

## Mobile phones

### What the law says

When you buy a mobile phone, the law says the **phone** (that is the **handset**) must:

- **match its description.** This means it must be as described by the seller. This includes any description on the packaging. For example, if it is described as being a WAP phone, you must have internet access. In most circumstances, it also means that it must conform to any advertising claims made about it; and
- **be of satisfactory quality.** This means the phone must be fit for its purpose and meet the standards that any reasonable person would expect, in normal use of a mobile phone, taking into account the description, the price and all other relevant information. This includes the appearance and finish of the phone and whether it is safe, durable and free from defects, including minor defects. It also includes any purpose you have specifically pointed out to the seller. For example, if you tell the seller that you need a telephone that you can use when abroad, you should not be sold one that it is only suitable for use in the UK.

You have the same rights when you buy a phone in a **sale**.

You will **not** be able to take action against the seller if:

- you **examined** the phone before you bought it and the fault was obvious
- the seller **pointed out the fault** (unless there are other faults and the phone is not as described before you bought it)
- you have **changed your mind** or found a cheaper phone elsewhere
- you have **not followed the instructions** on how to care for it
- you have used it for some time and the problem has been caused by normal **wear and tear**
- the phone **doesn't meet your needs** (unless these were pointed out to the seller when you bought the phone)
- the phone has lasted for the period of time it could reasonably be expected to last for.

The mobile phone **service** must be:

- **carried out with reasonable care and skill**; and
- **carried out in a reasonable time unless a specific time has been agreed.** This means that any problems you have when you use the service should be sorted out within a day or so, unless the delay is outside the service provider's control; and
- **provided at a reasonable cost unless a specific price has been agreed.**

## Special rules if you have paid by credit

If you used your credit card or the seller arranged the finance to pay for the phone and it cost over £100 and under £30,000, the company that provided the credit is likely to be **equally liable** for any breach of contract. This means that, if the phone is faulty, you may be able to claim your money back from the credit card or finance company. This does not apply to debit card transactions (for example, Switch or Delta) where the money comes directly from your bank account.

If the seller arranged the loan finance, you may be able to cancel the loan agreement.

## Remember

Generally you cannot return the phone or cancel the contract because:

- you have **changed your mind** or found a **cheaper deal** unless there is a clause in your contract allowing you to cancel. If there is a right to cancel in the contract, the trader may impose a charge for this – details of this should be found in the contract. (However you may have the right to cancel if credit is involved, or if you have signed a contract in your own home, or if you purchased the phone through distance selling methods i.e. not face to face with anyone - see above)
- you have **not followed the instructions** on how to use and care for the phone
- you have used the phone for some time and the problem has been caused by **wear and tear**.

Be sure to check your contract before you sell your mobile phone to someone else, as you may need the company's permission to do so.

In addition to the above rights, you will also have any additional **rights** included in your **contract**. If you do not have a copy, ask your mobile phone company for one.

## Choosing a mobile phone service

You should compare the clauses in each of the mobile phone companies' contracts before choosing. You may wish to consider:

- **the type of contract** you want, including its length, method of payment and the amount of notice you have to give to cancel the agreement
- the **cost of calls**, especially to non mobile phones and how often and when the phone is likely to be used
- whether the **price of the handset** affects the amount you will have to pay for monthly rental and call charges. The price of the handset may

- be subsidised and it could be expensive to replace it if it is lost or damaged
- whether the handset can be **used** with **other mobile phone companies**
- the **quality of the reception** in the areas in which you will be using the mobile phone
- if **insurance cover** is provided.

## Information before you enter the contract

Before entering into a mobile phone contract, **on or after 16 September 2009**, you **must be given certain information** either verbally or writing. This includes:

- the key charges such as the minimum contract charges and any early termination charges (if any)
- payment terms
- the start date of the service
- termination rights (if any)
- any minimum period of contract.

If you make the contract over the phone, then you must be sent a copy of this information by letter or e-mail, in good time following the call.

A check on your age and/or address will also be carried out. You can be asked for a utility bill, or a copy of your passport or driving licence.

You can complain to the outlet, if you have not received this information - see below.

## Your rights if the mobile phone or phone service is unsatisfactory

If you have a problem with the **phone (handset)**, it is the **seller** not the manufacturer or the service provider who is responsible for dealing with your complaint. If you have a problem with your mobile **phone service**, you will need to contact the person or company that you have a contract with. This will be:

- the network operator; or
- the service provider; or
- the supplier.

### Refund

If you buy a mobile phone and find that there is a fault with it straight away, you should return it to the trader and ask for a refund. If the problem does not arise until some time later, you would only be entitled to ask for a repair, a replacement or some of your money back.

## Replacement or repair

If you bought the phone on or after 31 March 2003, you can ask the seller to replace or repair it free of charge if it is faulty. If you do this within six months of receiving the phone, it will be assumed that the problem existed when you bought it, unless the seller can show otherwise. However, you can still ask for a replacement or a repair for up to six years from the date that you bought the phone, if it is reasonable for it to have lasted that long. In this case it will be up to you to show that the phone was faulty at the time of sale. The longer you have had the phone, the more difficult it becomes to prove that it was faulty at the time of sale.

If:

- it is impossible to replace or repair the phone; or
- a replacement or repair would be unreasonably costly for the seller when compared with alternative remedies; or
- the seller fails to replace or repair the phone within a reasonable time of having agreed to do so or causes you significant inconvenience; or
- the phone has worked for some time before it goes wrong or only one of its functions has gone wrong

then:

- you can ask for a partial or full refund. The amount of money you get back may be reduced to take account of any use that you have had out of the phone.

## Mis-selling, slamming and sales incentive schemes

A mobile phone company must not **mis-sell** their products and services. This means they must not leave out or provide false or misleading information, for example, about tariffs, savings or promising offers which do not materialise. Also they must not apply unacceptable pressure for you to enter into a contract, for example, by using intimidating behaviour or refusing to leave until you sign a new contract.

Mobile phone companies must also not use **slamming**. This means switching you from one provider to another without your knowledge or consent. Slamming may also include **passing off**, where sales people claim to represent a different company; where you are told you are merely signing up for information rather than entering into a new contract; or forging your signature on a contract without you being aware.

If the mobile phone company uses a **sales incentive scheme**, this must be fair. A sales incentive scheme is a scheme where you are promised a certain amount of money, goods or products when you take out a mobile phone contract.

Before entering into the contract you must be given this information, verbally or in writing:

- the identity of the company making the offer, that is, whether it is a network operator, a service provider or a retail outlet
- the details of the offer
- the terms and conditions of the offer. You must be told that the contract for the offer is separate to the mobile phone contract.

If you make the contract over the phone, then you must receive a copy of this information by letter or e-mail, in good time following the call.

When you claim your goods, products or services back from the company:

- they can't ask you to give them an original bill – a copy of a bill is enough
- they can't charge you for applying under the offer
- they must give you at least 60 days to apply
- they can't refuse to give you cashback because there is something unpaid on your account. However, they can refuse to give you cashback if you don't pay bills to them on a regular basis, or you are trying to defraud them
- if the offer is for cashback, the company can't decide to refuse all your future claims for cashback if you fail to get cashback the first time you apply.

## Complaining to an outlet

If you have a problem with mis-selling, slamming and sales incentive schemes, you should complain to the outlet. If you feel that a complaint is not being dealt with appropriately by the outlet, you should contact your service provider and ask them to look into the complaint. If you are still not satisfied you can complain to OFCOM – see below.

## Compensation

You may be able to get compensation if:

- the phone itself is not of satisfactory quality, as described, or fit for its purpose
- the contract has been broken (**breach of contract**). For example, the mobile phone service was not carried out with reasonable care and skill or problems were not put right within a reasonable time
- the phone was dangerous or unsafe and someone has suffered personal injury. If the phone is unsafe, report the seller to Consumer Direct on 0845 404 0506 before taking action against the seller
- the seller has made a **false or misleading statement or has put unacceptable pressure** on you about the phone or the service to persuade you to choose it
- you allowed the company to **correct the problem** but this has **not worked**

- you have incurred additional expenses or have suffered inconvenience because of the breach of contract, for example, having to make extra telephone calls or having to post items
- you have been subject to **slamming**
- you have been sold an **unfair sales incentive scheme**.

## Guarantee

If the phone was sold with a guarantee, you may have additional rights under the guarantee. The guarantee cannot take away your statutory rights.

## How to solve your problem

- If your problem is about a **broken or faulty handset** you should contact the outlet and ask for a full **refund**, a **replacement**, a free **repair**, or **compensation**, and set a time limit.
- If your problem is about **tariffs, billing or coverage** you should contact your mobile service provider. If you have not been able to resolve your complaint with the mobile service provider, you may be able to get help from the **Ombudsman Services: Communications** or from the Communication and Internet Service Adjudication Scheme (**CISAS**) – see below.
- If your problem is about the initial sale including **mis-selling, slamming or sales incentive schemes** you should contact the outlet which sold you the phone. If you feel that your complaint is not being dealt with appropriately by the outlet, you should contact your mobile service provider and ask them to look into the complaint. If you are still not satisfied you can complain to OFCOM - see below.
- **if you are still unable resolve the matter** you will have to consider court action. **Remember court is your last resort**. Before doing so, you need to consider whether you have sufficient **evidence**. You will have to prove that the company is responsible for the problem.

## Organisations that deal with complaints against mobile phone companies

### Ombudsman Services: Communications

If you have already used the company's own complaints procedure, the Ombudsman Services: Communications may be able to help with a complaint, but only if the company is a member. For more information, go to their website at [www.os-communications.org](http://www.os-communications.org) or call 0330 440 1614.

### CISAS

The Communication and Internet Services Adjudication Scheme (CISAS) may be able to help you with a complaint about a phone company, if the company is a member of the CISAS scheme. You must have used the phone company's own complaints procedure first. You can contact CISAS on 020 7520 3827, or visit their website at: [www.cisas.org.uk](http://www.cisas.org.uk).

### Ofcom

Contact Centre  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Enquiry line Tel: 0300 123 3333  
Switchboard: 020 7981 3000  
Textphone: 0300 123 2024  
Fax 020 7981 3333  
Website: [www.ofcom.org.uk](http://www.ofcom.org.uk)

Ofcom is the telecommunications watchdog in the UK. Ofcom do not investigate individual complaints against phone service providers, although they log every complaint about a company. If one particular company seems to be causing concern for consumers, they may consider investigating them.

## Other fact sheets that might be helpful

- Sample letters
- Starting court action
- Safety
- Credit

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