

complaint

Mr H complains that NewDay Ltd (trading as "Aqua") allowed a payment to be made using his credit card which took him over his credit limit. It then charged him fees for being over the limit.

background

In May 2015 a payment was debited to Mr H's Aqua credit card account. Mr H says the merchant took the payment by mistake. Before the payment, his account balance was just within his credit limit. But the payment took him over the limit. A couple of days later, Aqua charged him an over-limit charge.

Mr H is unhappy that Aqua allowed the payment to be taken even though it took him over his credit limit. And he says he wouldn't have been over his credit limit if Aqua hadn't applied the charge to his account. He's incurred further charges in the months since. He says he isn't prepared to pay for charges that were incurred due to a third party mistake. And he says Aqua told him that if the merchant credited the money back to the account, it would refund the charges. The merchant refunded the money in October 2015, but Aqua hasn't refunded any further charges. Mr H would like Aqua to clear all interest and charges from his account and remove all adverse information from his credit report.

When Aqua sent its final response to Mr H in September 2015, it refunded one over-limit fee of £12. It said that in order to remove additional charges or look to amend Mr H's credit file, he would need to submit a letter from the merchant, taking responsibility for the mistake in charging Mr H's account. It told Mr H that he'd still need to make the minimum payment each month. And it warned him that failure to do so would result in additional charges being applied and adverse information recorded on his credit file.

Our adjudicator didn't recommend that the complaint should be upheld. She said, in summary, that Mr H's account would still have gone over its credit limit even if the merchant hadn't taken the disputed payment. And she explained that Aqua was entitled to allow payments which took the account over its credit limit. She said Aqua had applied the charges in line with the terms and conditions. She said that she couldn't require Aqua to remove the late payment markers from Mr H's credit file. He'd been warned of the consequences of not making payments.

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've reached the same conclusion as the adjudicator, for much the same reasons.

Aqua's terms and conditions provide that it's entitled to decline a transaction which would take the account over its credit limit. But they don't *require* it to decline such transactions. Aqua's explained that not all purchases are referred to it for authorisation. I don't consider this unreasonable. There was nothing at the time to indicate that Mr H didn't consent to the transaction. I'm satisfied that Aqua was entitled to assume that Mr H wanted the transaction to be processed, and to charge any fees that resulted.

As it is, I don't accept that the fees wouldn't have been chargeable but for the disputed payment. Mr H had paid his minimum payment in May 2015. But he'd paid it two days after it

was due. Aqua applied a late fee of £12 to his account, as it was entitled to do. And that, in turn, took Mr H's balance slightly over the limit. As a result, Aqua debited an over-limit fee to the account. Mr H's balance continued to be over the credit limit for two weeks at the beginning of the June statement period. So I'm satisfied that an over-limit fee would have been applied in June, even if the disputed transaction hadn't been applied to the account.

It's true that Aqua said it would consider refunding further charges if Mr H provided a letter from the merchant accepting that it made a mistake in taking the payment. But Mr H hasn't provided such a letter. And given that I'm satisfied that the charges weren't a result of the disputed payment, I couldn't require it to refund them in any event.

Mr H has been warned of the consequences of not making payments to his account. I can't require Aqua to remove adverse information from his credit file, given that it's an accurate reflection of the state of his account.

I'm sorry to disappoint Mr H, but I can't require Aqua to refund any further charges or make any amendment to his credit file.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 April 2016.

Juliet Collins
ombudsman