

complaint

Mr P complains that NewDay Ltd (T/A Aqua) passed his account to a debt collection agency after agreeing a payment plan with him.

background

Mr P opened his credit card account with Aqua in January 2014. In May 2018 he contacted it to explain he was experiencing financial hardship. A reduced payment plan was agreed after Aqua assessed the financial information Mr P provided, which meant that no charges or interest would accrue. Mr P made payments to his account in May and June 2018. But Aqua said no payments were received in July and August 2018 so it cancelled Mr P's payment plan.

On 10 September 2018 Mr P asked Aqua to reinstate his payment arrangement. But this wasn't possible and Mr P was asked to call back on 14 September 2018 to discuss his income and expenditure. On 17 September 2018 Mr P contacted Aqua again and it agreed to set up a hardship plan for three months. Under this plan Aqua agreed to clear the arrears from his account. And it said it wouldn't apply charges or interest provided Mr P made three monthly payments of £215, which would bring his account up to date.

Aqua said the agent Mr P spoke to during this call explained that once an account reaches 65 days in arrears, it reserved the right to pass this to a debt collection agency (DCA). By 17 September Mr P's account had been in arrears for 70 days. But at this point his account was still with Aqua and he said he was assured his account wouldn't be passed to a DCA provided he made the required payments. Mr P made his first payment of £215 during that telephone call. However, he said a day or two after making the first initial payment he received a letter from a DCA saying Aqua had sold his account to it.

Mr P was unhappy about this. So he complained to Aqua. But it didn't uphold his complaint. It told him that, on 13 September 2018, his account had been selected for debt sale. It also said that when Mr P spoke to an adviser four days later, due to a system error, this information wasn't showing. So the adviser wasn't aware that Mr P's account had already been selected for debt sale. And this is why the hardship plan was set up. Aqua apologised for the trouble and upset this had caused and credited Mr P's account with £15 as a goodwill gesture.

Being dissatisfied with Aqua's response to his complaint Mr P referred it to our service. Following this, Aqua reviewed Mr P's complaint and upheld it. It accepted there had been some service issues and it offered Mr P a further £85 compensation to resolve his complaint. But it said it couldn't take back control of his account or adhere to the agreement he had made with it as he had wanted.

When our adjudicator looked into this complaint they didn't think Aqua had dealt with it fairly. So, they recommended that Aqua repurchase Mr P's account and make arrangements with him for the repayment of his debt. They also thought Aqua should also pay Mr P £150 compensation to put things right. But while Aqua agreed to pay this sum it refused to repurchase Mr P's account. And it asked for this complaint to be referred to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. My role is to determine this complaint impartially. This means I have to consider whether Aqua has made an error and whether it's treated Mr P fairly and reasonably.

The crux of Mr P's complaint is that he's upset that his account was sold to a DCA. And I can understand his frustration here – especially given the context of his telephone call with Aqua in September 2018. But I accept that a system error prevented Aqua from being able to see that Mr P's account had been selected for debt sale four days before he contacted it on 17 September. Based on the evidence I've seen, I think it's more likely than not that the adviser Mr P spoke to on this occasion would've told him about this if they'd been able to see this information. And I don't believe they would've agreed the payment arrangement that was set up or told him that making a payment would prevent his account being sold to a DCA.

Aqua has accepted it gave Mr P misleading information regarding his repayment plan and it's apologised for what happened. It's already paid him £15. And it's agreed to our adjudicator's recommendation that it pay a further £150 to compensate him for the misinformation it gave him and the impact this had. But Mr P thinks Aqua should also repurchase his account and make arrangements with him for the repayment of his debt. Our adjudicator has also recommended this as the fairest way to resolve this complaint. But Aqua won't agree to do this.

In thinking about the fairest way to put matters right for Mr P I've considered things from both sides and I've carefully thought about the impact this all had on him. The consequence of Aqua's error is that Mr P lost out on a credit card and payment plan. He doesn't want to liaise with the DCA who now own his debt and he wants Aqua to take back control of his account and honour the payment arrangement it agreed with him.

Aqua said it made a business decision to sell Mr P's account to a DCA after it fell into arrears. It said, in failing to make monthly payments as had been required, Mr P failed to comply with the terms of his account. Having seen Mr P's statements I can see that prior to September 2018 there were occasions when he made payments late or failed to make them at all. And I can also see that under the terms and conditions of Mr P's account Aqua is entitled to transfer customer accounts and debts to an external party. But sometimes where a business adheres to its terms it can lead to an unfair outcome for an individual consumer. And that's what I think happened here for Mr P.

I say this because during Mr P's telephone discussion with Aqua on 17 September 2018 he was clearly told his account wouldn't be sold to a DCA if he made a payment that day. I'm satisfied that this created a legitimate expectation in Mr P's mind that if he made that payment his account would remain with Aqua. Mr P made the payment he was told to make even though he said this would put him behind with other commitments. Having heard the telephone recording Aqua has provided I think Mr P made that payment to ensure that his account wouldn't be passed to a DCA. And, while his account had already been selected for debt sale, I think it was unfair for Aqua to proceed with that sale in the circumstances given what it had agreed with him.

With this in mind I'm persuaded that the fairest way to put matters right here for Aqua to repurchase the Mr P's account and make arrangements with him for the repayment of his debt. I should make it clear to Mr P though that I can't ask Aqua to provide a lending facility

to him because that's a decision for Aqua to make having exercised its discretion and commercial judgment. And it's something our service doesn't tend to interfere with as our adjudicator has already pointed out.

Aqua said it feels Mr P has benefited from the error it made. It said this is because if the payment arrangement hadn't been set up on 17 September 2018 Mr P's account would've most likely been sold to a DCA with a default due to the arrears that had accrued by this date. So, it feels the payment plan meant adverse credit hasn't been recorded on Mr P's credit file. I understand what Aqua has said here but I still think it shouldn't have sold Mr P's account because it should have adhered to the agreement it made with him.

I recognise that Mr P has been inconvenienced and caused distress by this experience. And I can appreciate the time it has taken him to bring this complaint to our service and to the attention of Aqua. To reflect what happened I think Aqua should pay Mr P the £150 compensation our adjudicator recommended to resolve his complaint. I'm satisfied that this is a reasonable amount, which is in line with our approach in similar scenarios.

my final decision

My final decision is that I uphold this complaint. NewDay Ltd (T/A Aqua) should repurchase Mr P's account and make arrangements with him for the repayment of his debt. It should also pay him £150 compensation to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 September 2019.

Julie Robertson
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