

The complaint

Mr D complains about a default recorded on his credit file by NewDay Ltd trading as Aqua.

What happened

Mr D had a credit card with Aqua that fell into arrears. On 29 September 2017 Aqua sent Mr D a Default Notice that said he had until 21 October 2017 to clear the arrears on his credit card. The default notice explained that if arrears weren't cleared before 21 October 2017 the credit agreement would be terminated, credit card closed and balance would become due immediately. The default notice also said the debt could then be sold to a third party.

No payment was made before 21 October 2017. On 15 November 2017 Aqua sent Mr D a letter confirming the credit agreement had been terminated and that the full balance was due. Aqua went on to refer the account to a firm of debt collectors. The file was returned to Aqua from the debt collectors in February 2018. Aqua recorded a default on Mr D's credit file dated 28 February 2018.

Mr D complained and said Aqua's default had led to a mortgage application being declined. Aqua sent a final response but didn't agree it had made a mistake when terminating the credit agreement or recording a default.

An investigator at this service looked at Mr D's complaint and upheld it. The investigator thought the arrears on the credit card were reasonable grounds for Aqua to terminate the credit agreement and record a default on Mr D's credit file. But the investigator thought Aqua had waited too long after issuing the default notice to take the step of terminating the credit agreement. The investigator asked Aqua to backdate the default to 21 October 2017, in line with the default notice. Aqua didn't agree and asked to appeal. Mr D confirmed he was willing to accept. As Aqua asked to appeal, Mr D's case has been passed to me to make a 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.

I've reviewed the account correspondence and information provided by both sides. I understand there were genuine reasons why Mr D's payments weren't made. I've considered whether it was reasonable of Aqua to take the step of terminating the credit card and recording a default on Mr D's credit file. And I've considered when the fairest point to record the default was.

Aqua received a payment from Mr D at the beginning of July 2017 but no further payments were made. Industry guidance says businesses can look to default a credit agreement that's between three and six months behind. Given the arrears that built following the last payment made, I'm satisfied there were reasonable grounds for Aqua to look at Mr D's account and consider terminating it.

There's no set guidance on when a business has to terminate a credit agreement. But I've looked at the information Aqua sent Mr D. Aqua's Default Notice said it would terminate the credit agreement on 21 October 2017 if the arrears weren't cleared in full. The Default Notice confirmed the status of the account would be shared with the credit reference agencies. The arrears weren't cleared in full by that date so Aqua sent a termination notice on 15 November 2017 that confirmed the credit agreement had been terminated.

Despite confirming the credit agreement had been terminated and not receiving any payments from July 2017 onwards, Aqua didn't record the default on Mr D's credit file until February 2018 – after a debt collector tried to arrange payment on its behalf. I'm not persuaded that's fair. Aqua says it was following its normal approach. Whilst that may be the case, I have to apply the process to Mr D's case to see whether he's been treated fairly or not. And I'm not satisfied Aqua's approach was right for Mr D.

In my view, it would've been fairer to terminate the credit agreement in line with the date given in the default notice, rather than wait another four months. The credit agreement was terminated within a few weeks of the date given in the default notice. I think the default date should reflect that, not when the account was returned by debt collectors acting for Aqua.

Our investigator asked Aqua to amend the default date to 21 October 2017, the date given in the Default Notice. I'm satisfied that date more fairly reflects the account activity and decision to terminate Mr D's credit agreement. So I'm going to proceed on that basis and direct Aqua to amend Mr D's credit file to reflect a default date of 21 October 2017.

My final decision

My decision is that I uphold Mr D's complaint and direct NewDay Ltd trading as Aqua to amend the default date recorded on his credit file to 21 October 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 March 2023.

Marco Manente
Ombudsman