

complaint

Mr K complains about the way NewDay Ltd (trading as Aqua) handled a dispute he raised about a payment to a software provider.

background

In June 2017 Mr K was interested in some computer software so he entered into a free trial. He decided he didn't want it but about a month later the software provider charged £79.99 to his Aqua credit card account. He disputed this payment with Aqua in October 2017. Over the following months Mr K didn't get a response from Aqua so he complained. In July 2018 Aqua responded to say it couldn't help Mr K with his dispute because he'd raised it too late.

Mr K didn't think this was fair so he complained to our service. In response to our request for information Aqua reconsidered the complaint and agreed to refund the £79.99 and, following a discussion with our investigator, pay Mr K £50 compensation in recognition of the inconvenience he'd been caused. Our investigator thought this was a fair resolution to the complaint.

Mr K didn't agree. He said Aqua not refunding the disputed payment when it should have caused his account to default which has affected his credit file and caused him distress. He also felt he should be compensated for the time he'd spent trying to resolve the matter. Overall, he thought more compensation was fair in the circumstances. The complaint was passed to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I think Aqua has made a fair offer. I'll explain why.

Mr K entered into a free trial with a software provider. I've looked at the software provider's website. It says "*After your 1-month free trial, [name of software] is £79.99 per year. Credit card required. Cancel anytime*". So I think when someone signs up for the free trial they enter their credit card details and if they don't cancel by the end of the trial period payment is taken, and they can continue to use the software for a year before a further payment is taken.

The software provider took a payment from Mr K's Aqua account. So I think he provided his Aqua credit card details when he entered into the trial. Mr K hasn't said he cancelled the trial. So I think it's most likely the software provider took payment at the end of the trial period – as it said it would.

In these circumstances I think Mr K agreed for the payment to be taken, meaning I don't think Aqua needed to refund it. Nor do I think a chargeback – a mechanism for resolving disputes between a card holder and a merchant – would have been successful given I think the software provider did what it said it would. And I don't think Mr K had a valid claim under Section 75 of the Consumer Credit Act 1974 either, because, amongst other reasons, the price of the software was too low for it to apply. Overall, I don't think Aqua needed to refund the £79.99. It follows that I don't think any issues Mr K has had maintaining his account are a result of how this dispute was handled by Aqua.

But, Aqua's customer service around the dispute could have been better. I say this because when Mr K returned Aqua's dispute form it didn't take any action for several months, and despite some contact from Mr K, it didn't give him a response until July 2018, about nine months after he'd first contacted it about the payment. And the response itself wasn't very clear or accurate. I think compensation in recognition of the distress and inconvenience the poor service caused Mr K is appropriate. Taking everything into account I consider £129.99 (the £79.99 refund, which Mr K wasn't entitled to, plus £50 compensation) to be a fair amount.

my final decision

My final decision is that NewDay Ltd (trading as Aqua) should refund to Mr K the £79.99 paid to the software provider, and pay him £50 compensation, as it has offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 March 2019.

James Langford
ombudsman