

The complaint

Mrs K complains about Studio Retail Limited's refusal to refund her account with sums relating to the purchase of goods which she says were returned.

Mrs K's complaint has been brought by a representative. My references to submissions made by Mrs K include those made by her representative.

What happened

Mrs K used her account with Studio to purchase and finance two items of furniture. Says she asked to return the items and did so, but was subsequently told by Studio that only one item had been received.

Mrs K says that she raised a complaint with Studio, and then did so with this service as studio hadn't responded.

By the time this service considered the matter, Studio had responded. Mrs K provided two responses from Studio about the return of the goods – the first said that it would investigate further, and the second said that it had closed the file on her complaint. Mrs K specifically raised issue about how Studio had addressed inappropriately her in one of its emails.

Studio accepted that the language used in one of its emails hadn't been appropriate, however, it argued that Mrs K's complaint about the return of goods is not a regulated activity. It said this service didn't have the power to consider the complaint.

Our investigator agreed that whether or not the goods had been returned was a retail complaint, and not something this service had the power to consider a complaint about.

However, they also said that we have the jurisdiction to consider whether Studio had acted fairly by asking Mrs K to repay the lending it had provided under her regulated finance agreement, despite her dispute about the return of the goods. Studio agreed that we had the power to consider that part of the complaint. Our investigator ultimately concluded that it was fair for Studio to ask Mrs K to repay those sums.

Mrs K didn't agree. She asked for a decision on the matter, so the case has been passed to me.

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.

Studio comes under this service's jurisdiction, but it has acted in two different capacities in dealing with Mrs K. There's an important distinction to be made here, and it's relevant to whether or not the complaint relates to an activity we can consider.

In selling goods to Mrs K, Studio has acted as a retailer. It was also acting as a retailer in handling a dispute about the return of goods. This service has no power to consider

complaints about Studio's activities as a retailer.

I'm aware that Mrs K is disappointed with the time it's taken for Studio to respond to her concerns, as well as the language it used in those responses. From what I've seen though, the concerns it's been dealing with and responded to are in relation to its retail activities. Therefore, I cannot comment on Mrs K's concerns relating to the speed or quality of Studio's responses.

That being said, Studio has also acted as the provider of regulated lending to Mrs K by providing her with a running credit account regulated by the Consumer Credit Act 1974. Our rules (known as DISP and found in the Financial Conduct Authority's handbook) say that we can consider complaints about a business covered by our jurisdiction as long the complaint is about a regulated activity, or other specified. DISP 2.3.1R specifically sets this out.

The regulated activities our rules refer to are set out in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). Article 60B(2) of the RAO says that exercising a lender's rights and duties under a regulated credit agreement is a regulated activity.

Studio has attempted to exercise a lender's rights and duties under a regulated credit agreement by asking Mrs K to repay sums lent to her under her running account credit agreement. Mrs K asserts that Studio has not acted fairly by declining to refund sums to that agreement, in other words, she's expressed dissatisfaction about the administration of her regulated credit agreement. That's something which this service has the power to consider a complaint about – independently of any dispute about Studio's retail activity.

So, I can consider whether Studio has acted fairly in asking Mrs K to repay the lending it provided to her and whether or not it ought to refund those sums, independently of Mrs K's dispute regarding whether or not the goods had been returned to Studio.

Mrs K's regulated agreement set out that Studio would provide lending for certain purchases and also the terms on which she would be required to repay that lending. It doesn't say that Mrs K needn't repay the lending or would receive a refund in the event of a dispute about the goods being returned. And it's clear there's a dispute between Mrs K and Studio about whether or not the goods were returned.

Taking that into account, I don't think that Studio has acted unfairly by asking Mrs K to repay sums it lent her under the agreement, despite her dispute, nor has it acted unfairly by declining to refund those sums.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 30 August 2023.

Stephen Trapp
Ombudsman