

complaint

Mr L complains, in summary, about the unsatisfactory customer service he's received from Express Gifts Limited, trading as Studio.

background

Mr L opened a credit account with Studio in July 1998. He has complained about the following issues:

1. He'd bought a tablet from Studio on 8 April 2015, but it froze and he complained to Studio about this two days later, and asked it to collect the faulty tablet from him. But Studio had refused to do so as Mr L had previously bought three tablets from it and returned them all. Mr L also asked for a refund for the replacement insurance he'd bought to cover the tablet.
2. He'd asked for account statements since September 2015 as these hadn't been sent to him.
3. Studio had told him they were reviewing his account, but he doesn't believe any review took place.
4. Studio had closed his account. He wants them to reopen it.
5. He had waited in all day for a call from Studio in July 2015, but it never called him.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. She said in relation to each issue:-

faulty tablet

She noted that Studio had said that Mr L hadn't contacted it about the tablet until over a year after he'd ordered it. As this was outside of the 12 month manufacturer's warranty for the tablet, Studio wasn't prepared to accept a return. But as Mr L had taken out insurance on the tablet to cover mechanical or electrical defects, Studio told Mr L that he'd need to contact the insurance company which provided the cover if he still wanted to pursue the matter. The adjudicator had looked at Studio's contact notes which showed the history of Mr L's communications with it. She also said that if Mr L had raised an issue with the tablet within 12 months of receiving it, this service would have likely considered it in Mr L's previous complaint to this service, for which a decision was issued in October 2015. She'd also seen evidence from the insurance provider that Mr L only contacted them about this in October 2016. As the adjudicator was persuaded that Mr L didn't raise any issues with Studio about this tablet for over 12 months after purchase, she didn't think it was unreasonable for Studio to refuse to take the tablet back.

statements

She noted that Studio had said that in about September 2015, Mr L's account had been passed to an external debt collection agency. It was defaulted in May 2016 when statements stopped being produced as the whole debt became payable. She couldn't see from the contact notes any request for the statements. But she was satisfied that Mr L had online access to his account, and that he would have been able to monitor it and make payments that way.

account review

She noted that Studio's contact notes showed that on 5 July 2016, Mr L was told that his account was under review. There were a number of calls after this during which he was told he'd need to speak with Studio's debt collection agent. She thought that the information Mr L was repeatedly given during the calls was sufficient.

closure of account

She'd noted that no payments were made on the account between March 2015 and July 2016, so the account was defaulted and closed. She didn't think that Studio shouldn't have taken this action.

Mr L disagreed and responded to say, in summary:

1. Faulty tablet – he'd told Studio the tablet was faulty two days after receiving it. It had been boxed up since, awaiting collection by Studio.
2. Statements – these should have been sent. He'd also received no service from Studio since April 2015, and had received no emails, calls or letters from Studio since September 2015.
3. Account review – he doesn't believe that his account was being reviewed.
4. Closure of account – he wants his account reopened.
5. Studio hadn't called him on 15 July 2015 when it said it would.

Mr L said that Studio was refusing to sort the issues out. He had consulted an independent advice agency and was considering court action.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and to Studio on 16 March 2017. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I could see that Mr L had very strong feelings about Studio's actions. He had raised a number of issues which he wanted this service to answer. I explained that it was for me to decide what I considered to be the relevant issues, in order to resolve the complaint in line with my statutory duties. I said that I'd considered all that Mr L had said, but didn't propose to comment individually on all of the issues he had raised. And I said that I wouldn't comment on issues which had been dealt with in his previous complaint to this service. I noted that Studio's failure to call Mr L in July 2015 was dealt with in that complaint.

faulty tablet

I noted that Mr L and Studio had two different versions of the same events. So I said that I had to decide which was the most likely. I noted that Mr L had said that he'd told Studio two days after the tablet's delivery in April 2015 that the tablet screen was freezing. I'd seen copies of emails sent by Mr L to Studio. I'd seen an email dated 20 April 2015 from Mr L to Studio in which Mr L said "Things just go from bad to worse. Same with the tablet, nothing sorted out there either". In his email dated 23 April 2015 to Studio, Mr L had complained that he'd had no reply to his emails. His email dated 28 April 2015 to Studio referred to the tablet freezing. There was then a reference in Studio's contact notes to the faulty tablet being

mentioned in a call on 11 April 2016, over a year after delivery. Studio had refused to deal with it and told Mr L to contact his insurer as he'd taken out a Product Replacement Plan for the tablet.

I'd listened to a recording of the call on 18 October 2016 in which Mr L had spoken to the insurance company providing the Product Replacement Plan for his tablet. He'd initially referred to a larger 10.1" tablet he owned and said there was a fault with the charger, which the insurer said wasn't covered by the insurance. But, he'd then referred to his smaller tablet which he said had frozen a few days after delivery. He said that he'd reported the fault to Studio two or three days after the tablet was delivered, but no one was prepared to sort it out, and Studio had told him that his account was under review.

I said that it was difficult to know for certain what had actually happened. But taking all of the above into account, on balance, I found Mr L's version of events the most likely. The frozen tablet was referred to in his email correspondence in April 2015 and his conversations with his insurer in 2016 had corroborated this. It was also clear that Studio didn't promptly respond to Mr L's emails about the frozen tablet. Whilst Mr L sent many emails to Studio, and his emails were lengthy and referred to several issues, I thought that the issues he'd raised should be investigated and that he was entitled to receive a response on the issues he'd raised. I didn't think that Studio had done this. So, as the tablet appeared to be faulty very soon after delivery, I thought it was fair that Studio should arrange to collect the tablet from Mr L and refund its cost and the cost of its insurance to his account.

statements

I noted from Studio's contact notes that Mr L had told Studio in May 2015 that he would cancel his direct debit payments and return all Studio's statements because of Studio's unsatisfactory service. He then complained that he didn't receive any statements after that. Studio had said the last statement was produced in June 2015. Mr L's account was flagged as "gone away" as mail was frequently being returned to them. In such cases, I am aware that businesses stop sending mail to customers for data protection reasons. So, for this reason, I could see why statements and correspondence might have stopped being sent to Mr L due to his own actions. But in any event, as Mr L had online access to his account, I thought that he could have seen the position on his account if he'd wanted to.

I also noted that Mr L believed in December 2016 that he owed Studio just under £1,000. It wasn't clear to me if this was correct. So, I asked the adjudicator to ask Studio to clarify how much Mr L owed to Studio. Studio said that the current balance owing was £1,100.

account review

I noted that Studio had said that the account was being reviewed whilst this service was investigating the merits of Mr L's previous complaint. Studio had also said that because of the complexity of Mr L's case due to the sheer volume of communications received from him, it had decided to await the outcome to Mr L's previous complaint to this service before deciding how to proceed. I didn't think that was unreasonable.

closure of the account

I noted that Mr L ceased to make his payments under the account from March 2015 until July 2016. As he'd stopped making payments, I could see Mr L was in breach of the terms of his credit agreement. I'd seen a copy of an unsigned credit agreement from 1998 and noted that this said that the consumer must pay a minimum of £10 each month or 5% of the outstanding balance, whichever was the greater. As Mr L didn't pay his monthly minimum payments, I didn't think that Studio had acted incorrectly in attempting to default Mr L's

account in May 2016. But, I said that I understood from Studio that the default notice wasn't sent to Mr L as his account had been flagged "gone away". I also understood the default was applied to Mr L's credit file in June 2016 without Mr L receiving the appropriate notice of this. I didn't think that Mr L would have been able to clear the debt if he'd received the default notice, and I considered it to be more likely than not that the account would've still been defaulted if Mr L had received the default notice.

I also didn't think that Studio had acted reasonably in applying the default to Mr L's account without prior notice of its intention to do so. I explained that the Information Commissioner's Office's Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies said that a lender must have told a customer of its intent to register a default 28 days before doing so. This was required in order to give a customer time to make an acceptable payment or reach a payment arrangement. I could see that as Mr L didn't receive the default notice, he hadn't known about Studio's intent to register a default. And I could also see that Studio would have known that it hadn't sent a default notice to Mr L. So, in these circumstances, I didn't think that Studio had acted fairly in applying the default to Mr L's credit file. So, I thought that it should be removed. I understood that Studio had commented that Mr L didn't refer in his complaint to the registration of the default, and so it shouldn't be referred to in my decision. But, I said that as my decision was provisional, Studio would be able to comment on this issue in its response to this decision.

Subject to any further representations by Mr L or Studio, my provisional decision was that I was minded to uphold this complaint in part. I intended to order Studio to:

1. Collect the "frozen" tablet and refund Mr L's account with the cost of it and the insurance policy for it. It should then rework Mr L's account so that any interest or charges attributable to these items should also be credited to the account; and
2. Remove the default from Mr L's credit file.

I also noted that Mr L had indicated that he may take court action. I said that if he didn't accept my decision, he could pursue his case by alternative means if he wished to do so.

Mr L responded to say that he was happy with my proposed decision. He also wanted his account reopened and his account statements sent to him.

Studio responded to say, in summary, that the faulty tablet had been raised in a previous complaint and had already been dealt with by this service. It said that Mr L wasn't referring to the faulty fourth tablet in his emails dated April 2015, but to previous ones. It agreed with my views regarding the statements and the review of the account. But, with regard to the registration of the default, it said that it didn't accept that my wider observations surrounding the registration of a default should be applicable to this final decision. But it would happy to address my concerns under a new complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

With regard to the fourth faulty tablet, I note that Studio told us in this complaint that Mr L hadn't reported the tablet as faulty in April 2015, and that he did this over a year later when it was too late to complain. But, for the reasons explained above, I remain of the view that Mr L had complained about the fourth tablet in April 2015. And I don't feel that this service ever

made a finding in the previous decision about the faulty tablet. I think that Studio may not have understood which tablet Mr L was referring to, but the onus remained on them to sort things out. Having considered Studio's further points on the issue of the faulty tablet, I'm not persuaded to change my view in the provisional decision about this aspect of Mr L's complaint.

With regard to the registration of the default, Studio has already been made aware of this aspect of the complaint, and it has been given a chance to respond to my comments in its response to the provisional decision. In addition, Mr L and his faulty tablets have already been the subject of two complaints, so I don't think it would be sensible to open another complaint, especially when Studio already know what I think is the right thing to do. So, I think it would be unreasonable to require the issue to be the subject of a new complaint. And, overall, I don't see anything wrong with my dealing with the issue in this decision, and I find no basis to depart from my earlier conclusions.

I note that Mr L would like his account reopened, but as he ceased making payments from March 2015 until July 2016, I don't think it was unreasonable for Studio to close the account.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Express Gifts Limited, trading as Studio, to:

1. Collect the "frozen" tablet and refund Mr L's account with the cost of it and the insurance policy for it. It should then rework Mr L's account so that any interest or charges attributable to these items should also be credited to the account; and
2. Remove the default from Mr L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 June 2017.

Roslyn Rawson
ombudsman