

complaint

Mrs R complains about a catalogue account she has with Shop Direct Finance Company Limited (Shop Direct). She says she believed she was acting as an agent of Shop Direct and is unhappy as it has now said that she has not been recorded as an agent. She says she was not aware of the changes Shop Direct made to its terms and conditions (about acting as an agent) and is unhappy that she will be liable for items if her customers do not make the required repayments.

background to complaint

The adjudicator who considered the complaint recommended it be upheld. He explained that Shop Direct should have been aware that Mrs R was acting as an agent of Shop Direct when ordering items for other people. He also felt that Shop Direct had not given Mrs R sufficient notification of the change to the account terms and conditions that relate to agency customers. He recommended Shop Direct refund any account charges that relate to the disputed items purchased for Mrs R's customer, remove any adverse credit information that relates to the disputed items and issue an apology. He also recommended Shop Direct pay Mrs R £150 for the distress and inconvenience she had been caused.

Mrs R accepted the adjudicator's proposals but also said that £90 was removed from her rewards accounts to go towards repayments that should have been made by her customer.

Shop Direct did not accept the adjudicator's recommendations. It believes Mrs R has been made aware of the duties required of her as an agent but she has failed to do this. It also feels that the notices provided in its catalogues and on its website clearly refer to the changes that were made to the terms and conditions.

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 have upheld this complaint.

Mrs R has a catalogue account with Shop Direct and says she has been ordering items for third parties for many years. She understood that when ordering items for others she was acting as an agent of Shop Direct and this meant that if her customers did not make the required repayments she would not be liable for the remaining debt for those items. She says that had she been told that she would be responsible if her customers did not make the repayments she would not have placed the orders.

Mrs R ordered certain items for one of her customers but this customer's pay date changed which meant that she could not make the required repayments before the actual due date. Mrs R says she has been making the required repayments for the items and she is then being paid, albeit slightly later, by her customer.

Shop Direct says there is nothing to show that Mrs R was acting as an agent when ordering goods for third parties. It also says that she did not meet the requirements of an agent by obtaining completed credit agreements before placing orders or completing payment cards to show what payments had been made.

Mrs R says she always understood she was acting as an agent of Shop Direct and she did complete payment cards and send Shop Direct copies of completed credit agreements.

I accept that there is no signed agency agreement between Mrs R and Shop Direct and it is possible that Mrs R simply assumed she was acting as an agent of Shop Direct. However, I think it unlikely in the circumstances that Mrs R simply assumed she was an agent. On balance, I think it more likely that Mrs R was either acting as an agent (albeit informally) or Shop Direct let her believe that she was an agent.

Mrs R has provided copies of credit agreements that were completed and payment cards that she kept. Shop Direct says Mrs R should have sent it copies of completed credit agreements but she says she did send the agreements to Shop Direct. Although I have not been provided with copies of every credit agreement for every purchase made by all customers, I think it more likely than not that Shop Direct would have received at least one of these when Mrs R sent it the copy. Had it had concerns about Mrs R either not being an agent, or that she was not fulfilling the requirements of an agent, it should have made her aware of this at the time. It seems to me that Shop Direct was aware that Mrs R was acting as an agent and was, until recently, happy for her to act as an agent.

Had Mrs R been told that she was not an agent then I think it is reasonable to assume that she would not have continued to make the purchases for third parties.

Shop Direct has referred to the changes it made to the account terms and conditions but I am not persuaded that these would have been clear to Mrs R. They were included in catalogues that were issued to customers but there was no clear warning or direction to consumers so they would have been aware of this significant change. It was also included on the website terms and conditions but again, there was no specific reference for consumers to be aware of the change. Shop Direct accepts the changes were set out in the 'small print'. Considering the significance of the changes and the effect on anyone acting as an agent I think the notification was inadequate. Mrs R says she was not aware of the change and I find her submissions plausible.

Mrs R's customer is still making the required repayments for the items that were ordered but she is making these payments after Mrs R has already paid Shop Direct. As this payment arrangement seems to be working between the parties I see no reason to change this. If however this changes in the future and Mrs R's customer stops making payments to her I do not think it would be fair or reasonable in the circumstances for Shop Direct to ask Mrs R to continue to make payments. If Mrs R's customer does stop payments Shop Direct should remove any outstanding balance (that relates to the disputed items) from her account and ensure that no additional interest or charges are applied.

Mrs R has also said that Shop Direct has used £90 of her 'rewards' towards the outstanding balance of the items purchased for her customer. As I do not think that Mrs R should be required to make the repayments for any disputed items bought for her customers I do not think it would be reasonable to use some or all of her rewards balance for the disputed items. If Shop Direct has used some or all of Mrs R's rewards towards the disputed items then it should refund what ever amount it used back to her rewards 'account'.

If Shop Direct has recorded any adverse information against Mrs R's credit file because of issues relating to the disputed items Shop Direct should remove this adverse information. It should also ensure that no further adverse information is applied if it relates to the disputed items.

Finally, I agree with the adjudicator that Mrs R has been caused some distress and inconvenience and Shop Direct should make an additional payment directly to Mrs R. Having carefully considered the circumstances here I think that £150 is fair and reasonable.

my decision

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

- allow Mrs R to continue to make the necessary repayments for the disputed items but if Mrs R's customer stops making the payments then Shop Direct should remove any outstanding balance from Mrs R's account;
- refund any money taken from Mrs R's rewards account;
- remove any adverse information, that relates to the disputed items, from Mrs R's credit file; and,
- pay Mrs R £150.

If Shop Direct does not make the settlement within 28 days of Mrs R accepting this final decision then Shop Direct should add interest at 8% simple per year, from the date of this decision until the date of payment, to the payments above.

Mark Hollands
ombudsman