

complaint

Mrs L complains that she has been an agent of Shop Direct Finance Company Limited ("Shop Direct") for many years. However, Shop Direct has pursued her personally for a debt after one of her customers failed to pay for a purchase.

background

Shop Direct says Mrs L opened her account in 1997. In 2006, it says it was obliged to change its processes to comply with new legislation. As it was unable to assess the credit worthiness of unknown customers of 'informal agents', it set up a formal agent registration system.

In January 2007, Shop Direct says it began including messages to account holders in its catalogues and on its website to explain that they needed to register if they wished to operate as Shop Direct agents. The messages also explained what agency involved. Shop Direct says it later also introduced payment liability clauses to make account holders who had not registered as agents liable for third party debts.

Shop Direct says that it has been its longstanding practice to update its policy information via its six monthly seasonal catalogues and its website and it does not consider it unreasonable to have expected Mrs L to have thoroughly read these pages.

Shop Direct says that it did not lead Mrs L to believe that she was an agent and, as she did not enquire about becoming an agent, it did not provide her with an agency pack. Therefore, when she allowed her credit facility to be used for placing orders for a third party Shop Direct says she was liable for the debt.

Mrs L says she became an agent of one of Shop Direct's predecessor companies nearly 20 years ago. She says she was not advised to the contrary therefore she presumed she was still an agent and continues to receive reward points.

our initial conclusions

The adjudicator upheld the complaint. She concluded that the catalogue messages were insufficient to alert Mrs L to changes in the agency relationship.

Shop Direct did not agree. It says Mrs L's account was closed in 2006 and reopened in 2009. She ought therefore to have familiarised herself with the policy changes.

my findings

I have considered everything that has been said and provided to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I uphold Mrs L's complaint for the reasons set out below.

In its correspondence to this service Shop Direct has acknowledged that prior to 2006 a system of 'informal agency' had existed. However, as a result of changes in the law Shop Direct says it was obliged to formalise the position by introducing a system of registration. Shop Direct does not appear to dispute that Mrs L was an agent of its predecessor company under the pre 2006 informal agency system. Instead, its argument seems to focus on the information and warnings it began including in its catalogues and website from 2007, which it

says Mrs L ignored. As Mrs L did not ask to be registered formally, she could not operate as an agent.

Mrs L argues that she has never been told that she is not an agent and continued to receive reward points when Shop Direct took over. She also says that when she first contacted Shop Direct about her non-paying customer, she received correspondence from the 'agency customer transfer team' telling her not to accept further orders from her customer. She was also asked to complete and sign a form in her capacity as agent to remove the customer from her account.

Shop Direct says that Mrs L received this correspondence before it had identified that she was not one of its registered agents. Therefore it does not agree that the correspondence proves that she was an agent. It also says that reward points were available to all of its customers.

I accept that the letter sent to Mrs L in May 2011 and the form she signed in July of that year cannot establish an agency where none previously existed. However, I do not have any reason to doubt Mrs L's statement that she was an agent under the informal system that existed when she opened her account. Shop Direct has not sought to deny this, by providing evidence or otherwise.

Shop Direct's argument appears to be that it brought this informal agency arrangement to an end in 2006. Thereafter, an agency could only exist through registration on its 'Etrads' system. However, Shop Direct did not terminate pre-existing agencies by writing to the customers for whom it had become responsible. Whilst Shop Direct says the account was closed in 2006, I have seen no evidence that Mrs L was told this. Mrs L says she might not have placed an order between 2006 and 2009, but she did not close the account and continued to receive catalogues in the intervening period.

Shop Direct instead chose to 'send messages' to customers in its catalogues and on its website. It has provided extracts of the 'messages', but this information is contained on pages headed 'small print'. I do not think that Shop Direct can change the basis of a contractual relationship with customers by putting messages and warnings in the small print of its catalogues. It is not reasonable to expect customers to look for important changes to their contractual relationship in the small print. If Shop Direct wanted to terminate the agency relationships that had existed up until 2006, in my view it ought to have written personally to its customers, or made its messages more prominent.

Shop Direct argues it was not practicable to send individual letters to informal agents because there were several million account holders, and it did not know which of these might be operating as informal agents. Whilst I understand the logistical problem for Shop Direct, it does not change my view that it could not change its contractual relationship with its existing agents in the way that it tried to do.

Therefore, even if Mrs L had read the payment liability provision, she would not have been alert to the fact that she was not registered as an agent. Clearly, she was registered as an account holder and had operated as an agent since 1997. She simply was not registered under Shop Direct's new system.

I am also satisfied that the item Mrs L bought was not for herself, or a gift for a member of her family or a friend. It was a gas cooker, which was delivered to her customer and the delivery address would have been recorded at the time of the order.

For the above reasons, I am satisfied that Mrs L was an agent of Shop Direct at the time of placing this order and is not bound by the payment liability clause.

I understand that Mrs L has paid the debt under protest to prevent further recovery action by Shop Direct. Therefore, Shop Direct must now reimburse all sums paid by Mrs L. It must also apply simple interest at 8% per year calculated from the date(s) that Mrs L made payment until the date Shop Direct refunds the money. Shop Direct must also remove any adverse information it has recorded with credit reference agencies about this order.

Finally, I also award Mrs L £100 compensation for the distress and inconvenience she has suffered, including for Shop Direct's administrative failings in continuing to pursue Mrs L when she was adhering to a payment arrangement.

my final decision

My final decision is that I uphold Mrs L's complaint. I direct Shop Direct Finance Company Limited as above.

Athena Pavlou
ombudsman