

The complaint

Miss A complains about the repayment of a fixed sum loan agreement she has with Sky UK Limited.

What happened

In June 2023, Miss A took out a fixed sum loan with Sky to pay for a brand new mobile telephone device. The device had a cash price of £1,173 and under the agreement, Miss A was scheduled to make monthly payments over a term of three years.

After nearly a year, Miss A says she encountered problems with the device, so arranged a repair with Sky. Sky's records show that the device was repaired and sent back to Miss A in June 2024. To do this, Sky used a courier service.

Miss A received a notification from the courier on the morning of the planned delivery day. But, Miss A says she wasn't due to be at home, so rearranged the delivery for three days later. The courier promptly sent Miss A confirmation of the change. However, the courier says they delivered the package to Miss A's home address on the previously planned delivery date.

When Miss A arrived home three days later, she says she couldn't see the package. So, she raised her concerns with Sky. In response, Sky said they were satisfied the package containing Miss A's device was delivered successfully to her address. So, they continued to hold Miss A responsible for the repayments due under the fixed sum loan agreement. Miss A didn't accept Sky's response and brought her complaint to our service.

One of our investigators looked into Miss A's complaint and found that Sky hadn't treated Miss A fairly. She said Sky's courier had been careless with the delivery and had not delivered the device on the agreed date. So she said Sky should allow Miss A to exit the agreement with nothing further to pay, and refund any repayments Miss A made to the loan since June 2024. The investigator also said Sky should remove any adverse information about the loan, from Miss A's credit file.

Miss A thanked the investigator, but Sky didn't agree with the investigator's findings. They said the delivery was completed successfully to Miss A's home. So, Miss A was responsible for the device after the delivery.

The investigator didn't change her conclusions and Miss A's complaint has now 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.

The fixed sum loan agreement

Sky is seeking to recover payment from Miss A under a regulated fixed sum loan agreement.

Our service is able to consider complaints about these sorts of agreements.

Sky provided Miss A with a fixed sum loan to finance the purchase of a mobile telephone device. Sky was also the supplier of the device, so they are responsible for its delivery. As well as the fixed sum loan to cover the cost, Miss A had an additional contract with Sky for the supply and use of the device, as well as associated services.

I've seen that the terms of Miss A's fixed sum loan linked the other contract for the supply of the device. Given this, and as it appears that both contracts were sold as one package, in my view the contracts were intrinsically linked. The credit agreement actually sets out that it is a requirement for Miss A to also enter into a contract for the supply of equipment. So, I'll consider both contracts together in determining whether Sky has treated Miss A fairly.

Miss A's fixed sum loan has terms which seek to stop her setting off a claim under one contract against the other. This might apply in a situation where Miss A seeks to make a claim about the failure to supply the goods to her under the linked contract for goods and services.

I've thought about what the Consumer Rights Act 2015 (CRA) says about contract terms, and I'm also aware that it is for a court to decide if a term is unfair. But, I'm required to take into account relevant law when deciding what is fair and reasonable.

Having carefully considered this, I don't think it would be fair to exclude Miss A's right to set off a claim under one contract against the other. I think we can consider Miss A's claim that Sky breached their contract with her by not supplying the goods. In any case, there is a regulated credit agreement, under which Miss A is being charged for the goods. So, I can consider whether Sky is acting fairly by asking Miss A to pay where there is a dispute about delivery.

As a result, I'm able to decide whether I think on balance, that Sky treated Miss A fairly when they delivered the package to her home address.

The change of delivery date

When the evidence is incomplete, inconclusive, or contradictory, as it is in this case, I make my decision on the balance of probabilities. That is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Miss A has sent us screen shots of messages between her and Sky's courier. The messages contain information about the return of her device, after Sky had finished the repair. I can see from those messages where Miss A changed the delivery date from 21 June 2024 to 24 June 2024. This amendment was completed at 9:29am. I can also see where the courier confirmed the change of delivery date to Miss A.

However, later in the afternoon of 21 June 2024, Sky's courier delivered the device to Miss A's home address, despite the arrangements she had made much earlier in the day. I cannot see where Sky, or their courier told Miss A that her change to the delivery date couldn't be honoured. This may have allowed Miss A time to make alternative arrangements. So, I think Sky's courier made a mistake in delivering the package to Miss A, outside of the plans she had made and that the courier themselves had accepted.

During our investigation, Miss A explained that she was away from her home until 24 June 2024, so couldn't do anything about the delivery in the interim. I can see from Sky's records where Miss A didn't contact them to report her concerns, until her return home. So, I think this adds weight to Miss A's argument, where she says the safety of the package was not

something she had control of, while she was away.

I've concluded that the package was delivered by Sky's courier, against the agreed plan between both parties. I've also found that Miss A couldn't reasonably have got to the package until her return home. So, I've gone on to think about Sky's responsibility for delivering the package securely, to Miss A's home address.

The delivery of the package

Sky have explained to us the delivery process for Miss A's package. They say a signature wasn't required and there wasn't an option for Miss A to have the package left in nominated place at her home, or with a neighbour. But, the courier was required to take a photograph of the package placed in Miss A's home.

Miss A has told us she lives in a flat, with its own front door and shares a communal hallway with other residents in the same building. The street entrance to the building's hallway is also for communal use and remains unlocked. I can see from the courier's photograph where the package was placed on the floor, just inside the communal door to the street.

To consider this further, Miss A has also sent us photographs of the building where she lives. I can see from those photographs where there are several doorbells on the outside of the communal door to the street. And inside the building, where there are secondary entrances to each flat.

I need to keep in mind the value of Miss A's device within the package delivered by the courier and the steps Sky's courier took to deliver the package securely.

Having thought about everything, I think the courier ought to have been aware that the communal door to Miss A's building was unlocked and where the threshold to Miss A's flat, was through a second entrance. So, I don't think the courier delivered the package securely to Miss A and left a risk that the package may be taken by an unknown third party. I also think the risk was compounded by Sky's courier, when they made an error with the delivery date.

Overall, I think Sky were responsible for the package, while Miss A was away from her home. So, I've considered Miss A's testimony that the package wasn't at her home when she returned.

Miss A first raised her concerns about a missing package when she arrived back home on 24 June 2024. Sky say they blocked the device, so it couldn't be used, after Miss A contacted them. I haven't seen any evidence from Sky to say the device was attempted to be used by Miss A, or in the area where she lives.

I'm also aware Miss A hasn't reported her suspicions about a theft to the police. I think this would have helped Miss A's testimony further. But, Miss A says that Sky gave her the details of this service, as the next step to handle her complaint. I can see where Miss A contacted us within a day of Sky's letter, so I think she followed the option given to her, in a reasonable time.

In all the circumstances, I find what Miss A has told us consistent and credible. I think at each point of raising her concerns, Miss A has taken reasonable steps. And I think this adds weight to her side of the dispute.

On balance, I'm persuaded the device was taken from the communal part of the building where Miss A lives, after Sky's courier had left it there.

Summary

Having considered everything, on balance, I think the Sky's courier made an error when delivering Miss A's device. And I'm persuaded the device was then taken from the unlocked doorway, causing a loss to Miss A. It follows that I think Sky should take steps to remedy the situation for Miss A.

Overall, I don't think it's fair for Sky to hold Miss A responsible for the fixed sum loan agreement. So, I think it's fair that Sky allows Miss A to exit the fixed sum loan agreement at no further cost to her.

I also think it's fair for Sky to refund all the repayments Miss A has made towards the agreement since 21 June 2024. I say this because Miss A used the device for nearly a year before the device was taken. So, I think it's fair that Miss A pays for the usage she had from the device.

Miss A hasn't had the use of the funds she has paid to Sky since 21 June 2024. So, I think it's fair for Sky to also add interest at 8% a year simple, to each repayment, from the date each payment was made, to the date of settlement of this complaint.

I've not seen where Sky may have recorded adverse information on Miss A's credit file. But, I'm aware Miss A is worried about that and has tried to prevent it from happening by keeping up with repayments. So, I think it's fair for Sky to remove any adverse information they may have passed on to credit reference agencies about the fixed sum loan agreement.

Putting things right

For these reasons, Sky UK Limited should:

1. Allow Miss A to exit the fixed sum loan agreement and cancel it, at no additional cost to her;
2. Remove any adverse information about Miss A's fixed sum loan, from the details held with credit reference agencies;
3. Refund all the repayments to Miss A that she has made under the fixed sum loan agreement, from 21 June 2024, to the date of settlement of this complaint; and
4. Add interest at a rate of 8% a year simple to part three of this settlement, from the dates the repayments 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 Miss A 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 Miss A, they should provide Miss A with a tax deduction certificate if she asks for one, so she 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 Miss A to accept or reject my decision before 13 June 2025.

Sam Wedderburn
Ombudsman