

The complaint

Mr C, who is representing his wife, complains that Studio Retail Limited (“SRL”) allowed her to order goods when her account should have been closed. It also failed to resolve the matter properly.

What happened

Mr C has been appointed a deputy by the Court of Protection for Mrs C and he is authorised to:

“a) take such steps as are necessary to cause an entry to be recorded with such credit reference agencies as he shall deem appropriate in the following terms:

The Court of Protection is satisfied that [Mrs C] lacks capacity to obtain credit and enter into a consumer credit agreement, including, (but not limited to) an agreement to take out a credit card, store card, purchase goods on credit, open a bank account with an overdraft facility or other such similar arrangements

b) take such steps as are necessary to close any account in the name of [Mrs C] which includes a credit facility

c) disclose a copy of this order to any credit reference agency or provider of credit as he shall consider appropriate.”

I understand Mrs C’s parents are also deputies.

Mrs C has had an account with SRL which it says was opened on 5 November 2018. In February 2019 Mrs C’s mother contacted SRL to notify it that her daughter should not be allowed credit. SRL says that it logged the account and noted that Mrs C’s mother had authorisation to deal with the account. The account was transferred to a team which deals with vulnerable customers and the outstanding balance of £33.93 was written off. The notes do not indicate that the account should be closed or that Mrs C should not be offered credit.

I also note that another family member phoned in January 2020 to make SRL aware of Mrs C’s situation, but they did not have authorisation so this call was not taken further.

In July 2021 Mrs C ordered goods comprising some 40 items and within about 10 minutes of that Mr C called SRL to cancel the order. Mrs C gave permission for him to speak to the call handler. He says he was told it would take 48 hours for the order to be cancelled and a week for an invoice to be processed.

There followed a series of calls, some 24 or more, which Mr C has detailed in the complaint made to this service. I will not record them all in this decision, but in summary the order was not cancelled straightaway and some of the goods were delivered. Mr C had then to arrange for the collection of the items and he had to make numerous calls often dealing with different call handlers who often did not understand the background to the situation. On some occasions he was told he did not have authority to speak regarding the account. He says

some calls were not returned as had been promised. I gather while this was ongoing Mrs C was ordering more goods. I note the last call according to Mr C was made on 23 September.

SRL acknowledged that it should have closed the account in 2019 and it had made mistakes handling the order. It wrote off the balance on the account and offered compensation of £100. Mr C did not consider that to be acceptable and brought a complaint to this service.

It was considered by one of our investigators who explained that we did not have the power to award compensation for distress and inconvenience to a person other than the account holder. He noted that Mrs C had not suffered any financial detriment and so he considered the sum of £100 offered by SRL to be sufficient.

I issued a provisional decision as follows:

"I would say at the outset that I sympathise with Mr C, his wife and her parents for the situation which they had to go through. However, my remit and my powers have certain limitations.

I must make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them. My role is not to investigate SRL's processes or procedures. I can only deal with the substance of this complaint and its impact on the account holder, Mrs C.

As for the matter of redress my power also has limits and in this matter I can only make an award for any distress or inconvenience suffered by Mrs C as the account holder. It is clear that Mr C has had to deal with SRL and he has found it extremely frustrating. He has set out in some detail the challenges he faced and the impact on him. He has my sympathy, but I cannot make an award to cover his distress or inconvenience, or indeed the time he spent trying to resolve the problem.

I am satisfied that SRL made a number of errors and I believe it recognises some of these. SRL should have closed the account in 2019 when Mrs C's mother notified it and supplied a copy of the Court of Protection order. It was reminded of the position again in 2020 and this did not prompt any action. If it had acted then this problem would not have arisen.

Also I can see that the resolution of the issue was not handled as speedily as it should have been and it took some time for the SRL staff to get to grips with the matter. It should not have required so many calls by Mr C to reach a satisfactory resolution. The order should have been stopped without delay and Mr C should not have had to chase it as he did. Ideally the items should not have been delivered as I think doing so was likely to have caused Mr and Mrs C more distress.

I explained the limits of my remit to Mr C and asked him to let me have more detail about the impact on his wife. He said:

"My wife was very stressed by the situation during the long period of time that it took to resolve.

It caused a lot of friction in our communication with each other. Before obtaining the Court Order I used to have to pay the debts as the only way to avoid it damaging our credit record and having court bailiffs take our property.

When she entered a more low mood the unresolved [SRL] debt played on her mind. It took several months before the account was closed and she continued to be sent bills in the

meantime.”

I consider Mrs C has suffered distress and inconvenience and I believe the sum offered by SRL is insufficient to recognise the impact of its errors on her. I have to make an award I consider suitable bearing in mind the impact on Mrs C who is vulnerable. The matter went on for many weeks and I can see that the initial failure to close the account was made worse by the delay in sorting things out. I am satisfied that while Mr C bore the brunt his wife will also have suffered distress and inconvenience while things were resolved.

I appreciate that Mr C and her parents have done all they could to mitigate the impact, but I can see that the original error in not closing the account and the delays in sorting things out would have been stressful for Mrs C.

Having given the matter much thought I have concluded that a sum of £500 is appropriate.”

SRL did not agree. It said that while there had been failings on its part, it was not made aware of any reasons why Mrs C should not have opened an account at the time it was taken out. It was notified of the Court Order in February 2019 when contacted by Mrs C's mother. It suggested a Notice of Correction could have been placed on Mrs C's credit file, but this wasn't done. However it agreed that once a copy of the Court Order was submitted the account should have been closed.

It was unable to deal with other members of the family who made contact as they did not have the relevant authority. SRL said that once Mr C sent a copy of the Court Order on 2 August 2021 it closed the account and applied a credit for the returned goods. It accepted that there had been delays in returning the goods, but felt its actions weren't the sole cause of the problems.

Mr C did not agree with my provisional decision. He said that SRL had obstructed the Court Order and we did not investigate the matter thoroughly. He asked that further questions be raised with SRL which he considered had systematically been obstructive. He also thought the background summary didn't give enough detail.

Mr C forwarded call recordings he had made of conversation with SRL staff and said these showed SRL's failings. He said he had called overseas numbers at great expense. He said it had taken over 30 phone calls before he was able to obtain an email address to allow him to file the Court Order. In that time his wife had been able to make another purchase. He also said he had to take over items which had been delivered to another address to stop his wife opening them.

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 appreciate how frustrating and infuriated Mr C has found dealing with SRL. He made that clear in more than one conversation with SRL staff. I would add that he showed great restraint in doing so. He also stated on several occasions that he personally found the whole matter stressful. Having listened to the conversations I can fully understand his annoyance at the inability of the SRL staff to properly engage with him and to seek to provide a straightforward and meaningful solution.

It already had the Court Order which had been submitted by Mrs C's mother earlier, but it seems this was stored on an old IT system which was archived. SRL says only a few staff members had access to archived materials. This seems to have added to the problem. As I

explained in my provisional decision I am not a regulator and I cannot direct SRL as to what processes it should operate, but it would appear that the system it used has failed in this case.

I agree that the matter should have been resolved much more quickly than it was and Mr C should not have had to make the significant number of calls that he did. SRL should have been able to identify that it had been supplied with the Court Order especially since it was passed to a specialist team dealing with vulnerable customers. Furthermore, it should not have lost the first copy of the Court Order submitted by Mr C which was signed for by one of its staff.

SRL recognises it made a mistake in not closing the account when it first received the Court Order. As I said in my provisional decision I share this view. However, I also think it did not handle the events subsequent to purchases made in July with any sense of urgency or sensitivity. It accepted that the goods could be returned and it credited the account with the cost.

That said Mr C still had to make over 30 calls to sort out delivery of the Court Order, which SRL had anyway. The first copy he posted was sent by recorded delivery and it was received by SRL, but it seems this was lost internally. Subsequent attempts to get hold of an address or email were stymied by SRL for almost a month and I can see no reason why this was not resolved sooner.

I consider the failings extended beyond not closing the account and so I consider the distress and inconvenience suffered by Mrs C was greater than STL has suggested and the offer of £100 compensation is insufficient.

I have to stress that I do not have the power to award any compensation to Mr C for and distress or inconvenience he has suffered or any costs he may have incurred. I am aware that he bore the brunt of sorting out the issue, but I can only consider the distress and inconvenience of Mrs C. I am satisfied from the background supplied by Mr C that Mrs C was caused significant distress and I have to bear in mind the impact this had on her given her medical condition. The goods had to be taken away from her when she thought she would be able to enjoy them and the whole resolution took longer than was necessary.

I have reflected further on the appropriate sum to award and I remain of the view that £500 is the right amount.

Putting things right

I consider that Mrs C should be compensated as below.

My final decision

My final decision is that I uphold this complaint and I direct Studio Retail Limited to pay Mrs C compensation of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 10 April 2023.

Ivor Graham
Ombudsman