

The complaint

Mr B has complained that Sky UK Limited is holding him liable for a fixed sum loan agreement he used to buy a phone he says wasn't delivered.

What happened

On 30 August 2023 Mr B entered into a fixed sum loan agreement with Sky to pay for a phone. The phone cost £1,920. Mr B paid £195 up front, and he was required to pay 24 payments of £46.37 followed by 12 payments of £51. It looks like there was an unsuccessful delivery attempt on 31 August 2023, and delivery took place the following day, on 1 September 2023.

Mr B contacted Sky on the 1 September 2023 in the evening and explained the phone wasn't in the package. He said the SIM card was present, but he thought the package had been tampered with. Sky's notes say the agent took details to look into things.

I can't see Sky took any action until Mr B contacted it on 27 September 2023 to find out what was happening. Following on from this Sky contacted Mr B on 3 October 2023 to take the details of the complaint again. Sky's notes say the case wasn't correctly raised the first time Mr B contacted it. And that due to the time elapsed it was limited to what information it could obtain from the courier. The notes say the complaint was raised as a Consumer Credit Act complaint and it was passed to a different team.

The following day (4 October 2023) Sky opened the complaint and investigated. Mr B supplied photos of the package that he said had been tampered with. Sky thought the delivery photos from the courier showed the box intact. And it didn't think Mr B's photos supported his allegations. It also highlighted the delivery was made around lunchtime and it wasn't until the evening that Mr B contacted it. It rejected Mr B's complaint the same day, and Mr B decided to refer his complaint to the Financial Ombudsman.

One of our investigators looked into things. He contacted Mr B to ask for further testimony. Mr B gave further details of what happened on the day of delivery. He said he was unaware there had been a delivery attempt the day before. He confirmed he took delivery of the package but thinks he remembered trying to call Sky before going out for an appointment on the day, before speaking to Sky in the evening. But he wasn't sure as it was some time ago.

Our investigator ultimately upheld the complaint. He thought the photographic evidence from the courier didn't definitively show the package hadn't been tampered with. He thought Mr B's evidence indicated it might have been. He thought Mr B had offered a reasonable explanation for how the phone may have been removed.

He thought Mr B's testimony was clear, concise and consistent, and that he'd been responsive to all requests. He also noted Mr B had maintained payments towards the agreement. Our investigator didn't think Sky had investigated things as thoroughly as it could have, and the delays may have impacted that. On balance our investigator recommended Sky end the agreement and refund Mr B all payments made under the agreement.

Sky didn't agree but initially didn't offer reasons why. Our investigator asked for Sky's reasoning, and it said it disagreed the delivery photo showed signs of tampering. It also said a warehouse search couldn't locate the phone, and that the phone was activated. Our investigator responded again to say he didn't think the photos were conclusive. But he asked for details of the phone activation and if Sky could provide further information such as a location or network for example. I can't see we received a response from Sky, so the complaint has been passed to me to decide.

I asked our investigator to contact the parties to request further information. From Sky, I wanted to know more about what checks it carried out with the courier and the impact of it not investigating straight-away. The notes indicated Sky was limited in what it could obtain so I asked for details of that. I also asked for details of what the activation data showed and whether it could supply further information that could be relevant. I asked for details of Mr B's history as a customer; whether it could supply more details of the package's journey, and the previous delivery attempt that was unsuccessful. I also wanted to know if there had been any other similar allegations of missing items through the same courier or area around the same time and gave it the option to supply anything else it thought might be relevant.

We contacted Mr B to ask more about who took delivery of the phone and to fill in some details of the timeline. I wanted to know whether Mr B had evidence of trying to contact Sky shortly after he took possession of the package, and for information about what he was doing the day before during the failed delivery attempt.

I can't see we received a response from Sky. Mr B, however, reiterated he took delivery of the package and that he thought he tried to call Sky straight away. He said he thought he was on hold for a while and had to leave most likely for an appointment. He said he changed his phone and couldn't obtain a call log that went back as far as needed to evidence this. Mr B said he can't specifically remember where he went to before speaking to Sky because it was a long time ago, but he said he thought he was at home the day before the delivery.

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 B is unhappy Sky is holding him liable for a regulated fixed sum loan agreement, and our service is able to consider complaints relating to these sorts of agreements.

From what I can see, Sky is the creditor as well as the supplier here. But like our investigator pointed out, I think I can consider Mr B's claim that Sky breached the contract by not supplying the goods. And I can consider whether Sky is acting fairly in asking him to pay where there's a dispute about the delivery of the goods. The Consumer Rights Act 2015 broadly implies terms into the contract that the goods must be delivered into physical possession of the consumer.

I should first point out that 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. And I'm required to resolve the complaint quickly and informally.

I think Mr B's arguments seem consistent and credible. He contacted Sky the same day he received the package. While there was a delay of a few hours between receipt and the phone call Mr B has maintained he tried to make the call straight away but couldn't reach Sky. He's been responsive to our investigator's questions.

I don't think the photos provided are conclusive. Unfortunately, the angle taken with the delivery photo doesn't clearly show the alleged tampered with area. The weight of the package seems correct. But it's not inconceivable that the goods were removed after they were posted by Sky. It's curious that Mr B didn't recall being told about a prior delivery attempt. He thinks he was at home at the time. And Sky hasn't been able to supply details of an investigation into that, which would have been helpful.

I'm conscious that Sky has not responded to requests we've made asking for information that might've been very relevant. And, importantly, it doesn't seem to be in dispute that it delayed starting its investigation and that the impact of that seems to be it wasn't able to obtain all the information it normally would have been able to.

Sky hasn't been able to tell us what information it couldn't receive due to its delay. It's not been able to give us details of what it found out from the activation of the device, or other information we asked for such as evidence of the checks it carried out with the courier.

On balance, while I'd like to have received more evidence to reach a conclusion, given I think Sky made a mistake by not investigating things straight away; given it's not supplied the evidence we've asked for; and that Mr B's testimony has been consistent and credible, I'm minded to agree with our investigator's assessment. I don't think Sky has done enough to show it's more likely than not that Mr B received the goods and so, on a fair and reasonable basis, I don't think it's fair he's held liable for the associated credit agreement. I'm therefore going to reach the same conclusions as our investigator.

My final decision

My final decision is that I uphold this complaint and direct Sky UK Limited to:

- End the agreement with nothing further to pay.
- Refund Mr B anything paid towards the agreement before the claim was declined with 8% simple annual interest added from the date Sky declined the claim to the date of settlement. For any payments made after the claim outcome, these should be refunded with 8% simple annual interest added from the date of each payment to the date of settlement.
- Remove the agreement and any associated entries from Mr B's credit file.

If Sky considers it is required to deduct tax from my interest award it should provide Mr B a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 October 2024.

Simon Wingfield

Ombudsman