

## The complaint

Mr F complains about the balance of a catalogue account with Studio Retail Limited trading as Studio, which he says was opened in his name without his authority.

## What happened

In June 2022, a catalogue account was opened with Studio in Mr F's name. Over the next six weeks, two items were ordered using the catalogue account, bringing the balance owed by Mr F to around £830. Around the same time, Mr F says a mobile telephone airtime contract in his name, was used by a close family member, who I'll call 'X', to make unauthorised purchases.

Over the next few months Studio sent account statements by email, addressed to Mr F. Studio didn't receive any repayments, so the catalogue account entered into arrears. Mr F says he didn't receive the statements and would have treated any such letters as junk mail, since he'd never heard of Studio.

But, in October 2022, Studio sent a default notice to Mr F's home address. Mr F says the default notice looked different to anything else he'd seen from Studio and decided to open the letter. He says it was at this point he realised that a catalogue account had been opened using his personal details. So, Mr F contacted Studio to dispute the account and the balance they were asking him to repay.

Around the time of the default letter, Mr F noticed another catalogue account with different provider had been opened. Mr F says it was here that he realised both the account with Studio and the other provider, were opened without his authority by X. While the other provider agreed to close their account and end their pursuit of the debt, Studio didn't accept Mr F's explanation. So, Mr F complained to Studio.

In their final response to Mr F's complaint, Studio said Mr F was aware of the account as he had queried it in the past and because they had sent regular letters to his address. They also said the dispute was a civil matter between Mr F and X and suggested Mr F contact the police. Mr F didn't accept Studio's response and brought his complaint to us.

One of our investigators looked into Mr F's case and found Studio hadn't treated Mr F fairly. He was persuaded that an email address and telephone number included on the application form, weren't used by Mr F. He also concluded that Studio couldn't show where Mr F received the goods in 2022 and noted that Mr F had reported X to the police.

Overall, the investigator wasn't persuaded that Mr F gave his authority for the catalogue account to be opened. So, he asked Studio to remove Mr F from the account and to remove any information about the account from Mr F's credit file. The investigator also asked Studio to refund any repayments made by Mr F towards the debt and to add interest onto each repayment.

Studio didn't agree with the investigator's findings and said they had verified Mr F's details when the account was opened. They also said they made Mr F aware the account was

open, but it took him until October 2022 to dispute it.

The investigator didn't change his conclusions and now Mr F's case has been passed to me to make a final 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.

Firstly, I'd like Mr F to know that I'm sorry to hear of the difficult personal circumstances he has told us about. It can't have been easy for Mr F and his family over the last couple of years.

I also want to point out that where the evidence is incomplete or inconclusive, I reach my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

The crux of Mr F's complaint is that Studio have asked him to pay off a debt in relation to a credit agreement for running account credit. Our service is able to consider complaints relating to these sorts of agreements. So, I've gone on to think about the evidence submitted by all the parties.

On the one hand, I can understand Studio's position that even if Mr F didn't set up the account himself, he ought to have known about it shortly afterwards. This is because they say they sent a welcome letter to Mr F and because goods costing around £830, were ordered in the days that followed. Studio also added the account to Mr F's credit file, and they sent him monthly statements.

But on the other hand, Mr F has told us he didn't realise the account was on his credit file and he assumed the letters he received from Studio were junk mail. Furthermore, Mr F says it was quite possible for X to have known the personal details needed, to be able to open an account. He also says X was able to hide statements and deliveries from him. And that X had opened another similar account without his authority, and made purchases around the same time as the application with Studio.

So, I've looked at the evidence both sides have sent us, to decide if it's fair for studio to hold Mr F responsible for the outstanding balance of the account. There are a few possibilities that might have given Studio a proper basis for pursuing Mr F for the debt owed under the catalogue account agreement: Namely:

- Mr F opened the account himself; or
- X opened up the account on Mr F's behalf, with his actual or apparent authority.

To help me consider the first option, I've looked at the application made to Studio and Mr F's actions since the account was opened.

I can see from other correspondence Mr F has sent to us that he used a different email address and telephone number, to the contact details used in the application with Studio. I've also seen where X's details match those of the contact details included on the application.

So, on balance, I think the telephone number and email address used in the application were those of X. Additionally, after looking at the other information needed to open the account,

I'm persuaded that it's reasonable for those types of details to be known by a close family member of Mr F.

I think Mr F has been consistent and credible when providing information to Studio and us. I accept that it was nearly four months from the opening of the account, until Mr F raised his concerns with Studio. But, given everything else he's told us, I think Mr F's explanation is persuasive, in that he assumed any letter from Studio was an advert or a circular, since he didn't think he had any connection to them.

Furthermore, I can see that Studio sent electronic statement notifications to the email address they have on their records. Given my findings about that email address, it then follows that Mr F didn't receive account statements from Studio. So, I don't think it was reasonable for Mr F to have become aware of the account until Studio started to send arrears letters to his home address.

Studio have explained that Mr F was aware of the catalogue account, because of the two goods orders they sent to him in June and July 2022. They say the packages were addressed to Mr F, so it's reasonable for him to have had sight of each delivery. To support what they say, Studio have sent us the delivery information for one of the orders.

I've looked at that information and I can see that the package was sent to Mr F's home address. But, the photograph provided shows the package being taken in by a female. Mr F has also seen the picture and says the person is his cleaner. And that it was possible for X to have then taken the package and have opened it, without his knowledge. On balance, I don't think the delivery photograph provides conclusive evidence to show that Mr F received the goods from Studio.

I've considered all the other circumstances and where Mr F has provided evidence of other instances of fraud carried out by X. Having done so, I don't think the account application, the early correspondence or the delivery information demonstrates that Mr F was aware of the catalogue account, or opened the account himself.

I turn now to consider if Mr F is likely to have given someone else his authority, to open the account on his behalf.

During our investigation, Mr F provided us with copies of text messages between himself and X. Within those messages, X acknowledges the need to take ownership of the debt owed to Studio and where they need to make arrangements to repay it. Mr F has also shown where he removed X from his home, by way of a council tax document and other text messages.

Overall, I, think the messages show a conflict between Mr F and X over the debt and where that conflict was serious enough for Mr F to ask X to move out of his home. I also think the messages show where X has taken responsibility for the account and the balance owed to Studio.

I've looked at Studio's records of the contact they've had with Mr F. Having done so, I cannot see that Mr F contacted Studio, before he reported his concerns to them in October 2022.

I can also see that neither Mr F nor X made any payments towards the balance of the catalogue account, in the months prior to Mr F's first contact with Studio. After looking at the contact and payment history of the account, I think they both support Mr F's testimony that he reported the concerns as soon as he says he became aware of the account with Studio.

Mr F has also provided letters from a different lender and a telecommunication provider,

where he says he was the victim of fraud carried out by X. These letters show the outcome of the investigations by the other firm, in that they found in Mr F's favour.

Additionally, Mr F has shown us where he took the difficult decision to report X to the police and Action Fraud. I have to keep in mind that X is a close family member of Mr F. So, I don't think he could take that decision lightly. Overall, I'm persuaded by the seriousness of the steps taken by Mr F, in that I don't think he would involve the police or Action Fraud, had he authorised the opening of the account himself.

On balance, I think the evidence most likely shows that X opened the account with Studio. I'm not persuaded the most likely thing to have happened is that Mr F gave his authority, or apparent authority to X, to open the account with Studio on his behalf.

Having considered everything, I don't think it's fair for Studio to hold Mr F responsible for the outstanding debt due under the credit agreement for running account credit. It follows that I think Studio should allow Mr F to exit the agreement with nothing further to pay. I also think Studio should remove all information connecting Mr F to the account, from the details held about Mr F with credit reference agencies.

From the account statements provided by Studio, I cannot see that Mr F has made any payments. But, given the passage of time and Mr F's wish to prevent any further adverse information from being applied to his credit file, he may have now made some interim payments.

In these circumstances, I think Studio should refund any payments Mr F has made to the catalogue account. I'm also aware Mr F would not have been able to use any of the funds from any payments he may have made. So, I think Studio should also add interest to any payments made at a rate of 8% a year simple, from the payment date, to the date of settlement of this complaint.

Finally, I acknowledge where Mr F says he's been caused distress and inconvenience by Studio. But, I think the bulk of the worry and trouble appears to have been caused by X, when the account with Studio was opened and goods were ordered without Mr F's authority. I empathise with Mr F, in that Studio didn't uphold his complaint. But, in Mr F's case, I do not think it would be fair to ask Studio to make a payment for the distress and inconvenience caused by a third party.

### **Putting things right**

For these reasons, I require Studio Retail Limited trading as Studio to:

1. Allow Mr F to exit the catalogue account agreement at no additional cost to him;
2. Remove all information about the catalogue account agreement, from the details held with credit reference agencies about Mr F;
3. Refund all the repayments Mr F has made under the catalogue account agreement, from inception to the date of settlement of this complaint; and
4. Add interest at a rate of 8% a year simple to part three of this settlement, from the dates the payments were made, to the date of settlement of this complaint.

Studio must pay these amounts within 28 days of the date on which we tell them Mr F accepts my decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year

simple.

If Studio deducts tax from any interest they pay to Mr F, they should provide Mr F with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and require Studio Retail Limited trading as Studio to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 September 2024.

Sam Wedderburn  
**Ombudsman**