

The complaint

Mr J complains that NewDay Ltd trading as Aqua has registered a default against his account without contacting him to set up a repayment plan.

What happened

Mr J contacted Aqua on 11 December 2019 to inform them he was suffering financial difficulties due to a personal situation. Aqua say they sent Mr J an income and expenditure form to assess how much he could afford to pay and applied a “breathing space” block which was a hold on his account.

Aqua removed the hold on 10 January 2020 as they hadn’t heard back from Mr J. They said they attempted to call him on 17 January 2020, but they were unable to get in touch with him. On 18 January 2020, Mr J contacted Aqua. He informed them he was receiving a state benefit and was looking to return to work in the following month. Aqua said that Mr J couldn’t make any repayments at this time, but they had arranged a call back with him.

Aqua say that they attempted to call Mr J back on 20 and 23 January 2020, but they were unable to speak to him. On 1 February 2020, Aqua issued Mr J a default notice giving him until 22 February to pay £183.80 or to contact them by this date. Aqua sent Mr J a letter on 27 February 2020 to inform him they had terminated his account.

Mr J contacted Aqua on 3 March 2020. Aqua say that Mr J told them that he would be going to a debt management company instead of making an arrangement with Aqua. As a gesture of goodwill, Aqua say that they refunded four default fees totalling £48. They also reapplied the hold on the account.

Aqua say that they didn’t hear from Mr J or the debt management company by 14 April 2020. They said they attempted to ring him, but Mr J didn’t answer. Aqua sent Mr J a letter for him to contact them in the next 48 hours but he didn’t respond so they passed his debt to a debt management company on 16 April 2020.

Mr J says he spoke with the debt management company Aqua had passed his debt to. He later thought that the debt had been passed to Aqua but then Aqua passed it back. Aqua charged off the account and defaulted the account on 30 June 2020 as no repayment plan had been set up with either company.

Mr J complained to Aqua. He said he was unhappy his outstanding balance had been passed to a debt management company and not Aqua’s specialist team. He said he had not received any letters, phone calls emails or messages from them and was unhappy that they had applied a default to his account. Aqua did not uphold Mr J’s complaint. They said the specialist team offered to call Mr J after the initial call he made on 11 December 2019, but he declined this. They had tried to contact him on other occasions to set up a payment plan. Aqua said they had followed their procedures and the default was correctly applied. Mr J brought his complaint to our service.

Our investigator did not uphold Mr J’s complaint. She said Aqua had followed their terms and

conditions in applying the default correctly. She said that Aqua had attempted several phone calls to Mr J to try and arrange a repayment plan. Mr J asked for an Ombudsman to review his complaint. He raised a number of points about what the debt management company had told him which included telling him not to worry about a default as his account was on hold, the debt management company passing the account back to Aqua and then Aqua sending the account back and the debt management company contacting Aqua to set up a repayment plan. He also said Aqua promised to contact him, but they didn't.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Mr J has made a number of points to both Aqua and this service and I've considered and read everything he's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.

Here, I can only look at the actions of Aqua in relation to the information they've recorded. I say this because they passed the debt to the debt management company in April 2020 (which they were entitled to do because there was provision within the agreement) at which point it ceased to be their responsibility. Mr J can pursue a complaint directly to the third party debt collector about what they have told him. But for the avoidance of doubt I won't be making any further comment on what the debt management company told him, as I can only look at the issues relating to Aqua's actions.

I've noted the strength of feeling that Mr J has regarding Aqua defaulting his account while there was a hold on the account. But a hold would not stop a default from being applied. The hold stopped collection letters being sent and regular phone calls to Mr J. The only way which would've potentially stopped the account from defaulting here is if Mr J had made a payment arrangement of more than 1% of the balance to be set and the account re-aged. But no arrangement had been agreed in the seven months since Aqua received his last payment.

I've thought about what Mr J has said about Aqua not giving him a call back. The only time I can see that Aqua said they would contact Mr J is from their phone call with him on 18 January 2020. But the evidence shows they did attempt to contact him by phone on 20 and 23 January 2020. So I'm not persuaded that Aqua failed in their promise to call Mr J back. And they sent Mr J a default notice which explained that if he couldn't pay the outstanding balance by 22 February 2020 then he should call them and they gave the telephone number to do so. But it appears the next time Mr J spoke to Aqua was when Mr J informed Aqua he was going to contact a debt management company rather than creating a repayment plan with them.

Next, I've considered the events after this phone call. Neither Mr J or the debt management company had contacted Aqua by 14 April 2020. So Aqua tried to ring Mr J on this date. And when they couldn't get in contact with him, they sent him a letter urging him to contact them. The letter was clear that Mr J needed to contact them in the next 48 hours to stop further action on his account. But when Mr J didn't contact Aqua by the deadline, they took further action on his account and passed the debt onto the debt management company.

I know Mr J has said that the debt management company passed his account back to Aqua. But the evidence suggests that they never did this. But I can see evidence that the debt management company did contact Aqua. This is evidenced in the letter Mr J provided our

service. I can see from Aqua's system notes that they said they informed the debt management company of their decision to remove the hold as they had no further contact from the customer. The notes also show that on 28 May 2020 they sent the debt management company a notice of their intention to register a default.

I've thought about what Mr J has said about the debt management company contacting Aqua while he was on the phone to them. Aqua's system notes show that Aqua advised the debt management company to try to set up a plan with Mr J. The notes from Aqua also state if the debt management company felt that the account should be returned to Aqua then they should follow their internal procedure to arrange this. But the debt management company did not return the account at this time. Aqua then charged the debt off and registered a default. Aqua said that the debt management company would have been informed that they took this action in July but only informed Mr J that they weren't responsible for his debt collection until October 2020.

I've thought about if it was fair for Aqua to register the default. I'm persuaded it was and I'll explain why. Aqua had made several attempts to contact Mr J to set up a payment plan and while Mr J wasn't available to take their calls, Aqua say that they sent him an income and expenditure form to complete. But they never received a proposal to make a payment from Mr J. They had sent the default notice which stated the actions they could take. And they could have registered the default in February when no repayment plan had been agreed with them.

Then Aqua allowed Mr J more time when he said he would speak to a debt management company – but no repayment plan offer came from this. And they also sent Mr J a letter urging him to contact them in 48 hours in April 2020, but he didn't do so. Their previous correspondence included how Mr J could make a payment. So although Mr J says he wanted to set up a repayment plan, it would have been possible to make a payment to the account at any time. Aqua have also said that the debt collection company could have set up a repayment plan and encouraged the debt collection company to do this for Mr J.

Aqua confirmed that there was no repayment plan set up with the debt management company either despite the default not being registered until more than two months after they had passed the debt to them. So as the account was more than 180 days in arrears, they registered the default.

In order to uphold this complaint, I would need to see that Aqua have made an error in registering the default. As Mr J hadn't made a payment in seven months then Aqua have a duty to report this information to credit reference agencies. They were entitled to issue a default notice and the default notice was clear that action needed within in the timeframe given to avoid the default. As the time had passed and Mr Y hadn't cleared the outstanding balance or made an agreement with Aqua or the debt management company, apart from a hold on his account which wouldn't prevent the default from happening, then Aqua were fair to register the default, even if Mr J doesn't think they were. So I do not intend to ask Aqua to do anything further."

I invited both parties to let me have any further submissions before I reached a final Decision. Aqua said they had nothing to add. Mr J made a number of points. In summary, he said that the debt collection company had told him that his account was on hold and he didn't need to worry about paying a minimum payment before the cut off date to stop a default being applied, but a default was applied anyway. He also said that the debt management company sent the debt back to Aqua multiple times and told them to arrange a repayment plan with him but Aqua sent the account back to the debt management company. Mr J also asked if I had seen an email that a manager from the debt management company sent Aqua.

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 thought about what Mr J has said regarding what the third party debt management company told him. But as I mentioned in my provisional decision, I can only look at the actions of Aqua in relation to the information they've recorded because they passed the debt to the debt management company in April 2020, at which point it ceased to be their responsibility. Mr J can pursue a complaint directly to the third party debt collector about what they have told him.

Next, I've thought about what Mr J said about the debt management company passing the debt back to Aqua multiple times. In my provisional decision I said *"I know Mr J has said that the debt management company passed his account back to Aqua. But the evidence suggests that they never did this. But I can see evidence that the debt management company did contact Aqua. This is evidenced in the letter Mr J provided our service. I can see from Aqua's system notes that they said they informed the debt management company of their decision to remove the hold as they had no further contact from the customer. The notes also show that on 28 May 2020 they sent the debt management company a notice of their intention to register a default"*. So although the debt management company contacted Aqua about the debt, I've seen no evidence that the debt was passed back to Aqua.

Aqua would not need to receive the debt back to set up a repayment plan. The debt management company would have been able to set up a repayment plan with Mr J themselves. Aqua's system notes confirm that they advised the debt management company to set up a repayment plan for Mr J and the notes confirmed that if the debt management company felt the account should be returned to Aqua then they should follow their internal procedure to arrange this. But the debt management company did not return the debt at this time.

Mr J asked if I had seen the email that a manager of the debt management company had sent Aqua. I had not seen this email so I asked Aqua to contact the debt management company regarding this. The debt management company said the manager spoke to Mr J to raise a complaint, but she would not have sent an email directly to Aqua.

In summary, Mr J's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mr J will be disappointed with the decision, but I hope he understands my reasons.

My final decision

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 November 2021.

Gregory Sloanes
Ombudsman