that manifest after this time, repairs become chargeable.

It looks like Tesco Mobile gave Ms H details of the repair process, but Ms H was unhappy with the support it was offering. She says she took the phone to the manufacturer, and it said there were no signs of physical damage or customer misuse. It looks like Tesco Mobile made an offer to Ms H, but she didn't accept it. Ms H referred her complaint to our service to consider.

One of our investigators looked into things but didn't uphold the complaint. She said she didn't think there was sufficient evidence the phone wasn't of satisfactory quality given how long Ms H was able to use it for – almost three years. She highlighted Tesco Mobile had asked Ms H to contact it about a missed payment towards the airtime, but that wasn't something the Financial Ombudsman could help with.

Ms H didn't agree with the assessment. In summary, she said:

- She wasn't unhappy with the 'quality of the mobile'. It stopped working while under contract with Tesco Mobile.
- The contract was for around £27 per month.
- The manufacturer said there were no signs of physical damage or customer misuse.
- She was unaware the phone only had a 12-month warranty and that it should remain valid for the 3 years.
- Tesco Mobile should provide a working phone for the life of the contract.
- Tesco Mobile didn't open the phone to check whether there was an inherent fault.
- Tesco Mobile offered a 30% reduction to purchase a new mobile phone from Tesco Mobile.
- Her contract ended in June 2023, so why was she sent an invoice in July 2023 for £15.

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 Ms H and Tesco Mobile 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.

Ms H 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.

The agreement sets out that Tesco Mobile sells the device subject to the terms implied by the Consumer Rights Act 2015 (CRA). The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

In Ms H's case, she reported a fault with the phone around two and a half years after she bought it. Even though Ms H says the manufacturer told her there were no signs of physical damage or customer misuse, I've not been supplied sufficient evidence of what is wrong with the phone, nor that the problem was as a result of something inherent. Given how long she'd been in possession of the phone, it would be up to Ms H to demonstrate that the phone wasn't of satisfactory quality at the point of sale. But based on what I've been supplied, I've not seen enough to show the phone wasn't durable, or that it was of unsatisfactory quality at the point of sale. So I don't think Tesco Mobile's response was unfair.

I appreciate Ms H thinks the phone should at least last for as long as the contract is active. But there's nothing in the CRA that sets out goods need to last as long as an associated loan agreement. Ms H could have paid for the phone with one payment or could have paid it off with a loan over 10 years for example. But this doesn't change the implied terms around satisfactory quality.

While I know she'll be disappointed, I've not seen enough to demonstrate the phone wasn't of satisfactory quality. I therefore don't have the grounds to direct Tesco Mobile to take any action. And, like our investigator pointed out, it looks as though the payment Ms H says she was contacted about in July 2023 relates to her airtime agreement. The Financial Ombudsman doesn't have the power to deal with complaints about airtime agreements, because this isn't in relation to a regulated activity. Ms H may wish to speak to Tesco Mobile about this.

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 Ms H to accept or reject my decision before 1 January 2024.

Simon Wingfield
Ombudsman