

The complaint and what happened

In October 2016 Studio approved a catalogue shopping account for Ms H, although due to the passage of time, it can no longer confirm what the opening credit limit was. However, the limit was £300 at the start of December 2016, and Studio then increased that limit several times, as follows:

Date	Increased credit limit
December 2016	£375
May 2017	£450
June 2017	£550
July 2017	£650
August 2017	£750
September 2017	£800

From October 2017, Studio began decreasing Ms H's limit, and it appears to currently sit at £710. Ms H began to struggle to keep up with repayments in 2017, and Studio “...initiated its arrears recovery procedure...” in December 2017. However, it would appear that her account continues to be owned by Studio and has not been sold to a third party.

Ms H complained to Studio in December 2022 that this borrowing was not affordable for her. After Studio said that she had brought her complaint about the account opening too late, and rejected her complaint about the credit limit increases from December 2016, Ms H brought the case to our service via a professional representative. One of our investigators looked at the evidence and thought that the complaint about the account opening had been brought too late. And that Studio's checks before providing the credit limit increases showed nothing of major concern. So he rejected the complaint. Ms H's representative didn't accept that, although, despite us asking repeatedly, didn't say why, or whether Ms H didn't accept both that we have no jurisdiction over her complaint about the account opening, and that the merits of her complaint about the CLIs from December 2017 were rejected.

As the situation remained unclear, this case was passed to me for review.

I've included relevant sections of my provisional decision from December 2023, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to find that the account opening was not within my jurisdiction, and why I was not planning to uphold the rest of the complaint, albeit for different reasons from those of the investigator. In brief that was because I thought that, although Studio's checks before instituting the CLIs didn't go far enough, I didn't have any evidence to show what proportionate checks would likely have revealed.

I asked both parties to let me have any more information they wanted me to consider. Ms H's representatives accepted my provisional findings and Studio did not respond.

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.

Having done so, I'm not upholding it, for the key reason set out above, but I've also included here the relevant sections of my provisional decision:

"What I've provisionally 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.

There are two separate questions for me to address in this case. Firstly, I will deal with the matter of whether Ms H's complaint about the account opening is within my jurisdiction. Then I will turn to whether the CLIs from December 2016 onwards were fair and reasonable.

Having considered everything, I'm planning to find that the account opening is not within my jurisdiction, and to not uphold the complaint about the CLIs, although for different reasons than those set out by the investigator, and I'll explain why.

Has Ms H brought her complaint about the opening of the account in time?

There are rules about the types of complaints that this service can and can't look at. One of those rules is about how quickly complaints need to be raised. It says that, where a business doesn't agree, I can't consider a complaint made more than six years after the event complained of. Or, if later, more than three years after the complainant (in this case, Ms H) was aware, or ought reasonably to have been aware, of cause for complaint. Dispute Resolution rule 2.8.2R can be found on the Financial Conduct Authority's website, or a copy can be provided on request.

Ms H has clearly raised this complaint more than six years after the account was opened in October 2016. The question is whether I think she knew, or ought reasonably to have known, that she had cause to complain about Studio more than three years before she first did so in December 2022. In that way, I can decide whether her complaint was made within the second part of the time limit or not. The investigator said that Ms H should have been aware of cause for complaint by the time she began having problems with paying the account and was in arrears in August 2018. That would have given her until August 2021 to complain within the time limits prescribed. Ms H's representatives didn't offer any comment to this. Actually, given Studio has confirmed it initiated an arrears procedure in December 2017, I think that was the point at which Ms H ought to have known the account was unaffordable for her. That means I think she had until December 2020 to raise her concern.

I can consider the complaint if the failure to refer it to this service in time is due to exceptional circumstances. But such circumstances are necessarily limited, being 'exceptional', and essentially mean that the consumer was entirely prevented from bringing their case in time. However, I've not been given any evidence in this case of what I would consider to be exceptional circumstances. Indeed, I've not been given any evidence or comments about jurisdiction at all. So I provisionally conclude that Ms H's complaint about the account opening is not within my jurisdiction.

Was Studio right to increase Ms H's credit limit from December 2016 onwards?

Studio is aware of its obligations under the rules and regulations in place at the time of these credit limit increases, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Ms H would be able to repay the borrowing it was making available to her in a sustainable way. As set out in CONC 5.3.1G(2) that means that she could manage the repayments,

"...without...incurring financial difficulties or experiencing significant adverse consequences"

Essentially, Ms H needed to be able to meet all her financial commitments and not have to borrow elsewhere to repay Studio for the credit limit to be considered affordable and sustainable.

The first question I have to consider is whether the checks Studio carried out before increasing Ms H's limit were proportionate. Studio seems to have carried out a high-level credit check, and had the benefit of seeing how Ms H had managed her account, before increasing the credit limit. The investigator thought that those checks revealed nothing of serious concern, so Studio had done enough. I disagree. I think that its checks needed to be more in-depth to be proportionate from May 2017 onwards. I say that as a result of the information coming from the high-level credit checks, specifically that, in January 2017, Ms H was categorised as being in financial difficulties, and in May and June 2017, she was categorised as being 'at risk of' financial difficulties. I therefore think that before increasing her credit limit month on month between May and September, it ought to have got more information about Ms H's financial situation.

However, despite repeated asking, Ms H's representatives have not responded to our requests for more information, which would enable me to determine whether or not more extensive checks would/ought to have led Studio to reach a different conclusion about the affordability of the increases for Ms H.

So based on the evidence available to me, I provisionally find that, although Studio's checks were insufficient from May 2017 onwards, I'm unable to find that it ought to have identified that the CLIs were unaffordable to her. And so I don't plan to uphold the merits of her complaint which are within my jurisdiction."

As Ms H's representatives have accepted my findings, and Studio hasn't responded, I have no reason to alter them as set out in my provisional decision. And so it follows that I don't uphold this complaint.

My final decision

For the reasons I've explained, I find that Ms H's complaint about the account opening is not within my jurisdiction, and I don't uphold the complaint about the merits of the CLIs from December 2016 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 1 February 2024.

Siobhan McBride

Ombudsman