

The complaint

Mrs W complains about five credit agreements taken out in her name with Sky UK Limited ("SUL").

What happened

Between March and November 2018 five credit agreements were taken out with SUL in Mrs W's name. Three of the agreements were taken out in November 2018. The credit agreements were taken out to buy mobile phones.

Mrs W says she did not either take out the agreements herself or give authority for the agreements to be made. Rather, she suggests that her former partner, who was living with her at the time, entered into these agreements without her knowledge or consent.

Mrs W explains that she remained unaware of these agreements as they were being taken out and maintained because her former partner, intercepted the mail. Moreover, she received no texts or emails about the agreements. Then in November 2019, she tells us that she happened to be at home when the post arrived. She saw five letters from Sky addressed to her. She opened the letters and found out about the existence of the five credit agreements.

Mrs W tells us she told her former partner about the agreements, he admitted he had taken the agreements out. He also admitted taking out other finance agreements with third party lenders also in her name. According to Mrs W her former partner had been made redundant and was having money troubles. In order to try and alleviate his money problems, he had decided to use credit obtained in Mrs W's name to tide him over. It appears, from what Mrs W tells us, that he sold the phones. It also appears her former partner was using the money he got by these means in part at least, to pay his share of the household expenses. Which is one of the reasons Mrs W suggests she didn't realise he was struggling financially before this. Mrs W indicates their relationship ended shortly thereafter and she moved out.

Initially Mrs W started to make payments towards the agreements. She suggests this was because she was worried about what would happen to her credit file if she did not. But she very quickly was unable to keep up with the repayments. The accounts fell into arrears and were defaulted. SUL sold the accounts to a third party who is now chasing Mrs W for the debt.

Mrs W complained to SUL. Initially she called about the agreements. She tells us she did not think there was anything she could do aside from try to pay off the agreements. Later, after she had taken advice, she told it about what her ex-partner had done.

Mrs W points out that some of the contact details for the agreements i.e. the email address belonged to her ex-partner not her. Moreover, when the account was set up the direct debits were coming from an account that Mrs W says belonged to her ex-partner not to her. Further it appears that Mrs W's former partner was able to link his own Sky ID to her account, at around the time the first agreement was taken out.

In any event Mrs W does not think that SUL took the appropriate steps to assess if she, the apparent borrower, could afford the lending. She also suggests that SUL did not assist her as it ought to have done once she began to struggle to repay it.

Mrs W wants SUL to buy back the debt and write it off. Further she wants her credit file amended to remove all mention of the agreements.

SUL did not agree it had done anything wrong. However, it was prepared to look again at its stance if it saw information from the police to say it was prosecuting Mrs W's ex-partner for fraud.

Dissatisfied Mrs W came to our service.

Once Mrs W's complaint was with us SUL told us it carried out appropriate checks to verify Mrs W's identity before going ahead with the agreements. It said it checked, amongst other things, sensitive personal information such as name, date of birth and address. It indicated that it also did other checks, but it was unwilling to share the details with us. It told us this was because this was business sensitive information. Its stance is that either Mrs W or someone acting on her behalf took out the agreements on that basis it decided to hold Mrs W responsible for all five agreements.

SUL also confirmed that all five agreements were made online. It seems the method for doing this was via the Sky Box in Mrs W's home using her Sky ID. It was unable to provide logs that related to Mrs W's Sky ID for the period when the finance agreements were taken out. Further, it added that each time one of the mobile phones was delivered the person who took delivery provided identification documents for Mrs W.

One of our investigators looked into Mrs W's complaint. She came to the view that on balance Mrs W did not enter into the agreements. Further, she also came to the view that on balance Mrs W neither gave authority for a third party to enter into the agreements on her behalf, nor had she given a third party apparent authority to enter into the agreements.

Moreover, overall, our investigator was not satisfied appropriate checks were carried out before the lending was made and she did not think the lending was affordable. Neither did she consider that SUL had demonstrated that it monitored appropriately for financial difficulties when the agreements were live.

In addition, our investigator considered that SUL had acted inappropriately when it sold the debt twice after Mrs W complained even though it ought reasonably to have known she was not in a financial position to pay off the debt.

For all of these reasons our investigator recommended that SUL:

- Buy back the debt from the third party who owned the debt at the time that our investigator's view was issued, (or whoever now owns the debt) in relation to the five finance agreements taken out in Mrs W's name
- Write off the outstanding amount relating to the debts
- Refund the payments Mrs W made herself towards the agreements (from the date she first contacted SUL about the loans in November 2019)
 - SUL should add 8% simple interest to each payment refunded, from the date it was paid by Mrs W until the date SUL settles the complaint.
- Remove all five credit agreements from Mrs W's credit file
- Pay Mrs W £250 for distress and inconvenience.

It appears that Mrs W accepted our investigator's recommendation, but SUL did not. In summary, in response SUL reiterated its position that Mrs W ought reasonable be held responsible for the agreements. It accepted that *"it isn't unreasonable to expect a long-term partner to have access to enough basic personal information and documents to pass the relevant industry standard credit and ID checks that are in place, but this responsibility remains with the individual"*.

Further, SUL explained that the Sky ID amongst other things allows the person who is using it to access all associated functions (such as changing personal information, making amendments to subscriptions, or ordering devices). SUL's position is that by seemingly permitting her ex-partner access to her Sky ID from its perspective Mrs W would be deemed as permitting full account control and thus, authority. It also pointed out that the protection of Sky ID credentials are the responsibility of the ID holder. It pointed to its terms and conditions which it suggested Mrs W had agreed to and which mean that Mrs W is responsible for any loss it has suffered:

"3.5. We may require you to reimburse us for any reasonable and foreseeable losses, costs and expenses which we incur as a direct result of the misuse of the App or Service by you or any one you have allowed to use the App or Service."

Moreover, SUL explained its stance to what it called "*domestic matters*". It told us if Mrs W had reported this matter to the police and a formal crime reference number had been allocated it would have cancelled the agreements and cleared any associated debts.

SUL had provided us with the payment history for the agreements. There were immediate late payments on at least one of the accounts. It did not agree that this might be an indication that either the person paying could not afford the lending or was experiencing financial difficulties. Rather it said *"it is the customers responsibility to manage their affairs to adhere to the contract in which they enter in to. [SUL] cannot be held responsible for a customer's mismanagement if appropriate affordability checks which are carried out with [a credit reference agency] confirm their eligibility for any given product(s). In this case, each application passed those affordability checks resulting in the orders being fulfilled"*.

Further still, SUL did not agree that it had acted inappropriately in selling the debt on twice. Rather, it suggested that Mrs W had not taken the steps she ought to have done to prevent it following this course of action.

Notwithstanding its response, purely as a goodwill gesture, SUL offered to:

- *"Retrieve the balance from the current debt owner in relation to the Credit Agreements.*
- *Cancel the agreements and clear any associated amounts relating to the debts.*
- *Knowing the proceeds of the sale of these devices was used, as you mentioned, for household bills it would be fair to assume Mrs W indirectly benefited from this. SUL feels it is unreasonable to refund the payments that Mrs W made towards the agreements or acknowledge any interest you've requested be paid.*
- *Remove any footprint of these Agreements from Mrs W's credit file."*

It also told us that the £250 for distress and inconvenience we recommended was unreasonable.

Meanwhile Mrs W told us she was working on each of the occasions when the mobile phones were delivered.

We had reached an impasse, so I was asked to take a fresh look at Mrs W's complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

There seems to be three possibilities here that might give SUL a proper basis for pursuing Mrs W for the debt.

Option 1 Mrs W contracted directly with SUL.

Option 2 Mrs W gave a third party actual authority to contract with SUL on her behalf

Option 3 Mrs W gave a third party apparent authority to contract with SUL on her behalf. I will look at each scenario in turn.

Option 1

As I mention above, the first question I think I need to look at is, on balance did Mrs W make the contract with SUL?

Mrs W says she did not. SUL's position appears more nuanced. Initially it appeared to be saying provided its identity checks went far enough it was entitled to assume that the person who purported to contract with it was who they said they were. And it followed therefore that there was a valid contract between it and Mrs W. Now its position seems to be slightly different it seems to suggest it is entitled to say it has a valid contract with Mrs W as she did not take enough care to make sure that a third party did not have *"access to enough basic personal information and documents to pass the relevant industry standard credit and ID checks that are in place"*.

However, I think that the question here is based on the information I have were the fundamentals of contract law in place such that I can fairly say that a valid contract was formed? I don't think they were.

I find it likely that Mrs W's ex-partner did have access to enough basic personal information and documents to pass the credit and ID checks SUL had in place. Moreover, I also find it likely, such is modern life, that Mrs W was logged in automatically to her Sky ID via her Sky Box and anyone who had access to that Box had access to her Sky ID.

I think it is notable that the finance agreements were set up with an email address that does not appear to belong to Mrs W. I also think it is notable that the direct debits were initially coming from an account that on balance was not Mrs W's account. It does not seem that SUL is disputing that the email address and the account did not belong to Mrs W.

The linking of her ex-partner's own Sky ID to her account and the timing of it also suggests it was not Mrs W who was making these agreements.

I also find her behaviour in November 2019 when she contacted SUL about the accounts to be consistent with her version of events.

SUL does not appear to suggest that Mrs W, possesses the phones, or sold the phones or benefitted directly from their sale. Mrs W says she knew nothing about them. And was unable to provide the phones to SUL when they asked for them back in order to reduce her liability. Which begs the question, why would Mrs W take out these agreements, then hand over the phones to someone else to sell but leave herself with the full and sole liability under the finance agreements?

In the circumstances, I think Mrs W never accepted any offer from SUL in regard to these finance agreements because it was not her who was in contact with SUL when the contracts were made. I don't agree therefore, that Mrs W and SUL contracted directly in relation to these agreements.

Option 2

That said if Mrs W authorised the third party who purported to be her to enter into the contract I think that a valid contract may have been formed. In those circumstances I would find that it was fair and reasonable that SUL be allowed to pursue Mrs W for the debt.

For the purposes of this decision I am going to assume that the third party who purported to be Mrs W was her ex-partner. I don't think the parties would disagree about this for the purposes of me considering if Mrs W gave actual authority or apparent authority to a third party for these agreements to be entered into on her behalf.

But for the same reasons that I don't think that Mrs W entered into the contract directly neither do I think she gave her ex-partner her actual authority to act on her behalf.

It follows I don't think that Mrs W contracted with SUL via an agent (her former partner), who had her actual authority to enter into these agreements on her behalf.

Option 3

In the alternative, I have also thought about whether Mrs W represented to SUL that her ex-partner had her apparent authority to enter into these agreements on her behalf. If she did again I think it likely that a valid contract would be created, or that at least SUL might have some proper basis to seek to recover its loss from her.

SUL appears to suggest that the mere fact that Mrs W may have given her ex-partner access to her Sky ID via the Sky box is sufficient, by itself, to say she authorised his actions in entering into the contract.

I don't agree I can draw the conclusion SUL invites me to make, simply because Mrs W might have taken greater care to ensure that her ex-partner did not have access to her Sky ID. SUL has outlined the many associated functions that the Sky ID permits, its purpose is not solely to permit the ID holder to enter into finance agreements for mobile phones. I don't agree therefore Mrs W was giving any apparent authority to her ex-partner to enter into such agreements on her behalf, even if she did give him access to her Sky ID.

Moreover, I find it likely that Mrs W did not knowingly give her ex-partner her Sky ID. It may be that she created the conditions that allowed her ex-partner to get her Sky ID but even that is not enough I find to say that she was giving apparent authority to her ex-partner to take out finance agreements in her name. I also note as an aside, that I rather doubt Mrs W had any inkling that a finance agreement for mobile phones could be applied for with this ID.

I don't place reliance on clause 3.5, SUL has not shown that this clause was part of its contract with Mrs W. I have no context for example to tell me when and how Mrs W agreed to be bound by that clause.

For all of these reasons, I don't agree that SUL has any proper basis to pursue Mrs W for this debt. It follows I find it needs to buy back all of the debt, write-off the balance owing, cancel the agreements, and ask the credit reference agencies to remove all record of these agreements from her credit file. I also find that it must refund any payments she has made towards these agreements and add interest to that refund. I don't agree that while Mrs W may indirectly and unknowingly have benefitted from the sale of the phones, this is sufficient reason to say she should not be refunded for payments she made to agreements she is not responsible for. In any event, it is not clear where or how the proceeds of the sale were spent and that she did get a benefit, albeit indirectly.

By pursuing Mrs W for the debt in these circumstances I also find that SUL acted unfairly and this likely caused Mrs W distress and inconvenience I find a payment of £250 is a both a fair and a reasonable award for this.

The main thrust of Mrs W complaint was about the agreements and whether she should be held responsible for them. However, for completeness I will briefly look at the remaining complaint points.

I accept that SUL appears to have a blanket approach to “*domestic matters*” which it appears doesn’t take into account individual circumstances. That’s a matter for it. I can’t tell SUL (or any business) that its policies or procedures are wrong – that’s a commercial decision it is entitled to make.

But sometimes, the normal application of a business’ standard policy or procedure leads to an unfair outcome for a consumer. And that’s what I think has happened here. SUL did not establish with Mrs W why she might not be able to report the matter to the police or do so in the timescale that it seems to expect. It withheld the redress it might otherwise have offered her because she did not fit the conditions it set. I think that was unfair to Mrs W. I think that also caused her distress and inconvenience, the £250 I have awarded is meant to cover this too. I also note that Mrs W did report the matter to Action Fraud and get a crime number that was given it seems to SUL I don’t see why, given what I have been told about SUL’s policy this was not enough.

In summary, when lending money to a consumer, SUL is required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what a lender should consider is for each lender to decide and the guidance and rules list a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

I can’t tell what checks SUL did overall, so I can’t say they are proportionate. Whereas the payment history of the accounts suggests to me that whoever took out the lending initially could not afford it. And certainly, once Mrs W was making the repayments I think she soon experienced financial difficulty. In such cases SUL has obligations to act fairly, with due consideration and forbearance towards consumers who are in financial difficulties. I don’t agree it did here. It is not enough for SUL to suggest that once its checks have been passed it is then down to the borrower to manage their money. Again, I think acting in this manner is likely to have caused Mrs W distress and inconvenience, which the £250 is meant in part to cover.

It’s entirely up to SUL if it sells on an active debt. That however may be inconsistent in some cases with its obligations towards a consumer who is in financial difficulty. SUL had a breakdown of Mrs W’s finances. It knew her situation, in these circumstances, it was not appropriate to pass the debt on without making sure those new owners had the full picture. In particular that they knew there was no realistic prospect of full payment. Again, I think this most likely did cause Mrs W distress and inconvenience. I think the £250 is a fair and reasonable award for this.

My final decision

My final decision is that Sky UK Limited must:

- Buy back the debt from the third party who owns the debt in relation to the five finance agreements taken out in Mrs W’s name. This includes any fees or charges applied by any third parties in relation to the debt. Mrs W must be left owing nothing to the third party.
- Write-off the outstanding amount relating to the debts. Mrs W must be left owing nothing to Sky UK Limited.

- Cancel the agreements.
- Refund the payments Mrs W made herself towards the agreements (from the date she first contacted Sky UK Limited about the loans in November 2019)
 - SUL should add 8% simple interest per year to each payment refunded, the interest to run from the date it was paid by Mrs W until the date Sky UK Limited settles the complaint.
- Contact the credit reference agencies and request that they remove all mention of all five credit agreements from Mrs W's credit file.
- Pay Mrs W £250 for distress and inconvenience.

Sky UK Limited must pay the total compensation within 28 days of the date on which Mrs W accepts my final decision. If it pays later than this it must also pay interest on the £250 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mrs W can reclaim the tax if she is able to.

Mrs W should refer back to Sky UK Limited if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 17 March 2022.

Joyce Gordon
Ombudsman