

The complaint

Miss C has complained Studio Retail Limited trading as Studio won't refund a payment she made to settle a catalogue account she says she didn't open.

What happened

In December 2020 Studio entered into a catalogue account agreement with Miss C. Miss C has explained her ex-partner opened the account without her permission. She says he ordered goods using the catalogue account in December 2020 and January 2021. She says he made a payment towards the account. And Studio sent monthly statements to Miss C at her address.

Miss C said she first found out about the account after seeing the statement sent by Studio in March 2021. She contacted Studio to say her ex-partner opened the account without her knowledge. Miss C says Studio wouldn't help because she knew the person who opened the account.

Worried about the impact on her credit rating, Miss C decided to pay off the debt of £426.76 in July 2021. She says she felt she had no choice and felt bullied into paying it. She says it's affected her health and so she complained to Studio.

Studio sent a final response to say it thought Miss C knew about the account and it also highlighted she paid it off. It didn't uphold her complaint, and Miss C brought her complaint to the Financial Ombudsman.

One of our investigators looked into things and contacted Studio about the debt. He provided some further evidence that Miss C had submitted to see if it would change Studio's position. Studio responded to say it accepted based on the evidence supplied that it appears Miss C was a victim of fraud by her ex-partner. But it said it wasn't convinced she knew nothing about the debt because:

- The account was reported on Miss C's credit file for four months before she contacted Studio.
- Three statements were sent to her before she disputed the debt.
- 11 parcels were dispatched to her name and address before she disputed the debt.
- She made a payment to clear the debt in July 2021 but took almost a year to complain.

However, Studio agreed to remove the details of the debt from Miss C's credit file.

Our investigator decided to uphold the complaint. In summary, he said:

- The phone number and email address used to open the account didn't belong to Miss C.
- Miss C works full time and wasn't at home when the goods were delivered.
- Miss C said her ex-partner told her the catalogue account was his.
- Miss C's ex-partner was being investigated by the police for controlling and coercive

behaviour.

- He didn't think it was unusual Miss C had not checked her credit file for a few months, and it was only when she saw a statement in her name that she found out about the debt.
- Miss C had notified Studio in March 2021 the account had been opened fraudulently but no action was taken.
- A postcode provided in relation to one of the payments for the account matches the address where Miss C's ex-partner's parents live, and where he moved back to.
- Miss C's ex-partner agreed in an email to Miss C he was responsible for the debt.
- Studio accepted in an email that Miss C was a victim of fraud.
- Studio agreed to remove details of the account from Miss C's credit file.

Our investigator recommended Studio refund Miss C the £426.76 she'd paid to settle the account, together with interest.

Studio didn't agree. It said it had not been contacted by the police. And it didn't think Miss C knew nothing about the account. It also said it thought Miss C was still in possession of the goods. Our investigator provided further evidence that Miss C had reported the matter to the police, but Studio didn't agree to the refund.

As the complaint couldn't be resolved, it's been passed to me to make a 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.

I first want to say I'm sorry to hear about what Miss C has been through. It can't have been easy. And I want to thank her for taking the time to bring her complaint to our service.

I also want to point out that where the evidence is incomplete or inconclusive, 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.

Studio asked Miss C to pay off a debt in relation to a credit agreement for running account credit. And our service is able to consider complaints relating to these sorts of agreements.

I've thought about the evidence submitted by the parties, and I've weighed things up.

On the one hand, I can understand Studio's position that even if Miss C didn't set up the account herself, she ought to have known about it shortly afterwards because Studio posted goods to her, it added the account to her credit file, and it sent her statements.

But on the other hand, Miss C has told us she didn't realise the account was on her credit file. The type of job she does meant she was working during the Covid-19 pandemic at the time at a workplace, so it was quite possible for her ex-partner to hide statements and deliveries from her. The email address and telephone number used on the application were not Miss C's. She's supplied evidence from another catalogue company accepting her details were used fraudulently to open an account. She's supplied evidence she contacted the police and Action Fraud about what happened. She's also given us evidence of an email her ex-partner sent her that indicated he accepted the debt was his. And a postcode linked to a payment made on the account was linked to her ex-partner.

There are a few possibilities that might have given Studio a proper basis for pursuing Miss C for the debt:

1. Miss C opened the account herself.
2. Miss C's ex-partner opened up the account on her behalf with her actual or apparent authority.

Turning to the first option, I'm not persuaded the most likely thing to have happened is that Miss C opened up the account herself. Miss C says she didn't open up the account. The telephone and email address used in the application were her ex-partner's. She sounded credible when listening to the call she made to Studio to let it know the account wasn't hers. To my mind, she seemed genuinely surprised to hear the account was in her name. She's referred the matter to the police and Action Fraud. And it looks like her ex-partner made payment towards the debt and has later acknowledged the debt in an email. I also find it likely her ex-partner would have known enough personal information about Miss C to pass the credit and ID checks Studio had in place.

Studio seems to accept it may not have been Miss C that opened up the account and, on balance, I agree that it likely wasn't her.

I've thought about whether, on balance, Miss C gave her ex-partner actual or apparent authority for the account to be opened in her name. If she did, I think it likely a valid contract would be created, and Studio might have had some proper basis for seeking to recover the balance from her.

Studio seems to be saying that by virtue of the fact it added the account to Miss C's credit file, it sent statements to her home address, and posted goods addressed to her, she ought to have known about the account. It's implying she's given some sort of authority for it. I think it would often be the case that you'd expect a consumer to raise the alarm very soon after being contacted about a debt they knew nothing about. But I'm mindful that Miss C has offered a plausible explanation about why she didn't notice the debt sooner. She says she works full time, and her profession is such that she was out for most of the day – even during the Covid-19 pandemic at the time. This seems like a reasonable explanation. She's also said her ex-partner was home full time. So it's easy to see how the deliveries and letters may have been missed or concealed from her. Miss C did contact Studio about the debt as soon as she saw the March 2021 statement.

I find Miss C's version of events consistent and plausible. She's offered credible testimony. On balance, in the very specific circumstances of this complaint, I don't think she gave her ex-partner actual or apparent authority to open the account in her name.

Studio has also highlighted there was some time in between Miss C initially notifying it of the fraud, and her raising a complaint. It's also indicated that by her paying off the debt she's acknowledged it was hers. But like our investigator pointed out, Miss C contacted Studio as soon as she says she found out about the debt. That's what I would have expected. She explained she only paid off the debt because she was worried about the impact on her credit file. Which sounds reasonable. And she also says she only felt able to raise a complaint with Studio about the account after her ex-partner left her property and she'd contacted the police. Miss C has said she was in an abusive relationship, and I can understand why she may not have felt able to raise her complaint sooner than she did.

Miss C has responded to all of our investigator's requests, and I think she's done everything she can to try to explain what happened. I appreciate the police haven't contacted Studio, but I don't think that's very unusual. Miss C did reach out to the police officer dealing with her case who said she wasn't able to contact Studio on Miss C's behalf, but she said she would liaise with it if necessary. We've given the police officer's email address to Studio, but I can't see they've been contacted.

All things considered I don't think Miss C opened the account herself. I don't think she knew about her ex-partner's actions until she received the statement in March 2021. I also don't think she gave him any sort of authority to open up the account on her behalf. Miss C said she didn't benefit from any of the goods that were bought under the account. I accept Miss C may be entitled to make a claim for the money from her ex-partner. But she's told us he's not paid her despite promising to do so. And given what she's said about impact of the relationship on her health, I can understand why she doesn't want to keep contacting him. I also don't think this stops Miss C seeking redress for the sum she paid to Studio. Therefore, I agree with our investigator that the fairest thing to do would be to refund Miss C the payment she made to clear the debt, together with interest.

I've finally thought about Miss C's complaint about how Studio have handled things. I agree it looks like Studio could have done more when she contacted it in March 2021. It refused to log the issue as fraud because Miss C knew the person who she said opened the account. While the call handler was empathetic, I think it would have been better had Studio raised a complaint at this point and looked into things further. It looks like it was always going to decline the complaint because Miss C knew the person that opened the account. I've explained above why I don't agree with that answer. But I'm also mindful that the main cause of the issue here is because of Miss C's ex-partner's actions. In all the circumstances, I think removing the debt from her credit file (as Studio has already offered), and a full refund of what Miss C paid together with interest is broadly a fair way to resolve things for the parties.

My final decision

My final decision is that I uphold this complaint and direct Studio Retail Limited trading as Studio to pay Miss C £426.76. Interest* should be added to this amount at a rate of 8% per year simple, from the date the payment was made to the date of settlement. And to the extent it's not done so already, Studio should remove record of the account from Miss C's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 21 February 2023.

Simon Wingfield
Ombudsman