

## **The complaint**

Mr E complains that NewDay Ltd trading as Aqua wrongly terminated his account, and they gave him wrong information about his account being passed to a debt collection agency (DCA).

## **What happened**

Mr E says that he rung Aqua on 17 August 2022, and he was told that if he paid £156 his account would not be closed or be passed to a DCA. Mr E says he paid the £156 and he agreed to make another payment the following month in order to correct his account. But when Mr E rung Aqua on 23 September 2022, he was told his account had been terminated. Mr E says that if he was told the correct amount, he would have been able to have his account unblocked, however, this opportunity was taken from him. Mr E made a complaint to Aqua.

Aqua partially upheld Mr E's complaint and they said they credited £30 to his account. They said that they sent him a letter dated 3 July 2022 advising that his account was in arrears of £156.11 and that this payment was due immediately. Aqua said they sent Mr E a default letter dated 22 July 2022 advising that a payment of £324.35 was due no later than 12 August 2022, or his account was at risk of termination and may be sold to a third party. Aqua said that when they did not receive payment or any contact, they terminated his account on 15 August 2022, and they issued him a letter advising this.

Aqua said that Mr E called them on 17 August 2022, and the agent he spoke to told Mr E that he could make a payment of £156.11 and then further monthly payments to prevent his account from being sold to a third party, but the payment he made was not enough to clear the arrears. They said that when he contacted them on 23 September 2022, the agent Mr E spoke to told him that she would raise a complaint, but this was not done, although they were already investigating this complaint for him. Mr E brought his complaint to our service.

Our investigator did not uphold Mr E's complaint. She said that Mr E's account was in arrears for a substantial time. Aqua had sent him a number of letters confirming the status of the account including a default notice which stated a payment of £324.35 was required by 12 August 2022. And a letter dated 13 August 2022 stated the full balance was now due and that Aqua may instruct a debt collection agency if the payment was not received. She said as Mr E didn't make the required payment, so the account was passed to a DCA on 15 September 2022. Our investigator said that when Mr E called Aqua on 17 August 2022, he was incorrectly advised that if he paid £156.11 the account would not be passed to a DCA, and Aqua paid Mr E compensation for the misinformation.

Mr E asked for an ombudsman to review his complaint. He said the point is that he was told on the phone to make a specific payment to prevent the account going to a DCA and they gave wrong information to him.

## **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 listened to the phone calls that Mr E had with Aqua on 17 August 2022. Mr E informs the agent he has a new job, and the agent tells him that unfortunately his account has been terminated and a DCA would be in touch with him. Mr E tells her he received a message saying that the debt may be sold, not that it would be sold. The agent says she can't advise who the debt has been passed onto yet as she can't see any notes yet. She tells him that once the debt has been passed on (to a DCA) there is nothing that they can do. She gives the name of three DCA's who it may be passed on to and she reiterates there is nothing they can do. Mr E asks to speak to a manager, but the line disconnects while he is on hold.

Mr E rings back Aqua. He says he is looking to set up a payment plan as he is back in work. He says he will pay £500 on 25 September 2022. The call handler says that the balance owed was £1,226.03. Mr E says he would pay another £500 on 5 October 2022 and £500 on 25 October 2022. But it appears that the agent gave Mr E an incorrect outstanding balance as his termination letter shows he owed £2,892.04 – the same outstanding balance as his 14 August 2022 Aqua statement.

Mr E was placed on hold, and he was told *"there is no way to erm explicitly make sure that it won't get sold to a debt collection agency"*. He says as the account has passed 60 days arrears it's liable to be terminated and sold to a DCA. The agent says *"unfortunately, there's no specific way of us preventing it from being sold off, unless you make a payment to clear the arrears"*. Mr E asks if it was the whole money on the account or £1,226 and the agent says it's the whole money on the account. Mr E says that there's nothing he can do right now, and he asks if there is any leeway, and the agent says *"there's nothing that we'd be able to put in place to stop the account being sold off"*.

Mr E asks how much he needs to pay to stop the account going to a DCA. The agent says to stop the account going to a DCA it would be the latest arrears payment of £156.11. He says it wouldn't get sold to a DCA and then Mr E could gradually pay the arrears. But this was the wrong information and contradicts what the agent had previously told Mr E.

I can see Mr E paid £156 on 17 August. So he hadn't paid the full amount that the agent told him anyway, albeit this was only 11p short of the payment the agent told him. While Mr E had been told the incorrect information, I'm satisfied that he should have been aware that Aqua were entitled to pass the account to a DCA and I'll explain why.

Aqua sent Mr E a letter dated 22 July 2022. I've looked at the address on this letter and this was addressed to the same address he gave our service. The letter said that Mr E must pay £324.35 by no later than 12 August 2022. But he didn't do this. The letter goes on to say that if he doesn't take the action required by the notice before the date shown, then the further action set out below may be taken against him, which includes *"If we terminate your credit agreement, we may sell your account to a third party which may bring legal action against you to recover the outstanding balance plus their legal costs"*.

While this letter says *"may"* and not *"will"*, I'm satisfied that the wording makes it clear to Mr E that Aqua would be entitled to make this decision to pass the account to a DCA if they chose to do so if Mr E didn't take the action he needed to – which he didn't. While I have a lot of sympathy for the position Mr E was in before he started his new job, I can't say that Aqua acted unfairly by passing the account to a DCA when they had set out their position prior to the phone call Mr E had on 17 August 2022.

Mr E's account had already been terminated before he rung Aqua, and so it appears that the process of passing his account to a DCA had already started, despite the text message Mr E received from Aqua. So I'm not persuaded the account could be *"unblocked"* when it had

already been terminated. The letter was sent on 13 August 2022, (before the phone call with the incorrect information) set out that he owed them £2,892.04. The letter says "*We may now ask a debt collection agency to collect the amount you owe us or we may sell your account to a debt purchaser who would then own your outstanding debt and take over the responsibility for collecting it*".

It was confirmed to Mr E on the first phone call he had with Aqua on 17 August, before the line was disconnected that there was nothing they could do (if Aqua were passing the debt to a DCA). And even the call handler who told Mr E incorrect information told him that "*there's nothing that we'd be able to put in place to stop the account being sold off*". So I'm not persuaded that the incorrect information that the call handler gave Mr E at the end of the call on 17 August 2022 means that Aqua should take back ownership of the account when they had clearly set out that the debt may be passed to a DCA if he didn't take the action required by 12 August 2022, which he didn't.

But Aqua did let Mr E down by giving him incorrect information. And while the agent told him the correct information earlier in the call, that there was nothing they could do to stop the account being sold off, he set an expectation that by Mr E paying £156.11, he could avoid the account being passed to a DCA. So this would have caused Mr E distress when he found out the account had been passed to a DCA.

Aqua have paid Mr E £30 for the wrong information and the issue with how they handled his complaint. I'm satisfied that this is fair. I say this because the information Aqua provided to Mr E clearly set out that they could pass the account to a DCA, and the account was terminated before Mr E received the wrong information. So I think the £30 compensation was fair for what happened here and the service around his complaint. So it follows I don't require Aqua to do anything further.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 November 2023.

Gregory Sloanes  
**Ombudsman**