

The complaint

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

What happened

In October 2023, Mr B took out a fixed sum loan agreement with Sky to pay for a brand new mobile telephone device. After the application was completed, Sky agreed to change the initial delivery date of the device to a Saturday. Mr B says he made these arrangements as he works during the week.

However, the package from Sky wasn't delivered on the agreed date. Instead, Sky delivered the package on the following Monday morning. Mr B says he delayed going to work, to be ready to take the package from the courier. But, as he needed to get back to work, he didn't open the package straight away. Upon his return, Mr B says he opened the package, but the device wasn't inside. He says the package contained a portable power bank for charging mobile telephone devices.

Mr B called Sky after discovering the contents of the package and provided them with several photographs of the brown outer cardboard box. Mr B also sent Sky photographs of the packaging containing the power bank, which he says was inside the outer box.

In their response to Mr B's concerns, Sky said that the outer cardboard box hadn't been tampered with or damaged. They also said their courier hadn't reported anything unusual about the delivery. So, Sky continued to hold Mr B responsible for the repayments due under the fixed sum loan agreement, for the mobile telephone device. Mr B didn't accept Sky's response and brought his complaint to us.

One of our investigators looked into Mr B's case and found that Sky hadn't treated Mr B fairly. He wasn't persuaded that the device was in the box, when Mr B received the package from the courier. So, he asked Sky to allow Mr B to exit the agreement and cancel it.

The investigator asked Sky to refund all the repayments Mr B had made to the fixed sum loan agreement, together with an interest payment because Mr B wasn't able to use those funds. The investigator also said Sky should remove any adverse information they had recorded about the loan and to pay Mr B £100 for the distress and inconvenience he had experienced.

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

The investigator didn't change his conclusions, so Mr B'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 B with a fixed sum loan to finance the purchase of a mobile telephone device. Sky was also the supplier of the device, so they are responsible for its delivery. As well as the fixed sum loan to cover the cost, Mr B 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 B'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 B 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 B fairly.

Mr B'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 B 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 B's right to set off a claim under one contract against the other. I think we can consider Mr B's claim that Sky breached their contract with him by not supplying the goods. In any case, there is a regulated credit agreement, under which Mr B is being charged for the goods. So, I can consider whether Sky is acting fairly by asking Mr B 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 B'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. Sky have told us that the weight of the package shows the device was in the box, when it was delivered to Mr B.

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. And that according to Mr B, there was an item in the box, that is similar in size to that of a mobile telephone device. So, I don't think the weight on the package can be solely relied upon to decide Mr B'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 the package, when it was sent to Mr B. Therefore, I've looked at what happened when the package arrived at Mr B's home, to think more about a fair outcome.

Both Mr B and Sky have shown us photographs from the day on which the package was delivered. Sky's records show the courier's photograph of the package being handed to Mr B, standing at his open front door. The courier's notes accompanying the delivery, show it was taken in by someone with the same name as Mr B.

I cannot see any obvious signs of damage or tampering to the outer packaging from the courier's photograph. And Sky have said that they haven't seen anything which concerned them about the delivery. So, I've gone on to consider the other photographs we have and what Mr B says about the package

When Mr B first raised his concerns with Sky, he provided photographs of the packaging. I've looked at Mr B's photographs and I can see where he had opened the brown cardboard packaging. The images also show the box for the power bank that Mr B says was inside. Mr B hasn't intimated that the outer packaging was damaged or tampered with. So, I don't think there was any third party involvement with the box, after it was received by Mr B.

I acknowledge where Sky say Mr B took more than seven hours to report what had happened. But, I'm persuaded by what Mr B has told us, in that he took delivery just before he had set off for work. And opened the package later in the day, upon his return.

The tearing of the brown cardboard package by Mr B, 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 and replaced with something else.

The events after the delivery of the package

Sky's records show that Mr B contacted them about the delivery on the same day he received the package from the courier. The records also show that Mr B was prompt in providing photographs and that he pursued his concerns with Sky over the following days.

Additionally, I can see that Mr B contacted us within ten days of taking the delivery from the courier and on the same day he received Sky's final response to his complaint. Against this background, I think Mr B's actions were reasonable and timely. I also think they show how serious Mr B had taken his concerns.

It may have been reasonable for Mr B to have also reported what had happened to the police. He tells us that he simply thought Sky had delivered an incorrect item, so didn't feel it necessary to contact the police about a crime. I'm persuaded by what Mr B says here and I think it was reasonable for him to have treated this as a dispute with a retailer, rather than any sort of fraud or theft.

Overall, I can see that Mr B has been consistent with what he explained to Sky and to us as part of his complaint. Indeed, Mr B has remained clear with what happened and has sort to assist Sky whenever they have asked him for information. So, I find what Mr B says credible. I think this further demonstrates where Mr B was prepared to help.

During our investigation, Sky told us that the power bank charger isn't an item they stock, so it couldn't have been sent from their warehouse. While I acknowledge what Sky say here, I don't think the evidence supports their side of the argument. I say this because Sky haven't shown us persuasive records to demonstrate what they sent to Mr B.

Sky have told us that the mobile telephone device hasn't ever been activated. Additionally, they haven't been able to trace where the device is, or if it is being used in connection to a particular account, offered through the manufacturer. So, I think this supports Mr B's

argument that the device wasn't included in the package delivered by the courier.

I've also seen where Mr B has maintained the repayments due under the fixed sum loan agreement. He says he kept up with repayments to avoid any adverse information from being registered on his credit file. He also says he has continued to use his previous device, while this complaint is ongoing. I accept what Mr B says here and I don't think by making repayments, it means he's accepted he took delivery of the device.

Summary

In all the circumstances, I think Mr B 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 the package when it left Sky's warehouse and I'm persuaded by what Mr B says about receiving a power bank charger instead.

Having considered everything, on balance, I don't think the device was in the package when Mr B took delivery from the courier in October 2023. So, I don't think it's fair for Sky to hold Mr B 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 B. I think it's fair that Sky allows Mr B 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 B has made towards the agreement.

Mr B 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.

I've not seen where Sky may have recorded adverse information on Mr B's credit file. But, I'm aware Mr B 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.

Finally, I can see where Mr B was put to some inconvenience by Sky when the package wasn't delivered as planned. Mr B says he paid extra for the delivery to be with him on the Saturday and Sky's records support where the delivery was part of an enhanced service.

I think Mr B was inconvenienced by having to change his plans, where it was reasonable why he wanted the package delivered on a weekend. So, I agree with the investigator that Mr B has suffered a degree of trouble through Sky's actions. And I think it's fair for Sky to make a payment to Mr B in recognition of that. In all the circumstances, I think it's fair for Sky to make a payment of £100 to Mr B for the distress and inconvenience he experienced.

Putting things right

For these reasons, Sky UK Limited should:

1. Allow Mr B to exit the fixed sum loan agreement and cancel it, at no additional cost to him;
2. Remove any adverse information about Mr B's fixed sum loan, from the details held with credit reference agencies;
3. Refund all the repayments to Mr B that he has made under the fixed sum loan agreement, from the start of the agreement to the date of settlement of this complaint;

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. And
5. Pay Mr B £100 for the distress and inconvenience caused.

Sky must pay these amounts within 28 days of the date on which we tell them Mr B 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 B, they should provide Mr B 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 B to accept or reject my decision before 13 January 2025.

Sam Wedderburn
Ombudsman