

Complaint

Mr A complains that NewDay Ltd trading as Aqua contacted him on a Sunday morning at 8am to discuss a missed payment on his account. He also complains that NewDay Ltd trading as Aqua misled him about the purpose of the call.

Background

Mr A had a credit card account with Aqua. He says Aqua contacted him on a Sunday morning at 8am. He says it told him it wanted to discuss possible fraudulent activity on his account. But, after verifying his identity, he says it demanded that a missed payment on his account should be paid.

Mr A says Aqua was acting fraudulently and illegally when it made this call. He complained to Aqua.

Aqua looked into his complaint. It initially sent him a response which dealt with issues about charges on his account and the number of calls he'd received. But, it didn't deal with his complaint about the Sunday morning call. So, it reviewed his complaint again and sent a final response to him. It upheld his complaint. It said calls were before the department opening times and should not have been made. It also credited Mr A's account with £20 by way of compensation.

Mr A was not satisfied with this response and so he referred his complaint to our service. Our investigator looked into his complaint. He said, on balance, he thought a call was made on a Sunday but because there was no recording of the call, he couldn't know what had been said. So, he thought £20 was fair and reasonable compensation for what had happened.

Mr A provided further information. He sent us call logs recorded on his own system which showed calls being received from Aqua's fraud department. He said these calls started on 11 January 2019. But, our investigator said he couldn't be sure what'd been said on the call Mr A had complained about. So, he didn't change his view. Mr A disagreed and so the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reviewed the logs that Mr A has sent us of calls he's received from Aqua. And, I've reviewed the logs and the information Aqua has sent us concerning calls they say they've made to Mr A. I've also compared the dates of the calls on Mr A's log against the dates of

the calls on Aqua's log. The log Aqua provided related only to calls recorded on its "Dialler" system. It's also provided recordings of other calls that were made and notes from its systems of calls that have taken place. I've checked all of the information provided by Mr A and by Aqua. But, I can't see any record of a call being made to Mr A on a Sunday.

Mr A is adamant that he received the call. He is able to access records of calls he received during this period and has provided us with copies of some of those logs. So, I would've expected him to be able to provide evidence of the call he says was made on a Sunday. We asked him to do that but he hasn't provided us with that evidence.

I can also see that Aqua in its final response letter dated 25 April 2019 told him it was upholding his complaint. It said

"..the calls were made before department opening times so they should not have been made to you..."

Aqua has subsequently said it has no record of the call Mr A refers to. It also says its collections team doesn't start until 10am on a Sunday and there is no facility to transfer calls from its security team to its collections team. It said its letter of 25 April 2019 was written because the agent had decided to 'take the customer's word.'

So, I can see why our investigator decided, on balance, to take the view that a call had been made on a Sunday. But, there's no record of the date or time that call was made. Nor is there any recording of what was said on the call. And, in these circumstances, I agree with our investigator that £20 was fair and reasonable compensation.

Aqua says it keeps a record of all its calls and it also records the calls. As mentioned above there is no recording of the call Mr A has complained about. But, I've listened to a number of other calls between Mr A and Aqua. I haven't found any evidence on any of those calls that Aqua has provided misleading information to Mr A about the purpose of its calls. On each call it has given the name of its adviser and correctly stated the purpose of the call.

When considering this matter, I have to consider the evidence that's been presented. Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base my decision on the balance of probabilities. Having done so, I'm not persuaded that Aqua misled him about the purpose of any of its calls.

So, whilst I know Mr A feels very strongly about this matter, I agree with our investigator that Aqua has treated him fairly and reasonably. It accepted his word that a call had been made on a Sunday, it agreed to delete his phone number from its records to prevent further calls and it credited his account with £20 by way of compensation. I don't require it to do anything more.

My final decision

For the reasons given above I do not uphold this complaint against NewDay Ltd trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 August 2020.

Irene Martin
Ombudsman