

## **The complaint**

Mr I complains NewDay Ltd trading as Aqua treated him unfairly when he couldn't meet the repayments on his account. Mr I says he received poor service which resulted in his account falling into default.

## **What happened**

The facts of the complaint are well known to both parties, so I will only provide a summary of the key points of the complaint.

Mr I had a credit card account with Aqua which he opened in December 2021. In 2022 he started experiencing difficulty in meeting the repayments due under the terms of the agreement. Mr I was granted a payment holiday in late March 2022, and in June 2022 Aqua contacted Mr I that the holiday was due to end, and a payment would be due. At this stage Mr I asked for the holiday to be extended but was informed this wasn't an option. Aqua explained it could assist in other ways if Mr I was experiencing financial difficulties. Mr I explained he would be in touch, but there doesn't appear to have been any further contact. A clear payment plan wasn't implemented at this point.

Aqua contacted Mr I at the end of July 2022 to discuss his account, and Mr I was sent income and expenditure forms so a repayment plan could be set up. Aqua didn't receive the completed forms and in August 2022 Mr I was issued a default notice. Mr I contacted Aqua in September 2022 to discuss his account. During these calls Mr I raised concerns about the level of service he received. Aqua reviewed these concerns and in its final response letter it acknowledged any shortcomings and offered Mr I £105 in recognition of any distress and inconvenience caused.

Aqua informed Mr I in October 2022 of its intention to terminate its credit agreement with Mr I. Mr I contacted Aqua again and it explained that a hold had been applied to Mr I's account to give him time to return the income and expenditure information, however the account would still incur interest and charges. Aqua granted Mr I another payment holiday in October for a month. During his dealings with Aqua during phone calls Mr I raised another complaint about poor service and unclear information. Aqua reviewed these concerns and issued another final response letter in January 2023, acknowledging that there were some areas where it could've provided a better service. Mr I was awarded an additional £55 by Aqua for the impact this had on Mr I.

Aqua didn't receive a completed income and expenditure form from Mr I, and no further payments were made to the account. Aqua terminated the agreement on 24 November 2022 and the account was sold on to a third party in March 2023.

Dissatisfied with the response from Aqua Mr I referred his complaint to our service. To resolve his complaint Mr I explained he wanted Aqua to clear the outstanding balance in full, remove the default reported on his credit file and also compensate him £1,000 for all distress and inconvenience caused to him.

An Investigator reviewed Mr I's concerns and explained why they thought Aqua had taken adequate steps to address any shortcomings on its part. The Investigator also explained that Aqua had tried to assist Mr I to manage the arrears and that it had acted reasonably given the circumstances.

Mr I remained unhappy and asked for an ombudsman to review his complaint.

### **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.

In keeping with our role as an informal dispute resolution service and as our rules allow I will focus here on the points I find to be material to the outcome of Mr I's complaint. I understand this complaint has been a source of worry and frustration for Mr I but based on the evidence I have seen I am not upholding Mr I's complaint. I'll explain why.

#### *Arrears management and default*

In early 2022 Mr I began struggling to meet his repayments. When a customer is in financial difficulty, there is industry guidance as to what a firm might do to help. Businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like Aqua should treat customers in difficulties with forbearance and due consideration. So I've considered Mr I's complaint in this light of these overarching principles.

I can see Mr I was provided with a payment holiday when he first explained he couldn't meet the repayments needed. This payment holiday ended at the end of June 2022. Payment holidays are intended to alleviate the financial pressure on a customer in the hope they will be able to resume repayments after the break. When Mr I spoke to Aqua following the holiday, he requested a further holiday. Aqua explained this wouldn't be possible, and instead offered to assist Mr I in other ways, including setting up a repayment plan. I can't see that Mr I returned completed income and expenditure information, and without this information it would be very difficult for Aqua to suggest a sustainable and fair repayment plan.

Aqua provided Mr I with what it terms as breathing space following conversations with Mr I in September 2022. This was a period during which Mr I could complete and return the income and expenditure forms. However, interest and charges still applied during this time. Aqua also provided Mr I with another short payment holiday in October 2022 to assist with his financial situation. Mr I says he was informed the payment holiday would mean his account wouldn't fall into default. Aqua has apologised if Mr I was informed this during a call, and says the compensation offered to Mr I recognises any misinformation Mr I may have been given. I appreciate Mr I had a number of calls with Aqua and the information may not have always been clear due to the constant changes in the status of his account. However, Aqua also sent letters to Mr I and I think these clearly set out the situation and any next steps for Mr I.

When an account is in arrears, a lender can register a default, even if an arrangement to pay or some other temporary arrangement has been agreed. The Consumer Credit Act 1974 says that a lender must issue a notice of default setting out what the consumer needs to do to bring the account back up to date and tell the customer the date by which this needs to happen. In Mr I's case I can see Aqua sent a clear notice at the end of August 2022 explaining the payment Mr I needed to make, and the consequences should he not be able to make payment.

Mr I had contact with Aqua following this default notice, but as no clear way forward could be established, the account fell into default and the agreement was terminated in November 2022. It is clear Mr I is keen to remove the default recorded on his credit file and feels it has been unfairly applied. Ultimately Mr I didn't make his contractual repayments in the months leading up to the account closure. Aqua took steps to explain the situation to Mr I and I think it has acted fairly and sympathetically in the months leading up to the default by granting two payment holidays, removing some fees and giving Mr I breathing space. However, given the last payment Mr I made to the account was June 2022, I don't think there were any further steps I could reasonably expect Aqua to take. Ultimately, Aqua is obliged to accurately report the status of Mr I's account. I'm therefore not going to require Aqua to remove the default and change the information it had recorded.

### *Customer Service Issues*

Mr I has also raised concerns about some of the customer service he received. Mr I has spoken to a number of Aqua call handlers during the course of his complaint, and I appreciate this has involved a considerable amount of time and effort. Based on the calls I have listened to I think the call handlers have acted professionally and tried to assist Mr I where possible.

I do agree there have been instances where Mr I experienced delays and Mr I says calls weren't returned. Mr I also explained he experienced problems with Aqua's automated service and online chat function. Aqua accepts things could've been handled better on some occasions, and a total of £160 was awarded to Mr I in recognition of these shortcomings. I can also see that during phone calls, as a goodwill gesture Aqua refunded multiple over limit fees that had been applied to Mr I's account.

I can see Mr I thinks £1,000 is fair compensation. I've thought about the impact these issues had on Mr I and I don't think an award at this level of warranted in the circumstances. Although Mr I experienced some customer service issues, overall, I think Aqua provided a fair service and provided Mr I with the time and information he needed. So, I won't be making any further award.

So overall and having considered everything, I don't think that Aqua has treated Mr I unfairly and I'm not upholding this complaint. I appreciate this will be very disappointing for Mr I as he clearly feels strongly about the matter. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 13 February 2024.

Chandni Green  
**Ombudsman**