

The complaint

Mrs P complains about a balance owed under a fixed sum loan agreement with Sky UK Limited.

What happened

In February 2024, Mrs P took out a fixed sum loan agreement with Sky to buy a brand new mobile telephone device. Sky arranged for their courier to deliver the device to Mrs P for the following day. But, shortly before Mrs P was expecting Sky's package, she says she received a notification from the courier, which explained that the delivery would be delayed.

Two days after Mrs P signed the loan agreement forms, the courier completed the delivery to her home address. Mrs P says she was away from her house at the time, so a family member, who I'll call 'A', accepted the delivery on her behalf.

However, Mrs P says she was contacted by A shortly after the delivery, to say the package from Sky didn't contain the device. So, Mrs P contacted the police to report a possible theft and also raised a complaint with Sky.

In their final response to Mrs P's complaint, Sky said they couldn't find any evidence to show the device wasn't delivered to Mrs P. So, they continued to hold Mrs P responsible for the repayment of the fixed sum loan agreement. Mrs P didn't agree and brought her complaint to our service.

One of our investigators looked into Mrs P's case and found that Sky had treated Mrs P unfairly. He said Sky hadn't given a reason why the courier changed the delivery date and noted where Mrs P had taken swift action to sort things out.

The investigator wasn't persuaded that the device was within the package delivered by the courier. He asked Sky to allow Mrs P to exit the fixed sum loan agreement with nothing further to pay. He also said Sky should refund any repayments made by Mrs P towards the loan and to apply interest to those amounts.

Mrs P thanked the investigator for his findings, but Sky didn't respond. So, Mrs P's case has now been referred to me to make a decision.

I sent Mrs P and Sky my provisional decision on this case, on 11 April 2025. I explained why I didn't think the complaint should be upheld. A copy of my provisional findings is included below:

The fixed sum loan agreement

Sky is seeking to recover payment from Mrs P under a regulated fixed sum loan agreement. Our service is able to consider complaints about these sorts of agreements. Sky provided Mrs P with the loan to finance the purchase of the device. It was also the supplier of the device, so it was responsible for its delivery. As well as the fixed sum loan to cover the cost, Mrs P 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 Mrs P'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 Mrs P to also enter into a contract for the supply of equipment. So, I'll consider both contracts together in determining whether Sky has treated Mrs P fairly.

Mrs P'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 Mrs P 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 Mrs P's right to set off a claim under one contract against the other. I think we can consider Mrs P's claim that Sky breached its contract with her by not supplying the goods. In any case, there is a regulated credit agreement, under which Mrs P is being charged for the goods. So, I can consider whether Sky is acting fairly by asking Mrs P to pay where there is a dispute about delivery.

As a result, I'm able to decide whether I think, on balance, that the device was delivered to Mrs P's address.

The delivery of the package

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.

Mrs P has told us she first had concerns when the courier changed the delivery date at short notice. She says she had made arrangements to be at home on the day of delivery, so was left frustrated when the courier changed their plans without any reason.

I've looked at Sky's records of the delivery and I can see where the courier's reason for not delivering the package was:

'Unable to deliver'

I don't think Sky's records are helpful, in explaining why the package wasn't delivered by the courier, and I can see why Mrs P was unhappy with what happened. But, I think the delay in the delivery was simply just that. I haven't seen anything else in Sky's records, or in what Mrs P has shown us, which leads me to conclude it was anything other than a delay caused by Sky's courier.

The package was delivered the next day and consisted of two parts. Firstly a brown outer cardboard box, which has a black security seal running down the intended opening. And secondly, inside the outer packaging is another box, which would normally contain the device itself.

Mrs P says she was away from her home at the time, so the package was taken in by A. She has explained that A thought the package was lighter than expected, so opened the brown

outer cardboard box. Mrs P says A found that the transparent film, usually surrounding the box containing the device and the device itself were missing. So, Mrs P says A quickly went back outside their house and altered the courier, who advised A to contact Sky.

I can see from Sky's records where Mrs P contacted Sky within a couple of hours of delivery. Mrs P has also shown us where she reported what had happened to the police and received a crime reference number. From looking at the steps Mrs P took, I can see that she took the situation extremely seriously.

However, during our investigation of Mrs P's complaint we spoke directly to A, since he was the party that took in the package. A explained to us that the courier had driven off, before he could alert them of his concerns. A has also said the package didn't show any signs of tampering and was fully intact. This is different to what Mrs P had told us, when she first brought her complaint to us.

So, I've considered the evidence we have available to show the condition of the package, when it arrived at Mrs P home address.

Mrs P has provided several photographs of the packaging she received. I can see where the outer cardboard box was opened as well as the box that would normally contain the device. While I find the photographs useful, I have to keep in mind that these photographs were taken after A had broken the security seal of the outer box. In other words, the photographs do not fully show the condition of the package on delivery.

In the evidence Sky sent to us, they have provided the courier's photograph of the package being handed directly to A. Having considered the photograph very carefully, I cannot see any signs of damage or tampering. While I accept this is just one photograph, from one angle, I think it supports what we were told directly by A.

Furthermore, Sky have explained that the package was not opened and repacked when it was taken back to the courier's depot, after the unsuccessful attempt at delivery. Sky's records do not show that any repackaging or relabelling were necessary. I can also see from the courier's photograph where the address label and security seal remain consistent.

On balance, I'm not persuaded the photograph from the courier shows that the package was tampered with, before it was delivered to Mrs P.

Sky's records go on to show their discussions with the courier. I can see from these records that the courier told Sky that the device wasn't returned to their depot, after the successful delivery of the package. Sky have also said the device was unlocked and activated, around two weeks after the package was taken in by A.

There's no record of the user who completed the activation, where it was done or the network the device was connected to. So, while I find this useful, I don't think it shows where the device is, or who is using it. So, I need to rely on the other evidence available to reach my conclusions.

Having thought very carefully about what both sides of the dispute have said, I think there are some inconsistencies in what Mrs P has told us about what happened on the day the package was delivered to her home address. And I have to think about credible and consistent evidence, when looking decide Mrs P's complaint. This is alongside the courier's photograph of the delivery and Sky's records of their investigation.

On balance, I think all the evidence shows Sky have treated Mrs P fairly, by reaching the conclusion that the device was likely to have been in the package delivered to Mrs P's house

in February 2024.

I accept Mrs P is likely to be unhappy with the conclusions I've reached. But, I'd like her to know that I do empathise with the position she finds herself in. However, our role is to carefully consider if Sky have treated Mrs P fairly, based on all the evidence we have.

Summary

In all the circumstances, I think it follows that it's fair for Sky to hold Mrs P responsible for the repayments due under the fixed sum loan agreement.

I realise that my conclusions mean that Mrs P may still need to make payments to Sky for the remaining balance of the fixed sum loan. I say this because during our investigation, Mrs P has said that she continues to make repayments to Sky.

In this instance, I remind Sky of their responsibility to treat Mrs P's current financial circumstances with due consideration and forbearance. This may mean working with Mrs P to make sure she is able to make affordable repayments to any outstanding balance, if she's unable to maintain the scheduled payments.

Mrs P responded to the provisional decision and didn't accept it. In summary, she said:

- Sky didn't give her a reason why the delivery was delayed and a perforated security strip was missing from the box containing the device.
- A didn't speak to the courier after opening the package, because the courier had already left.
- The device could have been tampered with, while it was with the courier and Sky should have blocked the use of the device on the same day it was reporting as missing.

Sky responded to the provisional decision and accepted it.

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.

I agree with Mrs P where she says neither Sky nor the courier gave her any details about why the delivery of the package didn't happen on the day it was expected. I also agree that more information at the time, may have helped avoid the suspicion Mrs P has about the courier.

However, Sky have since sent us their records of their contact with the courier. Having looked at those notes, and where it does not seem the package was opened and relabelled, I think the delivery was simply delayed. I accept this caused Mrs P frustration and she needed to make alternative arrangements. On balance though, I don't think it shows that the courier had tampered with the package, or had attempted to create a false record about the initial delivery attempt.

Mrs P has sought to clarify what happened when A took in the package from the courier. I understand Mrs P's reason for doing this and I empathise with the impact she says the situation has had on her. But, during our investigation, Mrs P and A have provided conflicting information. I say this because there's a difference in what Mrs P says about A's interaction

with the courier after the delivery, and whether or not he found the package to have been tampered with.

While I don't think the conflicting information on its own means Sky's arguments are more persuasive, I need to think about the impact on the credibility of Mrs P's version of what happened. And after looking at all the other evidence surrounding the delivery, I'm persuaded the device was delivered to Mrs P.

Sky haven't sent us comprehensive details about the activation or blocking of the device, or information about where it can be tracked to. I acknowledge why Mrs P would find these details useful and they may have helped with the background of our investigation.

However, I'm also aware of the limits of the usefulness of any activation and blocking records. I say this because they may show where the device is and who may be using it. But, they won't show where Mrs P's device was delivered, only where it was first switched on.

Having thought carefully about all the additional comments Mrs P has made, on balance I still don't think the evidence shows the device was missing from package sent to her by Sky. Overall, I'm persuaded it's fair for Sky to conclude that the device was delivered to Mrs P.

So, my conclusions remain the same, in that I think it's fair for Sky to hold Mrs P responsible for the repayments due under the fixed sum loan agreement.

My final decision

My final decision is that I don't uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 28 May 2025.

Sam Wedderburn
Ombudsman