

The complaint

Mr T complained because NewDay Ltd, trading as Aqua, charged him late payment fees on his credit card.

What happened

Mr T opened a NewDay account in January 2015. At that point, statements were produced around 24th of each month, with the payments being due on 11th of the following month.

On 30 April 2018, Aqua wrote to tell Mr T that it was changing the day the statements were produced, with a related change to the day payments would be due. The letter said Mr T could get in touch if he wanted to opt out of the change. Aqua also sent a text reminder on 8 May. His monthly statements also set out the due dates. Mr T didn't contact Aqua to opt out, so the dates were changed.

Mr T's June 2018 statement was issued on 5 June, with a payment due date of 22 June. For the first couple of months, Mr T paid in line with the new payment dates, and no late fees were charged.

But from August onwards, Mr T didn't generally pay by the new payment due dates. He did pay by the due dates in December 2019, January 2020 and June 2020. But for the other months when Mr T didn't pay by the due dates, Aqua charged Mr T £12 late payment fees each month.

In March 2021, Mr T checked his recent statements and realised that he'd been charged late payment fees. He contacted Aqua, asking why it hadn't contacted him, and was told it was because he wasn't in arrears. Mr T thought Aqua should have contacted him, and complained.

In Aqua's final response, it said that as a gesture of goodwill, it had refunded the last three late payment fees, totalling £36. It also changed Mr T's monthly payment date to 25th of each month, in line with his request. There was a misunderstanding about when this was to start, but Aqua refunded the fees charged in connection with that.

But Aqua didn't agree that it should have contacted Mr T when he repeatedly paid late. It explained that it had notified him twice of the change in payment date in 2018, and the date was on every monthly statement. And it said that as Mr T's account was never in arrears by the date of the next monthly statement, its collections team wouldn't have got in touch with him.

Mr T wasn't satisfied and complained to this service. He said he'd been unaware of the fees, and thought Aqua should have contacted him to inform him of the fees, and look at how they could be prevented.

Our investigator didn't uphold Mr T's complaint. He said that the fees charged were in line with the terms and conditions, and the published tariffs of the account, and were in line with

standard industry practice for late payments. He said that if Mr T had checked his monthly statements at any time after September 2018, he'd have seen the payments and could have spoken to Aqua to resolve the issue sooner.

Mr T didn't agree. He said he hadn't had a text from Aqua for almost three years after June 2017, and he believed Aqua should have contacted him to inform him of the fees. He said no extra work had been done to justify charging fees. He asked for an ombudsman's decision.

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.

The terms and conditions of Mr T's account, which he accepted when he opened the account on 7 January 2015, explain the charges which Aqua is allowed to make under the agreement. It's that agreement which sets out the charges, and Aqua doesn't, as Mr T believes, have to tell him how much extra work a late payment has involved. Section 5 of that agreement is about charges. It says, among other things, that:

"5.2 We will charge:

- £12 each month in which a minimum payment amount that should have been paid remains outstanding."*

So Aqua had the power to make the £12 charges, and Mr T had accepted that by accepting the account terms and conditions when he opened the account.

I do understand that Mr T's unhappiness is that he says he wasn't contacted to tell him about the fees. But monthly statements were available online each month, and Mr T was notified by email and text when these were available to view. I've checked a copy of Mr T's statement. For example the May 2021 statement says, on the first page, preceded by a red exclamation mark:

" Default fees £12"

And on the third page it says:

"We are sending you this notice in compliance with the Consumer Credit Act 1974 because you have incurred default sums on your account with us.

... Late fee £12

... This notice does not take account of default sums which we have already told you about in another default sum notice, whether or not those sums remain unpaid."

This was what Aqua was required to do in terms of notifying Mr T. So Aqua did everything it had to, in terms of notifying Mr T about the late payment fees.

Mr T said he didn't receive any texts from Aqua after 2017. He also said he didn't receive either the 2018 postal letter, or text, about the change to the billing date. But there's no regulatory requirement for Aqua to have sent Mr T a text or phoned him, in addition to this notification. Aqua told us that its Collections team would only get involved and contact a customer if they went into arrears. But Mr T wasn't in arrears, because his late payments did arrive before the time of the next statement.

I see that Aqua refunded three of the late payment fees, and also the fees which were charged when the payment dates were being sorted out in April 2021. It also changed the monthly payment date to the date Mr T wanted.

I recognise that Mr T is unhappy that he was charged late fees for a long period, and I do understand why he's upset. But these were set out on his monthly statements. And even if Mr T didn't receive any of the emails, or texts, which Aqua sent each month to notify him that his monthly statements were available, that doesn't make any difference to the outcome here. Aqua had provided them, and it's reasonable to expect that Mr T would have known there would be monthly statements on his account. And if he'd checked them before March 2021, he'd have become aware of the fees and could have contacted Aqua to sort things out.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 March 2022.

Belinda Knight
Ombudsman