

The complaint

Mr C complains about the quality of a mobile telephone device he got using a fixed sum loan with Sky UK Limited.

What happened

In October 2021, Mr C took out a fixed sum loan agreement with Sky for a mobile telephone device. Around five months later, Mr C says he noticed a problem with the device's display, where an uneven black line appeared across the middle of the screen. Mr C contacted the manufacturer of the device and arranged to send it to them for inspection.

The manufacturer looked at the device, but told Mr C they couldn't fix it under warranty. They said scratches on the exterior of the device, may have caused the damage to the screen. Mr C didn't accept that explanation and complained to Sky.

Once Sky had inspected the device, they agreed with the manufacturer and said the damage to the screen wasn't a fault. They said Mr C was liable to pay for a repair himself and gave him a quote to do so.

Mr C didn't agree with Sky's reply and brought his complaint to us. One of our investigators looked into Mr C case and found that Sky hadn't treated Mr C fairly. She wasn't persuaded that the evidence showed that the exterior scratches were linked to the issue with the screen.

The investigator concluded that a reasonable person wouldn't find the device to have been of satisfactory quality. So, she said Sky should allow Mr C to return it. She asked Sky to refund the deposit Mr C paid at the start of the loan agreement and to refund the repayments he had made since the issue with the screen came about. The investigator also asked Sky to add interest to those refunds and to remove any adverse information related to the loan, from the details held with credit reference agencies.

Mr C accepted the investigator's findings, but Sky didn't. They said the problems with the screen wasn't a fault, but damage probably caused by Mr C. They said the manufacturer was correct to say the device couldn't be repaired under warranty and that Mr C had the option to pay them for the repair.

The investigator didn't change her conclusions and now Mr C'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.

Mr C's agreement with Sky

The fixed sum loan agreement Mr C took out with Sky is a regulated financial product. Because of this, we are able to consider complaints about it.

Mr C took out a credit agreement in order to finance the purchase of the device. As the supplier of the device, Sky was also responsible for the quality of it. There were two separate contracts that Mr C entered into with Sky. One was for the supply and use of the device and associated services and the other was the fixed sum loan agreement to pay for it. However, both contracts were essentially sold as one package. Mr C was required to enter into the credit agreement because he chose not to pay for the device upfront.

I think its relevant for me to consider both contracts together when considering whether Sky treated Mr C fairly. I say this because it appears it was a term of the fixed sum loan agreement that there was a linked contract for the phone and associated services. So, I consider that the two contracts were intrinsically linked.

I note the credit agreement has terms which seek to prevent Mr C from reducing his liability under the agreement by way of deduction, set-off or counterclaim. For instance, this might be in situations where Mr C might have a claim about the quality of the goods supplied to him under the linked contract for goods and services. I've thought about what the Consumer Rights Act 2015 says about contract terms. While it is ultimately for a Court to decide if a contract term is unfair, I'm required to take the law into account when deciding what's fair and reasonable.

Having done so, I don't think it would be fair to prevent Mr C from potentially setting off a claim under one contract against the other. This is because to do so would cause a significant imbalance in the parties' rights and I don't think this significant clause was made sufficiently clear prior to Mr C when he entered into the credit agreement.

The quality of the mobile telephone device

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality. The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.

In Mr C's case, he says the device developed a fault with the screen. If the goods provided by the supplier are not of satisfactory quality, then this is a breach of contract. So, Sky's responsibility to Mr C was to consider his claim and decide if the device was of satisfactory quality. If it's found it was not of satisfactory quality, it would be for Sky to then offer Mr C an appropriate remedy.

Sky provided the device to Mr C in October 2021 and at the time it was brand new. Mr C says he found an uneven black line across the centre of the screen five months later. There isn't any evidence from Mr C or Sky to say he's had problems with the screen before March 2022. So, I'm persuaded that the issue with the screen happened when Mr C said it did. I also think the problem arose not far after Mr C took ownership of the device.

Before Mr C sent the device to the manufacturer, he took several photographs showing each side of the mobile telephone and of the screen itself. Mr C only had the device back for a short period of time in between sending it to the manufacturer and Sky. So, I'm persuaded his photographs are a true reflection of the condition of the device in March 2022.

Mr C's photographs show some scratches to the exterior cover of the device. I can also see there is an uneven scratch on the screen, in the same place as the uneven black line reported to Sky by Mr C. The photographs don't show any other damage, or highlight other problems with the screen. This is consistent with the photographs taken by the manufacturer and Sky.

In his complaint to us, Mr C intimated that the issue with the screen happened overnight. After the manufacturer had looked at the device, they said:

“Since upon inspection they found out that damage from your device is mishandling of the device. So that, they marked your device as out of warranty.”

When Sky inspected the device, they said:

“Following on from the investigation we have concluded that the customer is liable to pay for the repair to the device. Upon thorough investigation, there is no evidence to suggest this is a manufacturing fault. Due to this, Sky have deemed this repair to be chargeable and the liability of the customer.”

Having considered everything, I'm not persuaded that the manufacturer or Sky, have shown how the external scratches have caused the damage to the screen. I do of course understand that the external condition of a mobile telephone, may demonstrate how that device has been treated.

But in Mr C's case, I don't think the evidence provided by all parties, shows that the external damage is significant enough to say it caused further, quite specific damage, to the screen. I'm also very aware that apart from the uneven scratch across the centre of the display, there isn't any other evidence to show damage elsewhere on the screen. If Mr C had mistreated the device, as the manufacturer says, it may be that more damage to the screen would be evident.

I've also considered Mr C's concerns about the problem with the screen, being a common issue with the make and model of the mobile telephone Sky provided to him. Although I've thought about that very carefully, I've placed more weight on what all parties have told us about this specific device and the evidence gathered after the various inspections.

On balance, I'm persuaded by Mr C's argument that the problem he found with the screen, is more likely because of a fault with the device. The mobile telephone was brand new and from the higher end of the market. And Mr C had possession of the device for a relatively short period of time. So, I think the device showed the fault, sooner than can be expected, considering the relevant circumstances involved.

In all the circumstances, I don't think a reasonable person would have found the device to be of satisfactory quality. So, I think Sky have breached the contract they have with Mr C. Taking into consideration Sky's obligations under the CRA, I think this means Mr C is due a remedy from Sky.

Summary

Because I think there's been a breach of contract in Mr C's case, the CRA says he is entitled to a repair or a replacement of the device from Sky. I can see that Sky inspected the device in March 2022 and although a repair was offered, Sky expected Mr C to pay for it himself. If a repair isn't offered in a reasonable timeframe, or hasn't worked, the CRA says a customer is due a final right to reject the goods.

Having considered what happened, I think Sky have had a chance to repair the device and to have offered Mr C a replacement. Sky haven't offered either to Mr C. So, I think it's fair for Sky to now allow Mr C to reject the goods. This means I think Sky should arrange for Mr C to exit the fixed sum loan agreement and to return the device at no extra cost to him. Mr C has told us that Sky already have the device, which means part of this settlement may have already been done.

I've also looked at the repayments Mr C has made under the agreement. I've concluded that Mr C was able to use the device for five months before he noticed the issue with the screen. Although I've concluded Sky should allow Mr C to reject the goods, I think it's fair that he pays for the usage he had from October 2021 to 7 March 2022.

This means Sky should refund any repayments to Mr C that he made under the fixed sum loan agreement, from 8 March 2022 to the date of settlement of this complaint.

I'm not aware that any payments towards the agreement were missed by Mr C. But, I agree with the investigator here, in that I don't think it would be fair for Mr C to suffer inconvenience due to missed payment information relating to a device that had a fault. So, I think Sky should remove any adverse information about the agreement, that may be held with credit reference agencies.

Given that Mr C should be allowed to reject the device, I also think it's fair for Mr C to receive a refund from Sky of the upfront fee of £12 he paid, when he entered the agreement.

Mr C has been without the use of the funds from the upfront payment and the repayments under the agreement he made from March 2022 onwards. So, I think it's fair that Sky adds interest at a rate of 8% a year simple to the refund of the upfront payment of £12 and each refunded repayment. I think Sky should calculate the interest to be added from the date the payments were made, to the date of settlement of this complaint.

Finally, Mr C has told us that he used the SIM card from Sky, in another device he has access to. So, I think he has been able to make use of the airtime contract he had with Sky throughout that time.

Putting things right

For these reasons, Sky UK Limited should:

1. Allow Mr C to exit the fixed sum loan agreement and allow him to return the device at no additional cost to him;
2. Remove any adverse information about Mr C's fixed sum loan, from the details held with credit reference agencies;
3. Refund all the repayments to Mr C that he has made under the fixed sum loan agreement, from 8 March 2022 to the date of settlement of this complaint;
4. Refund the payment of £12 that Mr C made when the fixed sum loan agreement was started; and
5. Add interest at a rate of 8% a year simple to parts three and four of this settlement, from the dates they 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 C 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 C, they should provide Mr C 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 C to accept or reject my decision before 27 April 2023.

Sam Wedderburn
Ombudsman