



Buying a Mobile phone

This fact sheet has been developed for the Consumer Education Program by the Communications Commission of Kenya. It was compiled by studying material from various authoritative sources and adopting what is universally acceptable and relevant to the Kenyan situation. The fact sheet is intended to enable Consumers have a good understanding of the issues discussed and hence empower them and enable them make informed decisions regarding ICT products and systems.

Introduction

When consumers do not know their rights with regard to buying mobile phone handsets, they become very vulnerable to fraud or being sold substandard products. Consumers therefore need to know their rights and responsibilities so as to protect themselves and exploit all avenues for redress when their rights are violated.

Which handset is best for me?

When shopping for a new mobile phone handset it is always best to buy the handset that best suits your needs and budget. You will find a range of handsets to choose from with many different features. As a general rule, the more features a phone has, or the smaller it is, the more expensive it will be. Avoid being pushed to make an instant decision by a salesman. It always pays to shop around. Also do not be misled by cheap or eye-catching banner rates - there may be hidden costs. Find out what your phone will cost to replace if it is lost or stolen - depending on the model as this could turn out to be a lot of money.

With regards to service provided by service providers, always ask for the helpline number of the service provider that you wish to subscribe to. Call the number to find out whether the features are supported by their network. Some of the features incorporated in today's mobile phones would enable one to make video calls, have access to broadband wireless data and internet access by use of GPRS, WAP, and EDGE technologies to enable web browsing and sending and receiving of e-mails. Mobile phones now have features that enable access to Multimedia Messaging Service or MMS which allows the sending and receiving of pictures, videos, and music files, cameras and touch screens and also have Bluetooth a technology that allow phones and other compatible devices to communicate within a short radius.

You can start your search by asking yourself the following questions:

- Is the size of the handset right for me?
- Can I see and use the keypad properly?
- Will I need to be able to attach a car kit?
- Do I need access to short message service (SMS)?
- Do I have special needs, like using the phone with a hearing aid?
- Does the phone have all the features I require? This might include services like call barring capability, fax and data facility, or internet access.
- How many numbers will I be able to store on the phone?



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- Am I going to spend a lot of time on my phone and therefore need a model with a long lasting battery (high talk-time)?
- Am I paying for features that I don't need?

Mobile phone warranties and conditions

A condition is a term which, when breached, allows the injured party to treat the contract as breached. The injured party can sue for compensation and is also freed from his obligations under the contract. A warranty or guarantee is a promise that a product or service sold to you will do the job that it's supposed to do. Warranties are not fundamental to the contract and do not give the aggrieved party the right to cancel the contract, he may however have a right to redress.

Implied terms and conditions in a sale of goods contract

In every sale of goods contract, there are some implied terms and conditions that prevail unless they are expressly excluded by the parties involved.. These conditions and warranties include:

1. The right to sell
2. Right to quiet possession
3. The goods are free from charge and impediment
4. Goods are fit for the purpose they are normally used for
5. Goods are of merchantable quality that is that the goods are commercially saleable.
6. If the goods are sold by sample then the bulk must correspond to the sample
7. Goods sold by description should be as described

Whenever one goes out to purchase a phone or any other item a contractual relationship exists between you and the seller whether or not the sale was over the counter or documented. Therefore you as a consumer are protected under the law and you have course for redress whenever any of the above conditions and warranties are breached. You will need to show the seller proof of purchase (a receipt or the network service connection agreement) and let them know as soon as you notice a problem

Your rights when buying a phone

If you are buying a mobile phone, it must be of satisfactory quality, fit for its purpose and as described. If the phone turns out to be

- Defective or faulty
- Does not match a sample or description that you were shown
- Does not do what the seller said it would do.

Follow the advice below:

- If you have only had the phone a few weeks or have not had a reasonable opportunity to check it, you are probably entitled to a refund for a fault or poor description, or alternatively you may request a replacement.

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- If the fault is only minor and can easily be put right, it is reasonable to accept a repair. This will not stop you claiming a replacement or refund if the repair turns out to be unsatisfactory.
- If you have had the phone longer than a few weeks or have had a reasonable opportunity to check it, you are probably still entitled to a repair or replacement. A repair should be carried out within a reasonable period of time and without causing you significant inconvenience. Any repair should restore it to a satisfactory condition. If this does not happen, you are entitled to a replacement or compensation. This could be a sum of money or the cost of having somebody else repairs the phone.
- If the phone cannot be replaced or repaired economically, you are entitled to a refund. The trader may make a reduction from the price you paid to allow for the use you have had from the phone.
- If you may have incurred any other additional charges, you may be entitled to compensation over and above the price of the phone.

Things to consider when comparing mobile phone warranties

Manufacturers will guarantee their handsets against any faults occurring within a specified period (usually 12 months) and the network service providers guarantee connection to the mobile phone network. When you are given a warranty with a handset there may be conditions attached. You need to clarify what is covered by the warranty with the seller and get this in writing so there is no confusion later. Things to ask the seller include:

- What does the warranty cover (repair of phone, replacement of parts, software related/hardware related etc)
- Where can the repairs be carried out?
- Are costs for labour, transport and spare parts included?
- Is a substitute handset provided while repairs are being made?

Express warranties

Express warranties are extra promises made by a retailer or manufacturer about a product. They can be made in writing or in person and are sometimes called a 'manufacturer's warranty'. When you purchase a mobile phone, you may receive a manufacturer's warranty card or notice. This type of warranty is usually included in the cost of the phone and usually lasts for one year.

Because manufacturers offer these warranties voluntarily, they determine how long the warranties apply. Manufacturers are not legally required To provide express warranties covering the mobile phone for the entire contract period. A company must keep any promises it makes in its express warranties. Remember—express warranties are provided in addition to your statutory rights.

Extended warranties

An extended warranty is a type of express warranty—it is usually a service or insurance contract sold separately to provide repair and maintenance for a set period,



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for example, a two-year extended warranty on top of a one-year manufacturer's warranty.

You might consider an extended warranty if your handset was expensive, but check that the benefits are worth the extra money and that the extended warranty does not simply repeat your statutory rights. You should also factor in the cost of any excess that you may need to pay to make a claim—it may not be worthwhile.

Once you have bought the phone, you will not be able to take action against the seller if;

- You examined the phone before purchase and the faults were obvious.
- The seller pointed out the faults.
- You have changed your mind and found a cheaper phone.
- You have not followed the instruction on how to care for it.
- You have used it for some time and the problem is as a result of normal wear and tear.
- The phone has lasted for the amount of time it could reasonably be expected to last.

Your right if the mobile phone handset or service is unsatisfactory

If you have a problem with the handset it is the seller and not the manufacturer or service provider who is responsible with dealing with your complain.

If you have a problem with your mobile phone service you will need to contact the company that you have a contract with, this can be

- The network operator
- The service provider

Compensation

You may be entitled to 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 or of a condition)
- The seller has made a false statement about the phone or service to persuade you to choose it.
- You allowed the company to correct a problem but that has not been done.
- You have incurred additional expenses or have suffered inconveniences because of a breach of contract.

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.



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Faulty mobile phone: How to go about solving the problem

Contact the mobile phone retailer and follow the steps below:

- Gather all your documents together including your contract, and credit agreement, if applicable
- Explain your problem calmly but firmly to the manager or the respective head of the department concerned. Always keep a copy of the letter of complaint made to the mobile phone retailer which should clearly outline your problem and your request for appropriate action to be taken. This could either be a full refund, a replacement, a free repair, or compensation or other appropriate action and this should be carried out within set a time limit.
- If you have not been able to resolve your complaint with the mobile phone retailer, you may be able to get help from CCK by following the appropriate complaints procedure
- If you are still unable to resolve the matter, your only other option is to consider going to court. You should again write to the manager of the firm and/or the credit company detailing your complaint and the steps that have been taken. Say you are giving them **fourteen days** to resolve the problem or you will consider legal action. Be sure to keep copies of all correspondence
- If the company makes an alternative offer, you can either accept or continue to negotiate. Be realistic in what you will accept. You may not necessarily get a better offer by going to court
- If the company refuses to do anything, or makes a final offer you are unwilling to accept, 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

Complaints against mobile phone companies and vendors

After repeated failure by a service provider to address a matter to the satisfaction of its client, then the client may file a complaint to the Communications Commission of Kenya, and ensure that you attach copies of relevant correspondence that would assist the Commission and the service provider resolve the problem.

The complaints should be addressed to:

THE DIRECTOR GENERAL
COMMUNICATIONS COMMISSION OF KENYA
P.O. BOX 14448, NAIROBI, 00800
Email: info@cck.go.ke
Website: www.cck.go.ke

The complaint should also contain as much relevant information as possible and be clear so as to enable easier and faster follow-up with the service provider



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Acknowledgement

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Disclaimer:

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