

The complaint

Mr Z complains Sky UK Limited is unfairly holding him responsible for a mobile phone device he says he never received under a fixed sum loan agreement.

What happened

On 9 September 2022, Mr Z took out a fixed sum loan agreement online to finance the purchase of a new mobile phone device. The total amount of credit was £1,482 and the agreement had a term of 36 months. Mr Z also agreed to a data SIM plan at the same time.

Later that day, Mr Z said he contacted Sky again as he changed his mind and wanted to change the data SIM plan he previously agreed to. Mr Z says he was told by Sky that the previous agreement he took out would be cancelled before going ahead with the revised agreement, which was then signed on 15 September 2022.

However, the first agreement wasn't cancelled as Mr Z was told it would be. And instead, two agreements were in place, resulting in Sky saying they sent Mr Z two mobile phone devices. Mr Z says he only received one of the devices and that Sky are unfairly holding him responsible for both fixed sum loan agreements.

Mr Z said because he was annoyed and stressed about the whole situation, he later contacted Sky to cancel the agreement and to send the phone, he had, back to them. Sky's internal notes show they told Mr Z this would trigger their returns process and that if Mr Z didn't return both devices, the account would enter into the debt cycle. Sky arranged for the return of the mobile phone but said nothing was returned. Mr Z said he didn't return the device as he realised he needed it and so kept it. But Mr Z says he was told he'd have to pay the outstanding balance under the agreement, which he didn't think was fair.

It seems that due to payments not being made under the agreements from late 2022 to early 2023, this resulted in the accounts defaulting. Mr Z said this issue has negatively impacted his credit file, and he wants Sky to remove any negative information from his credit file. Mr Z also wants Sky to provide compensation for the stress this issue has caused as well as for the incorrect information he received from them.

Sky acknowledged Mr Z was incorrectly told the first agreement he entered into online had been cancelled before he entered into the second agreement. Sky weren't able to cancel the first agreement as Mr Z was led to believe. Sky say the information provided by the delivery company shows both devices were delivered to Mr Z's property – the first one in September 2022 and the second one in early October 2022. Both were the same type of mobile phone device.

Sky said before the successful delivery of the second device, there was an attempted delivery first which was unsuccessful. As a result, an attempted delivery card was posted through Mr Z's door by the delivery company, notifying him that the delivery wasn't successful. Additionally, Sky say they sent paperwork relating to the second device to Mr Z's email address. So overall, Sky said it's highly unlikely Mr Z wasn't aware of the second delivery that took place in October 2022.

Mr Z took this complaint to another ADR entity and received a decision about whether he was being fairly held responsible for the second agreement. This ADR entity also suggested an award of £150 for compensation for the service Mr Z received from Sky and for the inconvenience caused to Mr Z.

Our Investigator considered Mr Z's complaint. In summary he said while Sky acknowledged there was a failing on their part, the evidence suggests both mobile phone devices were delivered to Mr Z's address. Additionally, Sky had provided evidence that updates about both mobile phone devices were sent to Mr Z's email address, so he felt Sky had taken reasonable steps to make Mr Z aware of the delivery of the second device. In relation to the negative information on Mr Z's credit file, our Investigator didn't think Sky were acting unreasonably when reporting information about the agreements to the Credit Reference Agencies (CRAs). So overall, our Investigator didn't think Sky had acted unfairly in the circumstances.

Mr Z disagreed. He said he signed the second agreement on the basis that the first one had been cancelled – as he was told this was the case by Sky. Mr Z also said that there's been a clear breach of trust and also the law in this situation. So, the case 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.

Firstly, I'm unable to comment on any finding the ADR entity has reached on Mr Z's complaint as it's not appropriate for me to do so. But I have taken their answer into consideration when reaching my decision. This complaint involves a regulated agreement, so I'm satisfied it's a complaint I can look at.

As a starting point, Sky have acknowledged they made an error which isn't in dispute here – Mr Z was told the first agreement he entered into online had been cancelled before he entered into the second agreement. Mr Z hasn't disputed entering into the agreements, so I don't need to make a finding on whether it was or wasn't Mr Z who took out the agreements. What's in dispute here is whether Mr Z should be held responsible for the two agreements, given he says he didn't receive the second mobile phone device. So before deciding whether Sky are fairly holding Mr Z responsible for both agreements, I'll first consider the issue of whether I think it more likely than not Mr Z received the second device.

Sky have provided a photo from the delivery company of both deliveries being made – the first in September 2022 and the second in early October 2022. Having carefully looked at the photos, and the features within the photos, I'm persuaded the deliveries were made to the same place and that the front door in the two photos are, more likely than not, the same property. Mr Z has acknowledged seeing the photos and says he disagrees with them but hasn't said why. Mr Z hasn't disputed the photos aren't his property, and he acknowledges receiving the first device. Therefore, I see no reason to believe that the deliveries were made to anywhere else but to Mr Z's property.

Mr Z told us he had tenants and builders around the time the second mobile phone device was delivered in October 2022. But that none of them recall a phone being delivered. However, the evidence suggests that the phone was delivered. So, I've thought about what Mr Z has said in the context of what's happened in this case.

The delivery notes show that when the second device was delivered, it was received by Mr Z and that a driver's license was verified for ID. I haven't seen a copy of the ID that was verified by the delivery driver at the time. But I wouldn't have expected to see a note confirming Mr Z accepted delivery if the ID they checked was for someone else, other than Mr Z. So, I'm satisfied it was more likely than not that Mr Z provided his ID to accept delivery of the device. Further to this, the delivery company told Sky that the signature for the second delivery was the same as previous deliveries.

Additionally, Sky have provided us with evidence to show Mr Z was sent updates about the second delivery, such as messages notifying him that the delivery of the device was on track and also an email notifying him that the device was going to be delivered after 30 September - which was after Mr Z received the first device on 16 September. Mr Z hasn't disputed receiving the updates and I would've expected Mr Z to contact Sky to question this, given he'd already received and was in possession of a mobile device from Sky.

With all this in mind, I think it more likely than not that the second mobile phone device, the one that Mr Z disputed receiving, was delivered and received by Mr Z.

Next, I've considered whether Sky have acted fairly in holding Mr Z responsible for both agreements.

As mentioned, Sky acknowledged they told Mr Z the incorrect information about the first agreement being cancelled. But unfortunately, this wasn't the case - the mobile phone device was sent to Mr Z which he acknowledges he received and kept as he needed it. So, I don't think Sky were acting unfairly when holding him responsible for the first agreement taken out on 9 September 2022.

I'd only be able to ask Sky to not hold Mr Z responsible for the second agreement if I was persuaded the mobile phone device wasn't delivered to or received by Mr Z. However, as explained, based on the evidence available to me, I think it more likely than not that it was. And I haven't seen any evidence to suggest Mr Z returned this device. So, with all this in mind, I don't think Sky have acted unfairly in holding Mr Z responsible for both agreements.

Mr Z has said this issue has caused him a lot of stress and inconvenience. The decision Mr Z received from the other ADR scheme about this matter suggested an award of £150 to be paid to Mr Z for Sky's service when they incorrectly sent Mr Z two mobile phone devices and the inconvenience this has caused him. Having carefully thought about this, I don't think it's appropriate for me to consider requiring Sky to pay compensation to Mr Z, given a decision has already been made that they ought to.

I note Mr Z is concerned about the impact this issue is having on his credit file. Even though Mr Z changed his mind, it seems from the evidence available that the cancellation process had been instigated on Sky's end. As Mr Z hadn't returned both devices, he had an obligation to repay under these agreements. Mr Z was sent default notices for the agreements in April 2023, which set out what Mr Z owed. But I haven't seen evidence of payments being made. Sky have an obligation to report accurate information to the CRA's, so, I don't think they've acted unfairly here.

My final decision

For reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 3 December 2024.

Leanne McEvoy
Ombudsman