



complaint

Mrs R complains that Shop Direct Finance Company Limited used her reward points to pay for goods ordered on behalf of a third party when that third party failed to pay for them. She is also unhappy that Shop Direct registered a default against her account.

background

Our adjudicator recommended that the complaint be upheld. She was satisfied that Mrs R believed that she was acting as an agent of Shop Direct and that Shop Direct had not made her sufficiently aware that this was not the case. She concluded that it was not fair for Mrs R to be held liable for the debt or for Shop Direct to use her reward points to settle it. Our adjudicator recommended that Shop Direct refund Mrs R's reward points, remove any adverse information on Mrs R's credit file and pay Mrs R £100 for the distress and inconvenience this matter has caused her.

Shop Direct did not accept those conclusions so the matter was referred to me for review and determination.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold this complaint.

Mrs R opened an account with Shop Direct in June 2007. She says that she has been acting as an *"informal agent"* since that time. She says that her account fell into arrears when one of her customers – referred to here as Mrs F – failed to pay for her goods.

Shop Direct says that Mrs R *"is not, and never has been, registered as an agent... [and] unless account holders are registered as an agent, they are personally liable for the full balance on their account"*. As such, it says Mrs R was liable for Mrs F's outstanding debt.

There is clearly disagreement about Mrs R's status with Shop Direct. Mrs R's actions – the items she bought, her completing the 'Agent's copy' forms – are consistent with those of a Shop Direct agent. On the other hand, Mrs R accepts that she did not follow the normal ordering process used by Shop Direct's registered agents.

Shop Direct says that it *"introduced the payment liability clause"* in July 2008. However, by this point Mrs R had already been its customer for some time. On balance, I am not satisfied that Shop Direct took sufficient steps to tell Mrs R about this policy change. Shop Direct concedes that it did not write to its customers, but instead relied on information placed in its catalogues and on its website. I am satisfied that if Mrs R been aware of her potential liability she would not have continued to buy items on behalf of her customers.

Shop Direct also says that it *"cannot legally transfer a debt to a third party unless we can first establish that a debt is actually owned [sic] by that third party"*. But Shop Direct's internal contact notes for this account show that it discussed the outstanding debt with Mrs F in July 2009 and had begun the process of transferring this debt to her. Whilst Mrs F did not return the forms she was sent, I consider that Shop Direct was aware that the debt was owed by someone else.

Finally, in a letter to Mrs R's solicitor dated 1 March 2010, Shop Direct said: "*I can confirm that we will not be pursuing [Mrs R] for the outstanding balance of £1,087.11*". Soon after this, Shop Direct used Mrs R's reward points – worth £1,062.93 – to pay off this outstanding balance. Given its earlier response, I do not consider this to be fair or reasonable.

I am satisfied that Mrs R believed herself to be acting as an agent of Shop Direct. I am also satisfied that Shop Direct did not take reasonable steps to either dissuade her of this or tell her that she would be liable for her customers' unpaid debts. And I do not consider it fair or reasonable for Shop Direct to have applied Mrs R's reward points to the account when it had told her that it would not pursue her for the outstanding balance. I find that Shop Direct should refund the value of the reward points to Mrs R.

Finally, I find that Mrs R has suffered a certain amount of distress and inconvenience as a result of Shop Direct's actions throughout this period. Our adjudicator has recommended an award of £100 to reflect this. I consider this to be fair.

my final decision

My final decision is that I uphold this complaint and order Shop Direct Finance Company Limited to:

- stop any collections activity, cancel the outstanding balance and close Mrs R's account;
- remove any adverse information it has registered about this account with any credit reference agencies;
- pay Mrs R £1,062.93 in respect of the reward points used to settle the outstanding balance on her account; and
- pay Mrs R £100 to reflect the distress and inconvenience this matter has caused her.

Simon Begley
ombudsman