

## **The complaint**

Mr L complains that NewDay Ltd trading as Aqua have defaulted his account unfairly.

## **What happened**

Mr L suffered financial difficulties. As a result of this he contacted Aqua in November 2019 to inform them of his personal circumstances. Aqua applied a hold to Mr L's account for three months which suppressed interest and charges. It also meant that Aqua wouldn't pass his debt onto a third party during this time and they wouldn't actively pursue him for the outstanding amount.

Aqua sent Mr L a letter dated 27 December 2019. This letter was a default notice that said that Mr L had until 17 January 2020 to pay his arrears or to contact them before this date to make an arrangement. The letter said that if he did neither then they would terminate his account. Mr L did neither. On 18 January 2020, Aqua wrote to Mr L to explain that they had terminated his account and he should contact Aqua to make an affordable repayment plan if he couldn't pay the full arrears.

Mr L contacted Aqua on 11 March 2020. On the call, Aqua took Mr L's income and outgoings to see if a repayment plan could be arranged but no agreement was reached. On 14 April 2020, as Aqua had received no payments since September 2019, they wrote to Mr L to inform him that they intended to register a default with the credit agencies at any time after 28 days of the date of the letter. The letter explains that a default would show on his credit file for six years and urges him to contact them to set up a repayment plan.

Mr L says that in June 2020, he received a letter informing him his account had been defaulted. Mr L says he contacted Aqua to find out what the letter was about and was told he needed to raise a complaint and he did so.

Aqua did not uphold Mr L's complaint. They said that the default had been applied in line with the terms and conditions of his account. As he had not been making his contractual payments and they had sent him three letters detailing what needed to be done and the consequences of either not paying the arrears or setting up a repayment plan. Mr L brought his complaint to our service. He questioned why Aqua didn't call him if they were going to register a default against the account. Mr L has since repaid the outstanding balance in full.

Our investigator did not uphold Mr L's complaint. He said although Aqua didn't have a copy of the call in March 2020 when Mr L proposed a payment plan, he did have access to the system notes which suggested that Mr L was going to provide Aqua with medical evidence they had asked for but it didn't appear he contacted them again before the account defaulted. Mr L asked for an Ombudsman to review his complaint. He didn't believe Aqua had sent letters to his address. He also said he couldn't log into his online account when the account was on hold.

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.*

*Both parties don't agree on several points. So I've looked at all of the information available to me in order to decide what is more likely to have happened and when, on balance of all the evidence here.*

*When Mr L informed Aqua of his financial difficulties, I can see that Aqua put his account on hold. This would suppress interest and charges and this would ensure that his account wouldn't be passed to a third party debt collection company. But it would not stop arrears building up or a default being registered.*

*A default can only be registered when a customer has been in arrears for at least three months. A notice of default was issued to Mr L on 27 December 2019, as it had been three months since Aqua received a payment from him. I know Mr L disputes that this letter was posted by Aqua and said this was a bank holiday. So I asked Aqua if they could prove that this letter was posted – and the other letters they said they sent, by providing me with screenshots to confirm this. Aqua were able to provide me a screenshot to show that default notice was sent on 27 December 2019, which was not a bank holiday. So although Mr L says he didn't receive this letter, I'm satisfied that Aqua did send the letter.*

*This letter was followed up by another letter which Aqua have provided proof that this was sent. From this information, I can see that the letter was dated 18 January 2020 and was sent to Mr L on 21 January 2020. This letter was addressed to Mr L's registered address also and informed him that his account had been terminated.*

*I've next considered what happened on the call in March 2020. Mr L says he was told not to worry about the payments as the account had been frozen. Our investigator had already asked Aqua if they could provide us with the call recording, but unfortunately, due to the time which has elapsed since the call was made, there is no recording of it. So I've considered what both parties have said about this call and what was likely to be discussed on the call on the balance of probabilities.*

*Aqua's system notes are detailed about this call. They show that Mr L had contacted them to set up a repayment plan and Mr L's health still affected him being able to manage his account. The notes state that Mr L wants to keep his money for emergencies. The outcome of the call is to extend the hold on the account until 25 March 2020 to allow Mr L to send Aqua a health assessment. There are no notes to suggest Mr L was told about not to worry about making repayments as his account was frozen. That's not to say that Mr L wasn't told this, but I think on the balance of probabilities, if this was said to him, it would be in the context of not worrying about making repayments until the medical evidence is sent to them by the 25 March 2020. But this was never received by Aqua, so it did not allow Aqua to see how further they could help him.*

*I've considered what Mr L has said about how Aqua should have rang him to let him know that a default would be registered and that it was only because of his health situation that they didn't do this. But Aqua aren't required to ring a customer when they intend to register a default, irrespective of any health conditions a customer may or may not have. Aqua wrote to Mr L in April 2019 to confirm they intended to register the default with credit reference agencies. So even if Mr L was under the impression from his call the previous month with Aqua that he didn't have to pay, then I'm persuaded that this should have made it clear to Mr L that Aqua intended to register the default with credit agencies. But the next time that Mr L contacted Aqua, based on Aqua's system notes was in June 2020, after the default had already been registered – Aqua confirmed that the account defaulted on 29 May 2020.*

*So the default was registered as the arrears hadn't been settled, in line with their process. I'm satisfied Aqua have treated Mr L fairly by sending multiple letters by post explaining the arrears position and the consequences of not paying the arrears. So even though Mr L says he wasn't able to log in online to see his statements and digital letters, the letters relating to the default weren't sent digitally, they were posted. Aqua also asked him for further medical information to aid a repayment plan in March 2020, but ultimately Mr L didn't contact them with the required information by the deadline they gave him. Aqua also had placed the account on hold which would suppress any interest or charges and the debt being transferred to a third party debt collector, but it wouldn't stop the account from defaulting.*

*So I'm satisfied that Aqua have fulfilled their duty and registered the default correctly. But I can't say that Aqua have treated Mr L unfairly for the reasons already given. So it follows that I don't intend to ask Aqua to take any further action."*

I invited both parties to let me have any further submissions before I reached a final decision. Aqua responded to my provisional decision and had no further comments for me to consider. Mr L did not accept the findings of my provisional decision, but he did not offer any new information for me to consider by the deadlines given.

### **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.

As neither party presented me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

### **My final decision**

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 December 2021.

Gregory Sloanes  
**Ombudsman**