

## **The complaint**

Miss V complains about a fixed sum loan agreement she took out with Sky UK Limited.

## **What happened**

In July 2023, Miss V started an online application for a fixed sum loan agreement with Sky, to pay for a brand new mobile telephone handset, which I'll call Device One. During the final parts of the application, Miss V says she encountered a problem and wasn't able to complete and sign any documents.

Shortly afterwards, Miss V called Sky and spoke to an advisor to try and sort things out. The advisor told Miss V that her online order wasn't showing on their system. So, the advisor processed a new application and ordered Miss V's chosen handset, which I'll call Device Two.

Later that day, the same advisor called Miss V and told her that the application for Device One, now appeared on Sky's system. To try and put things right, Sky's advisor cancelled the application for Device One and told Miss V to refuse the planned delivery from the courier. The advisor also said that Device Two would be in a separate package and Miss V was to accept delivery of that.

A few days later, the courier arrived at Miss V's home address, to deliver both packages. Miss V says she explained to the courier what had happened, took delivery of Device Two and sent the courier away with Device One. Miss V also contacted Sky twice over the following days to make sure that Sky would charge her for Device Two only.

Sky couldn't trace the return of Device One and saw that it had been activated. Sky also checked the courier's delivery records and found that there wasn't a record of the delivery being refused, or that Miss V was given that instruction by their advisor. Miss V complained to Sky and said it was unfair for them to hold her responsible for the repayment of the fixed sum loan agreement for Device One, as she had followed their instructions of how to return it.

In their response to her complaint, Sky reiterated that they couldn't find a record of Miss V returning Device One and said the evidence shows it was delivered. So, they continued to hold Miss V for the repayments due under the loan agreement. Miss V didn't accept Sky's response and brought her complaint to us. Miss V also cancelled the fixed sum loan agreement for Device Two and sent that handset back to Sky.

One of our investigators looked into Miss V's case and found that Sky had treated her unfairly. She said Sky had told Miss V to refuse the delivery of Device One and was persuaded that Miss V didn't take both of the packages from the courier.

So, the investigator concluded that Sky shouldn't hold Miss V responsible for the repayment of the loan for Device One. The investigator also asked Sky to remove any information about the fixed sum loan from Miss V's credit file and to pay Miss V £100 for the distress and inconvenience she had been caused.

Sky didn't agree with those findings. They said they didn't receive Device One back from the courier and if the delivery was refused by Miss V, there would be a record to show it.

The investigator didn't change her conclusions and Miss V's complaint has now 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.

The two fixed sum loan agreements Miss V took out with Sky are regulated financial products. Because of this, we are able to consider complaints about them.

I can see from Miss V and Sky's records that Device Two was returned to Sky shortly after it was delivered. I can also see that the fixed sum loan agreement was cancelled with nothing further to be owed by Miss V. With that in mind, I don't think I need to make a finding about the agreement for Device Two. So, I've concentrated my findings on the crux of Miss V's complaint, being the fixed sum loan agreement for Device One.

#### *The application for Device One*

When Miss V first complained to Sky, they told her that she hadn't followed the returns procedure and that she wasn't told to send the package containing Device One, back with the courier. So, I've considered what happened when Device One was ordered, to decide what advice Sky gave to Miss V.

I've listened to the first call Miss V made to Sky, when she encountered a problem with the application for Device One. In this call the advisor told Miss V the application for Device One wasn't showing on their computer system. The advisor processed the application for Device Two and later that day, she made a follow up call to Miss V.

I've listened to the second call and I can see that the advisor told Miss V that Sky needed to cancel the agreement, that had subsequently appeared on their system for Device One. The cancellation was carried out and the advisor told Miss V to refuse the delivery of the package and hand it back to the courier.

Against this background, I think Miss V was given conflicting information by the advisor about the status of her application for Device One. Although this was put right, I think Miss V was told to refuse the delivery from the courier. I also think this advice goes against what Sky say is their correct returns process.

Overall, I think Miss V was entitled to rely on the advice from Sky, when they told her to refuse the delivery of Device One and take delivery of the package containing Device Two. So, I've gone on to consider what happened on the day of the delivery and if it's likely Device One was returned, in line with Sky's advice to Miss V.

#### *The delivery of Device One*

Sky say that the courier's global positioning system (GPS) tracker and the photographs they have provided, show that Miss V took delivery of both packages. I acknowledge that the GPS information will show that the courier was at Miss V's home address. But, I don't think this alone is persuasive enough to prove where Miss V may have taken both packages from the courier.

Additionally, the photographs show both packages in the courier's hand, rather than in Miss V's possession. So, while useful in the context of this investigation, I don't think the courier's photographs show that Miss V took delivery of Device One.

During Miss V's complaint, Sky asked her for closed circuit television (CCTV) or doorbell camera footage. Miss V doesn't have these facilities, so was unable to provide such evidence.

I've also looked at Sky's records of the delivery of Device One and I can see that there isn't a note to suggest the package was refused. Sky say they would expect a record to be made had the package been handed back to the courier. On the other hand, Miss V says the courier has confirmed to her, that the package containing Device One was taken back to their warehouse. But, Miss V hasn't provided any written evidence to support that.

Additionally, Sky have told us that Device One was activated around a week after it was delivered. Sky haven't gone on to show us the location where the device was activated, or whose account it was activated with. With this in mind, I don't think I can rely on what Sky say here, to lead me to find that Miss V accepted the delivery of the package from the courier.

I can see from Sky's records that Miss V contacted Sky on several occasions in the days following the delivery date. I think Miss V was careful enough to try and make sure she would only be charged for Device Two and that she returned that device correctly, when she saw that the relationship with Sky had broken down. I can also see that Miss V paid the balance of the fixed sum loan agreement for Device One, to try and limit any impact on her credit file.

I think Miss V's recollections of what happened, before and after the application for the agreement for Device One, are very consistent and I find what she has told us credible. I think this is in contrast to the version of events that Sky had said in their initial response to Miss V and then to us, once we had asked for further information.

Having thought about everything, I'm persuaded by what Miss V has said. On balance, I think Miss V refused to take delivery of the package containing Device One, in line with the advice Sky gave to her during the call to cancel the loan agreement. So, I think it's unfair for Sky to hold Miss V responsible for the repayments due under the fixed sum loan agreement for Device One.

It follows that I think Sky should offer Miss V a remedy. So, I've thought about how Sky should put things right.

#### *The settlement of this complaint*

Miss V has explained to us that Sky have recently been in touch with her about the outcome to this complaint. But, neither Sky nor Miss V have provided evidence to show if anything has been agreed or put into place. Therefore, I've continued with my findings to explain what I think is a fair way to resolve the matter.

I've found that it's unfair for Sky to hold Miss V responsible for the payment of the fixed sum loan agreement for Device One. So, I think Sky should allow Miss V to exit the agreement at no additional cost to her.

Miss V has explained to us that she repaid the balance of the loan agreement for Device One, in late 2023. She says this was after Sky passed the outstanding debt to a debt collections agent. I think it's fair for Sky to now refund any repayments Miss V has made

under the agreement for Device One.

I also think Miss V has been without the use of those funds. So, I think it's fair for Sky to add interest to the repayments Miss V has made. I think this should be at a rate of 8% a year simple from the dates the repayments were made, to the date of settlement of this complaint.

I acknowledge that Sky are likely to have recorded information about the fixed sum loan agreement for Device One, on the records held about Miss V with credit reference agencies. In light of my conclusions about Miss V's responsibility towards the loan and that it was cancelled by Sky on the same day it was approved, I think it's fair for Sky to remove any information about the agreement for Device One from Miss V's credit file.

Finally, I can see that Miss V was put to some degree of trouble by Sky when she tried to show that they told her to refuse the delivery. I also think it was very worrying for Miss V, when the outstanding debt was passed to a debt collection agent and the impact that would have on her credit file.

So, I think it's fair for Sky to make a payment to Miss V, in recognition of the distress and inconvenience she has experienced. In all the circumstances, I think the level of that payment should be £100.

### **Putting things right**

For these reasons, Sky UK Limited should:

1. Allow Miss V to exit the fixed sum loan agreement for Device One, at no additional cost to her;
2. Refund all the repayments to Miss V, that she has made under the fixed sum loan agreement for Device One;
3. Add interest at a rate of 8% a year simple to part two of this settlement, from the dates the repayments were made, to the date of settlement of this complaint;
4. Remove any information about Miss V's fixed sum loan agreement for Device One, from the details held with credit reference agencies; and
5. Pay Miss V £100 for the distress and inconvenience caused.

Sky must pay these amounts within 28 days of the date on which we tell them Miss V 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 Miss V, they should provide Miss V with a tax deduction certificate if she asks for one, so she 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 Miss V to accept or reject my decision before 11 April 2024.

Sam Wedderburn  
**Ombudsman**