

The complaint

Mr M complains that NewDay Ltd trading as Aqua has charged him the wrong interest rate on his credit card account.

What happened

Mr M took out a credit card with Aqua in September 2019. It was advertising a rate of 35.9% APR (Annual Percentage Rate), and also said that as a loyalty bonus, it would reduce the APR by 5% per year for the first three years, for anyone who never missed a payment.

Mr M had never missed a payment, so by September 2019 he expected his APR to be down to 20.9%. But he discovered that he was being charged 49.9%, with no annual reductions. He said he'd told Aqua about this, and it reduced his current rate to 29.9%, but he said he should be paying less than this now, and had been overcharged since September 2016.

Mr M said he'd asked Aqua to send him his welcome letter, and signed agreement, so he could see what he'd originally agreed to. But it wouldn't. It just sent him his statements, which only proved he'd been overcharged since the start.

Aqua said that Mr M hadn't been given a card with a 35.9% interest rate. He'd taken out a card with a 49.9% interest rate. He did get a promotional offer to reduce his rate by 5% each year, if he didn't miss any payments. His rate had been reduced in 2017 and 2018, but not 2019. Aqua thought he'd missed a payment, but when he complained, Aqua decided this was probably its fault. It had a problem with the online payment system, so it reduced Mr M's rate by more than the 5% he was expecting. And it refunded his late payment charge, and paid £10 as a gesture of goodwill.

Aqua said it had now sent Mr M his first statement and his welcome pack.

Our investigator didn't think this complaint should be upheld. She said businesses can advertise rates without having to give them to all applicants. And Mr M had been offered a higher rate of 49.9%. That's what he was being charged. So our investigator didn't think Aqua had to do anything.

Mr M wanted to see the agreement. Our investigator sent it to him, and Mr M said he hadn't signed it. And the statement interest rate could say anything, that didn't mean he'd agreed to it. Mr M said he'd kept asking for his welcome pack, and hadn't been sent it. He didn't think it existed. He thought we'd taken Aqua's side on this.

Our investigator said that the credit agreement was a legally binding agreement between both parties. When it's completed online, there wouldn't be an actual handwritten signature, but an electronic one was fine. There was no evidence to suggest these documents were forged. She'd asked Aqua for the welcome pack, but she said it was still the credit agreement which was legally binding.

Mr M still thought the welcome pack was very important, and he said he wanted to know how we would decide the case without it, because he might take this issue to court. Our

investigator repeated that she'd asked for the pack, and as Mr M hadn't agreed with her, she would now pass this case to an ombudsman for a final decision.

Mr M said he never got the pack so he wasn't aware of the 49.9% interest rate. Aqua said that the welcome pack was issued with the card.

Mr M wrote again to say that he'd agreed to a 35.9% interest rate when completing his application on the Aqua website. He said he wouldn't have accepted 49.9%. Mr M also said that Aqua had increased his credit limit a number of times without asking him and with no notice. He didn't think that was responsible lending. Mr M said Aqua was refusing to send him a welcome pack. That would show his APR was 35.9%. He said these were all regulatory fails.

Our investigator said we could only look at the APR charged as part of this complaint. Mr M could raise the other issues with Aqua if he wanted to. The case then came 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.

I've reached the same overall conclusion on this complaint as our investigator.

Aqua has shown us a credit agreement with Mr M, which shows an interest rate of 49.9%APR. It has also sent us statements to show it's been charging Mr M interest based on that starting rate, ever since he took out the card.

Mr M is adamant that Aqua has made a mistake. He said the credit agreement we've seen wasn't signed. However, he has also told us that he applied online. I wouldn't expect to see a "wet" signature on an online application.

Mr M argues that the credit agreement is forged. That's a very serious accusation to make, and I haven't seen anything to make me think that.

Mr M also says that Aqua hasn't sent him a welcome pack, and he thinks that's crucial. But Aqua says it issues the welcome pack with the new card. And Mr M definitely got that, because he used it. Aqua also says it's resent this pack to him since. I can see internal notes which say this was sent. If Mr M didn't get that, I don't think that's Aqua's fault.

Mr M also says that the interest rate shown on his statements doesn't mean that he agreed to that rate. But I also think it's worth noting that Mr M didn't object to this rate either, until some three years after he took out the card.

I think the fact that Mr M has been charged at a rate consistent with an initial agreement of 49.9% since he took out this card provides very strong support for what Aqua has told us about the rate it agreed with Mr M.

I don't think that there is sufficient evidence in this case for me to decide that Aqua agreed a rate of 35.9% APR with Mr M. I've explained that what I have seen makes me think it's likely Aqua only ever offered Mr M a card with 49.9% APR.

I know Mr M will be disappointed, but I don't think this complaint should be upheld.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 August 2020.

Esther Absalom-Gough
Ombudsman