

## The complaint

Mrs W has complained about the way Entertainment Magpie Limited trading as Music Magpie dealt with a hire agreement she tells us was fraudulently taken out in her name.

## What happened

Mrs W tells us she noticed a credit search was carried out in her name in July 2022 and a phone was delivered to her from Music Magpie. She says she didn't order the phone – the agreement was set up fraudulently. Mrs W tells us she contacted Music Magpie by email and web form but didn't receive a response. Mrs W didn't open the phone packaging. She says she raised the fraud with the credit reference agencies and action fraud.

Music Magpie wrote to Mrs W because rental payments weren't being received towards the hire agreement. Mrs W says she spoke to Music Magpie in September 2022 to complain, and she was waiting for it to send her a return label.

From what I can see, Music Magpie started to look into things in more detail for Mrs W in November 2022. It said its customer service team processed the matter and handled it incorrectly. And it corresponded with Mrs W over the next few days. Mrs W wanted Music Magpie to collect the phone from her and provide a complaint reference number. And she wanted it to give her details of who was set up as the borrower on the agreement. Music Magpie didn't want to disclose the payment details because Mrs W had said she wasn't the person who took out the agreement. Mrs W wasn't happy with Music Magpies' explanation so raised a Subject Access Request (SAR). She wanted to make sure she'd not been impacted in any other way.

In summary, Mrs W complained:

- Music Magpie completed a credit search without consent.
- Music Magpie fraudulently held the agreement in her name.
- Due diligence wasn't completed for a known scam.
- The email and telephone number on the application weren't correct.
- Music Magpie didn't respond to the complaint properly.
- The return slip didn't work – she had to go to the post office to return the phone.
- The debt would remain in her name until the phone was returned.
- It had a financial impact, and it affected her credit file.
- The debt was passed to a debt collector.
- It caused distress and inconvenience.
- Another creditor reduced her credit limit from over £10,000 to £100 due to this issue.

Mrs W sent the phone back in December 2022. The debt collector closed the account. And a few days later Music Magpie wrote to the credit reference agencies to remove the account from Mrs W's credit file. It also responded to the SAR.

Our investigator looked into things and thought Music Magpie ought to have handled things better. She didn't think Music Magpie handled things within a reasonable amount of time. But she didn't think there was sufficient evidence to demonstrate Mrs W's credit limit had been

changed solely as a result of something Music Magpie did wrong. And she didn't think there was sufficient evidence to recommend it pay Mrs W compensation for the impact on a mortgage application because there are multiple factors for lenders to consider. But she recommended Music Magpie pay Mrs W £200 compensation.

Mrs W didn't think £200 went far enough to put things right. She provided further evidence from the creditor that reduced her credit limit. She gave details of the impact of having the credit limit reduced so dramatically had on her. She said she didn't owe anything on the credit card, but she had plans to use it in order to help a family member who was very unwell. She also told us the credit card company wouldn't consider increasing the credit limit for six months.

Our investigator considered Mrs W's extra points. She explained she'd set out that creditors can change credit limits for a number of reasons. But she thought the compensation should be increased due to the impact on Mrs W. She thought the impact of what went wrong had been greater than it might've been for another customer. And the delays and worry were heightened for Mrs W. So she recommended the compensation be increased to £350.

Mrs W didn't agree. She said it was clear her credit limit was decreased as a result of Music Magpie's actions. She says she shouldn't have lost a mortgage and credit facility as a result of fraud. She had to borrow money from friends and family and that everything could have been avoided had Music Magpie taken action promptly. She thinks £350 isn't sufficient and that Music Magpie is getting away lightly.

Music Magpie accepted the investigator's view but responded to say it told Mrs W to return the parcel to the sender when she initially got in touch. It also said Mrs W didn't use the return label it provided. It said it responded to the complaint raised in November 2022 within a reasonable amount of time and removed all record of the agreement once it received the goods back.

As things couldn't be resolved, the complaint has 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 Mrs W has an unwell family member. And I thank Mrs W for taking the time to bring her complaint to our service.

I also want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mrs W and Music Magpie that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Music Magpie sought rental payments from Mrs W under a regulated consumer hire agreement, and our service is able to consider complaints relating to these sorts of scenarios.

I imagine Mrs W was very concerned to have found out about the fraud. It must have been worrying for her. I can understand why she would have wanted matters resolved quickly and any delays or failings in customer service from Music Magpie would have added to the stress.

Music Magpie has accepted Mrs W didn't take out the agreement. And it agreed to remove all record of the agreement from her credit file once it received the phone. It looks like an applicant knew enough of Mrs W's personal details to take out the agreement and Music Magpie thought it was a genuine application. I haven't seen something to indicate Music Magpie acted unfairly by opening the account. It's fortunate that Mrs W spotted something was wrong and kept possession of the phone. I also don't think it was unfair of Music Magpie to not provide payment details for an account Mrs W told it was set up fraudulently. But I can understand why Mrs W wanted to make sure the fraud hadn't affected her in another way.

Mrs W tells us she complained to Music Magpie by email and web form when she noticed the credit search and received the phone. But it wasn't until the phone was returned in December 2022 that Music Magpie agreed to remove record of the agreement on Mrs W's credit file. This was a few months later. So I can understand why Mrs W was unhappy it took so long to resolve. I've thought about the impact on her.

Music Magpie has agreed to pay £350 compensation for the way things were handled. It also acknowledged things didn't go as they should have done. What I need to decide is if it needs to do more to resolve things for Mrs W.

I think Music Magpie ought to have dealt with things better, and sooner than it did. Mrs W let it know about the problem straight away. It said it told her to return the phone to the sender, but Mrs W hasn't agreed this is what happened, and I've not seen any evidence to back that up, such as notes, calls or correspondence. I also can't see why Mrs W wouldn't have sent the phone back straight away if that's what she was instructed to do by Music Magpie. I've also not seen Music Magpie took steps to follow up on what it was told, for example by making a follow up call to Mrs W to check if things had been resolved.

When Music Magpie did start to look into things in more detail it wanted Mrs W to send the phone back before it would remove the agreement from her credit file. And by this point it had also referred the agreement to debt collectors and recorded missed rental payments on Mrs W's credit file. It should have been a simple matter for Music Magpie to help Mrs W get things resolved within a few days. I think Music Magpie ought to have been more proactive in providing support to Mrs W. Leaving things and having missed rental payments recorded would naturally likely cause further problems. Mrs W was no doubt worried about the fraud and frustrated Music Magpie weren't responding to her promptly. She's had correspondence not responded to. She had to repeat herself. And she tells us she had to go out of her way to send the phone back. While the problem stemmed from the fraudster, in this particular case, I think it's fair Music Magpie pay something to Mrs W to recognise the distress and inconvenience caused.

Moreover, Mrs W has said the missed rental payments on her credit file affected her in other ways. She says it impacted her decision to make a mortgage application. And she says it directly led to a reduction in the credit limit on her credit card. This had a knock-on effect on Mrs W's plans. So she wants this taken into account when I decide what Music Magpie needs to do to put things right.

When considering the impact of a business' mistake there are various things I need to think about. So in this case, I'd need to think about whether Mrs W did what she could to minimise the impact of Music Magpie's mistake. I also need to think about whether the impact of the mistake was reasonably foreseeable for Music Magpie. And whether any losses Mrs W incurred were directly flowing from a mistake it had made.

In this case, I've not seen sufficient evidence of the impact of the mistake on Mrs W's mortgage application. Mrs W tells us she was told verbally by a broker that they were unwilling to proceed with an application with these issues outstanding. As I said above, we'd

expect to see Mrs W had taken steps to mitigate the impact of the problem. But without any sort of application having been made, it's difficult to know what might've happened had she done so. I do have to be mindful that mortgage lenders take in to account a whole range of considerations before deciding to lend. And I also have to bear in mind that she might've been able to tell the potential lender there was incorrect information on her credit file.

I also appreciate Mrs W has said the negative information on her credit file impacted her ability to complete works on her house, which also had a knock-on effect. She's explained that her personal situation wasn't known to Music Magpie. And I can understand why she didn't want to explain everything to it. But I also have to consider that Music Magpie may not have been able to reasonably foresee all the issues Mrs W mentioned if it wasn't aware of them.

I've finally thought about the reduction in Mrs W's credit limit on her credit card. While we don't know the exact reason for this. I take on board Mrs W's comments that the creditor told her it was due to behaviour with another lender. I've not seen all of Mrs W's credit file but, on balance, I think it's fair to assume that the reduction was linked to the negative information recorded by Music Magpie. However, like our investigator pointed out, I can't direct Music Magpie to do something about a credit limit with another financial services provider. And if Mrs W thinks that creditor is treating her unfairly given the circumstances, she might want to take it up with that creditor in the first instance. If she's unhappy with its response, it might be something our service is able to consider. I have, however, considered the overall impact on Mrs W.

All things considered, I take on board what Music Magpie seems to be implying in that Mrs W could have sent the phone back sooner which would have resolved things. And that I don't think I can fairly direct it to pay compensation for the impact on Mrs W not reasonably foreseeable for it, or directly flowing from its mistake. But on the other hand, I don't think it's in dispute it should have handled things better. I think it should have done more to follow up on Mrs W's initial contact. Had it done so, I don't think it should have taken so long to resolve. And it's likely a lot of what went wrong with regards to the impact as a result of the missed rental payments being recorded could have been avoided.

I've thought about the impact on Mrs W, and what I can fairly award. While I understand why she's unhappy, broadly, I think the £350 compensation is fair in all the circumstances of the complaint. I think it recognises the mistake has caused considerable distress and worry. And that it's taken more effort than it should have done for Mrs W to sort out. It also recognises the impact has lasted for a few months. I don't find I have the grounds to direct Music Magpie to pay more.

**My final decision**

My final decision is that I uphold this complaint and direct Entertainment Magpie Limited trading as Music Magpie to pay Mrs W £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 19 April 2023.

Simon Wingfield  
**Ombudsman**