

The complaint

Mr K complains about the repayment of a fixed sum loan agreement he has with Sky UK Limited.

What happened

In April 2023, Mr K applied online for a fixed sum loan with Sky to pay for a brand new mobile telephone device. The loan application was successful and Mr K took delivery of a package the following day, from a third party courier.

Mr K says he received a brown cardboard package from the courier and the box for the device was inside. However, Mr K says the device was missing when he opened the box.

On the same day as the delivery, Mr K called Sky to complain and told them what had happened. Sky asked Mr K to send images of the packaging, which he promptly did. After reviewing their records, Sky sent Mr K their final response to his complaint. They said that the device was successfully delivered to Mr K, so he was responsible for the repayments to the fixed sum loan.

Mr K didn't accept Sky's response and brought his complaint to us. One of our investigators looked into Mr K's case and found that Sky hadn't treated Mr K fairly. She was persuaded that the device wasn't in the box, when Mr K received the package from the courier. So, she asked Sky to allow Mr K to exit the agreement and cancel it.

The investigator asked Sky to refund all the repayments Mr K had made to the fixed sum loan agreement, together with an interest payment because Mr K wasn't able to use those funds. The investigator also said Sky should remove any adverse information they had recorded about the loan, with credit reference agencies.

Mr K accepted the investigator's findings, but Sky didn't. They said all the evidence suggests that Mr K took delivery of the device, so it's fair they hold him responsible for the repayments.

The investigator didn't change her conclusions, so Mr K's complaint has been passed to me to make 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.

Sky provided Mr K with a fixed sum loan to finance the purchase of an electronic device. It was also the supplier of the device, so it was responsible for its delivery. As well as the fixed sum loan to cover the cost, Mr K had an additional contract with Sky for the supply and use of the device, as well as associated services.

I've seen that the terms of Mr K's fixed sum loan linked the other contract for the supply of the device. Given this, and as it appears that both contracts were sold as one package, in

my view the contracts were intrinsically linked. The credit agreement actually sets out that it is a requirement for Mr K to also enter into a contract for the supply of equipment. So, I'll consider both contracts together in determining whether Sky has treated Mr K fairly.

Mr K's fixed sum loan has terms which seek to stop him setting off a claim under one contract against the other. This might apply in a situation where Mr K seeks to make a claim about the failure to supply the goods to him under the linked contract for goods and services.

I've thought about what the Consumer Rights Act 2015 (CRA) says about contract terms, and I'm also aware that it is for a court to decide if a term is unfair. But, I'm required to take into account relevant law when deciding what is fair and reasonable.

Having carefully considered this, I don't think it would be fair to exclude Mr K's right to set off a claim under one contract against the other. I think we can consider Mr K's claim that Sky breached its contract with him by not supplying the goods. In any case, there is a regulated credit agreement, under which Mr K is being charged for the goods. So, I can consider whether Sky is acting fairly by asking Mr K to pay where there is a dispute about delivery.

As a result, I'm able to decide whether I think, on balance, that the device was delivered to Mr K's address.

When the evidence is incomplete, inconclusive, or contradictory (as it is in this case), I make my decision on the balance of probabilities. That is, what I think is most likely to have happened given the available evidence and the wider circumstances.

The delivery of the package

During our investigation, Sky explained the process they have when sending a device to a customer. They say the box which contained the device was packed into a brown cardboard package, labelled and passed to a courier. Sky say this was all done under surveillance.

However, Sky haven't provided evidence to show where the device was in the box, before it was placed in the cardboard packaging. But, they have told us that the device was sealed in its box, when they took delivery of it from the manufacturer. Sky have also said that the weight of the package shows the device was in the box, when it was delivered to Mr K.

I've thought carefully about the evidence we have here. I acknowledge what Sky have said about the weight of the package, when it was passed to the courier. I'm also aware that the weight is rounded up, for the benefit of the courier. So, I don't think the weight on the package can be solely relied upon to decide Mr K's case.

Overall, I don't think the evidence Sky have provided about the journey of the package through their warehouse to the courier, is persuasive enough to show that the device was in its box, when it was sent to Mr K. Therefore, I've looked at what happened when the package arrived at Mr K's home, to think more about a fair outcome.

Both Mr K and Sky have shown that the package was delivered the day after the device was ordered. Sky's records show the courier's photograph of the package inside Mr K's open front door with a person standing beside it. The courier's notes accompanying the delivery, show it was taken in by someone with the same surname as Mr K.

I cannot see any obvious signs of damage or tampering from the courier's photograph. And Sky have said that they haven't seen anything which concerned them about the delivery. Additionally, Mr K says he took the delivery himself from the courier. Having thought about all the evidence, on balance, I don't think a third party took the package on Mr K's behalf.

So, I've gone on to consider the other photographs we have and what Mr K says about the package.

When Mr K first raised his concerns with Sky, he provided photographs of the packaging. I've looked at Mr K's photographs and I can see where he opened the brown cardboard packaging. The images don't show any clear, thin plastic wrapping used to seal the device box, but they do show where two thin plastic stickers were attached. The photographs also show the charging cord in the device box.

Mr K hasn't intimated that the device box was wrapped in clear, thin plastic when he opened it. This is different to what Sky says about how they received the device from the manufacturer. Mr K says he simply tore the cardboard packaging and removed the two thin plastic stickers from the device box, before opening it.

The tearing of the brown cardboard package by Mr K, means I have to look at the courier's photographs to think about its condition on delivery. Having done so, I don't think the cardboard packaging had been tampered with in such a way, that its contents had been removed. While I recognise what Sky have said about the removal of the clear, thin plastic wrapping of the device box, I find the evidence Mr K has provided persuasive.

On balance, I don't think the device box was sealed in the way Sky have suggested, when Mr K came to open it.

I've concluded that the evidence doesn't show that the device was in the box when it left Sky's premises. And that I'm persuaded that the device box didn't have the clear, thin plastic wrapping, when it was delivered to Mr K. So, I've thought about what Mr K and Sky did next to try resolve the issue.

The events after the delivery of the package

Sky's records show that Mr K contacted them about the delivery, around 40 minutes after he received the package from the courier. The records also show that Mr K was prompt in providing photographs and that he pursued his concerns with Sky, over the following days. Additionally, Mr K has provided copies of emails between himself and a police officer, from when he reported the device missing to the authorities.

Against this background, I think Mr K's actions were reasonable and timely. I also think they show how serious Mr K had taken his concerns that the device had been stolen. I can see that Mr K has been consistent with what he explained to Sky, the police and to us as part of his complaint. So, I find what Mr K says credible.

Furthermore, the police have provided comments to say they believe the device was sold to a pawnbroker, after searching a national database. Although the police weren't able to find a record of the person who sold the device to the pawnbroker, I think this further demonstrates where Mr K was prepared to help with the police's investigation.

Sky have told us that the mobile telephone device was activated in early July 2023, just over two months after the delivery date. Sky haven't been able to trace where the device was activated, or if it was used in connection to a particular account, offered through the manufacturer. So, I think the activation of the account likely supports where the device may have been sold on by the pawnbroker. This is consistent with what Mr K and the police have shown us.

I've seen where Mr K has maintained the repayments due under the fixed sum loan agreement. He says he's kept up with repayments to avoid any adverse information from

being registered on his credit file. He also says he has used a different device, while this complaint is ongoing. I accept what Mr K says here and I don't think by making repayments, it means he's accepted he took delivery of the device.

In all the circumstances, I think Mr K has been consistent and credible throughout complaining to Sky and during our investigation. On balance, I'm not persuaded the evidence shows the device was in its box, when it left Sky's warehouse and I'm persuaded by what Mr K says about how the device box wasn't wrapped in plastic, when he opened the packaging.

Having considered everything, on balance, I don't think the device was in its box when Mr K took delivery from it, from the courier in April 2023. So, I don't think it's fair for Sky to hold Mr K responsible for the repayments due under the fixed sum loan agreement.

It follows that I think Sky should take steps to remedy the situation for Mr K. I think it's fair that Sky allows Mr K to exit the fixed sum loan agreement at no further cost to him. I also think it's fair for Sky to refund all the repayments Mr K has made towards the agreement.

Mr K hasn't had the use of the funds he has paid to Sky since the start of the agreement. So, I think it's fair for Sky to also add interest at 8% a year simple, to each repayment, from the date each payment was made, to the date of settlement of this complaint.

Finally, I've not seen where Sky may have recorded adverse information on Mr K's credit file. But, I'm aware Mr K is worried about that and has tried to prevent it from happening, by keeping up with repayments. So, I think it's fair for Sky to remove any adverse information they may have passed on to credit reference agencies about the fixed sum loan agreement.

Putting things right

For these reasons, Sky UK Limited should:

1. allow Mr K to exit the fixed sum loan agreement and cancel it, at no additional cost to him;
2. remove any adverse information about Mr K's fixed sum loan, from the details held with credit reference agencies;
3. refund all the repayments to Mr K that he has made under the fixed sum loan agreement, from the start of the agreement, to the date of settlement of this complaint; and
4. add interest at a rate of 8% a year simple to part three of this settlement, from the dates the repayments were paid, to the date of settlement of this complaint.

Sky must pay these amounts within 28 days of the date on which we tell them Mr K accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Sky deducts tax from any interest they pay to Mr K, they should provide Mr K with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Sky UK Limited to put things right

as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 January 2024.

Sam Wedderburn
Ombudsman