

## **The complaint**

Mr T complains that NewDay Ltd, trading as Aqua, failed to present a cheque he sent to them for payment.

## **What happened**

I issued my provisional decision on this complaint in April 2025. An extract from that provisional decision is set out below.

*In August 2024 Mr T sent Aqua a cheque for £5,500 to clear his credit card balance. Aqua didn't cash the cheque and Mr T complained to them. He said the debt should be discharged as Aqua had refused to accept the cheque or return it to him.*

*Aqua explained to Mr T that they couldn't find the cheque he'd sent. They suggested he cancel it with his bank, and they refunded the late payment fees Mr T had incurred since he said he sent the cheque to them.*

*Mr T was unhappy with their response. He referred his complaint to this service. In the meantime, Aqua identified that they had received a cheque from Mr T by recorded delivery in August 2024. They explained they had taken a business decision not to process cheques from that provider as they had had difficulty obtaining funds in the past. They accepted that they should have told Mr T they wouldn't be cashing his cheque and to settle the complaint, they offered to refund any interest charged between August 2024 and November 2024 (£684.43) and to remove any adverse markers they had reported to Mr T's credit file between August 2024 and February 2025. Our investigator thought that offer was a fair one.*

*Mr T was still dissatisfied, and he asked for a final decision by an ombudsman.*

## **What I've provisionally 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 think Aqua haven't done enough to compensate Mr T for their error here. I'm expecting to ask them to pay Mr T some compensation in addition to the settlement offer they have made. I'll explain why.*

*I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.*

*The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the*

*submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.*

*Mr T has referred me to the Bills of Exchange Act 1982. It's not for this service to decide the merits of any legal claim Mr T may have against Aqua under that Act, only a court can do that, but I have taken the Act into account when considering if Aqua have been reasonable here.*

*Mr T didn't pay his debt when he sent his cheque. The business' failure to cash it didn't discharge the debt and I don't think it was unreasonable of them not to accept a cheque given the issues they had had with that provider, that I've detailed in the background to this complaint.*

*They've been prepared to remove the interest that was added to the account for several months while the dispute was in progress and I think that was fair as, at least by November 2024 Mr T was aware the cheque hadn't been cashed and could reasonably have instructed his bank not to have honoured it. Aqua have also offered to remove any adverse credit reports they have made to Mr T's credit file over a generous period, and they removed some of the late payment fees that were incurred by Mr T. I think those actions were reasonable and, in effect, they put Mr T back in the position he would have been in had they acknowledged receipt of the cheque and promptly explained they wouldn't be cashing it.*

*However, it's clear that Mr T has experienced some distress and inconvenience here. He's taken the trouble to send a cheque by recorded delivery and it must have been distressing to find that Aqua had lost it. It was only when Mr T had to escalate his complaint to this service that Aqua identified they'd received the cheque. The delay in their response must have been distressing for Mr T. He's also had some adverse reports made to his credit file in the interim. On the other hand, Mr T's emails to Aqua in October 2024 demonstrate he was aware the cheque hadn't been cashed and at that point he could have mitigated some of the distress and inconvenience that's been caused by asking his bank not to honour it. Taking everything into account I think Aqua should pay him £200 in compensation.*

*Mr T wants Aqua to return the cheque and I can understand he may be concerned that they subsequently choose to cash it if that's not done. He says he can't cancel the cheque now as he doesn't have the account anymore, but I've not seen evidence that his bank has refused to cancel the cheque and Mr T has a right to do so. It seems unlikely that Aqua will have the cheque. If they have, they should return it to Mr T but if they can't do that, and Mr T incurs a charge to have it cancelled, Aqua should refund that fee to Mr T on provision of a receipt.*

*Mr T says that Section 59 of the Bills of Exchange Act 1982 provides that “if a valid tender of payment is made and subsequently refused without just cause, the obligation to pay may be discharged”. I can’t decide the merits of any legal claim Mr T may wish to bring to the courts in respect of that, but as there’s no compulsion for the business to discharge the debt in those circumstances, I don’t think Aqua were unreasonable not to agree to do so.*

*Mr T has also suggested that Aqua were enriched by the decision not to cash the cheque. He says that’s the case as they were able to sell his debt. I don’t agree as I think it’s likely any sale would have been for less than the debt was worth.*

*Ultimately, in addition to the settlement offer already made by Aqua, I’m expecting to ask them to pay Mr T £200 in compensation.*

### **My provisional decision**

*For the reasons I’ve given above, I’m expecting to uphold this complaint in part and to tell NewDay Ltd to take the debt back and, unless they’ve already done so, to:*

- *Apply to the account balance, a refund of any interest charged to Mr T’s account between August and November 2024. If the debt has now been cleared, Aqua should liaise with Mr T so that refund can be paid directly to Mr T’s chosen account.*
- *Remove any adverse reports they may have made to the credit reference agencies in respect of this account and for the period August 2024 to February 2025.*
- *Pay Mr T £200 to compensate him for the distress and inconvenience caused.*
- *Return the cheque to Mr T. If they can’t do that and if Mr T incurs a charge to cancel his cheque, they should refund that charge on provision of a receipt.*

### **The parties’ responses to my provisional decision**

Aqua accepted my provisional decision but Mr T didn’t, he said that it did not properly address the serious legal and commercial failings by Aqua. He provided two emails in which he documented what those failings were. I’ve read those emails in full but for brevity I will summarise only what I consider to be the most important points.

- Aqua failed to process legal tender.
- Aqua were in breach of the Bills of Exchange Act 1982 and the obligation to pay should be discharged.
- They failed to adhere to their duty of good faith and fair dealing
- Aqua were enriched by the failure to accept the cheque as they continued to treat the account as in arrears
- Aqua originally said they hadn’t received the cheque and changed their position.
- Aqua haven’t returned the cheque and that places him at financial risk. Mr T has never had access to the account from which the cheque was issued and has no authority or mechanism to cancel or recall it.
- That it would, therefore, be fair and reasonable for me to tell Aqua to cancel the debt, compensate Mr T further and return the cheque 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 don't think Mr T has raised any new issues that would lead me to change my provisional decision. Much of what he has laid out in his response to my provisional decision was covered in that provisional decision. I've discussed, for instance, my view on his Bills of Exchange Act (1982) argument and I've accepted that Aqua were unfair when they initially said they hadn't received the cheque. In respect of any financial risk of not returning the cheque Mr T hasn't incurred any loss and it wouldn't be fair for me to compensate him for something that hasn't happened. I'm not persuaded that Aqua have been enriched by not cashing or acknowledging receipt of the cheque. The debt wasn't discharged, and I can see that Aqua agreed to refund some late payment fees.

Overall, I have not been persuaded to change my provisional decision, and that provisional decision now becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above, I uphold this complaint in part and tell NewDay Ltd to take the debt back and, unless they've already done so, to:

- Apply to the account balance, a refund of any interest charged to Mr T's account between August and November 2024. If the debt has now been cleared, Aqua should liaise with Mr T so that refund can be paid directly to Mr T's chosen account.
- Remove any adverse reports they may have made to the credit reference agencies in respect of this account and for the period August 2024 to February 2025.
- Pay Mr T £200 to compensate him for the distress and inconvenience caused.
- Return the cheque to Mr T. If they can't do that and if Mr T incurs a charge to cancel his cheque, they should refund that charge on provision of a receipt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 June 2025.

Phillip McMahon  
**Ombudsman**