

The complaint

Mr W 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 5 August 2023 Mr W entered into a fixed sum loan agreement with Sky to pay for a £678 phone. I understand he also bought another device and SIM card at the same time. Mr W received a delivery from Sky on 7 August 2023. He says he received the second device and SIM, but the phone was missing. He contacted Sky for help the following day because he thought the phone may have been due to be sent in another package. Sky looked into things and asked Mr W to send pictures of the package and contents Mr W received. He sent those in and said he didn't notice any tampering with the package. Sky continued its investigation and concluded the package was shipped correctly. I believe it contacted the courier who looked at the tracking and found no sign of damage or retaping of the package. Sky said it couldn't locate the phone at its lost property or find any evidence of relabelling.

Sky said it wasn't going to take any action. Mr W was unhappy and didn't accept the outcome. He also highlighted the weight recorded on the package was 0.7kg and that he didn't think this could have included the phone. He supplied evidence the package's weight (only with the second device and SIM card) was around 0.7kg. So he said it couldn't have included a phone or it would have weighed more.

Sky didn't uphold the complaint, so Mr W decided to refer it to the Financial Ombudsman.

One of our investigators looked into things. He highlighted to Sky that he thought Mr W's evidence regarding the weight seemed plausible. He asked for a detailed explanation along with CCTV footage, or at least detailed comments in regard to Mr W's weight evidence.

Sky didn't respond and our investigator assessed the case. He thought, on balance, Mr W's arguments seemed plausible, and that it may have been a case of a packaging error. He recommended Sky end the agreement with a full refund of payments and any adverse credit reference information to be removed.

Sky responded to say it didn't agree. It said it had supplied relevant information. Our investigator asked for further details on what Sky didn't agree with. As he didn't receive a response, the complaint has been passed to me to decide.

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 W 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 W'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.

I should first point out that where the evidence is incomplete or inconclusive (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.

Like our investigator has pointed out, I think Mr W's arguments seem consistent and credible. While he didn't contact Sky the same day as the delivery, he contacted it the next day. He's said he thought the phone may have been due to be sent in a different package which isn't unreasonable. Mr W has been forthcoming with his answers and hasn't, for example, tried to say the package had been tampered with when it hadn't.

I think the most compelling evidence Mr W sent shows the second device and SIM weighed around 0.35kg, and the empty package weighed around 0.33kg. The total weight of everything Mr W said he received was around 0.7kg. It's not in dispute the packaging label showed the weight of the package as 0.7kg. So I think it's plausible that, like our investigator concluded, there may have been a packaging error and the phone wasn't included in the original package. Otherwise, it would have weighed more. This could also explain why the package didn't look like it had been tampered with.

I'm conscious we've asked Sky for an explanation or for further evidence based on the evidence Mr W presented. It's had opportunity to explain why it doesn't agree, but it's not submitted anything materially new for us to consider. Without further evidence, on balance, I think the most likely thing to have happened is that Mr W didn't receive the phone. So I agree with our investigator that the fairest way to put things right is therefore to end the agreement, and refund anything paid towards it.

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 W 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 W's credit file.

* If Sky considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 October 2024.

Simon Wingfield
Ombudsman