

## **complaint**

Mr B complains that NewDay Ltd (trading as "Aqua") has not treated him fairly in that it has defaulted his account despite not providing the required notice and even though he was meeting his agreed repayments. He would like the bank to remove the default listing from his credit file.

## **background**

Mr B held an Aqua credit card account. The account fell into arrears and Mr B and Aqua agree he could make monthly payments of £4 towards the debt. This arrangement started in July 2013, but as Mr B was not meeting his contractual repayments, the arrears continued to grow. Aqua recorded a default on 31 October 2013 and sold the debt to a third party collections agency in December 2013.

Mr B says he never received notice of the default, despite Aqua being required to provide this to him before listing a default on his credit file. He would like the listing to be removed and to receive compensation.

Our adjudicator recommended that this complaint should be upheld in part. This is because Mr B had told him that even if he had received a notice of default from Aqua, he would have continued to make payments of £4 per month. So our adjudicator did not consider it was likely that Mr B would have repaid the arrears and returned to his contractual repayments, which is what would have been required to avoid the default. He did consider that Mr B had suffered distress and inconvenience as a result of the failure to provide that required notice, and recommended that Aqua should increase its offer of compensation from £25 to £150.

Aqua does not agree, saying it considers £25 compensation to be fair and reasonable in the circumstances.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It isn't disputed that Aqua failed to send the required notice of default to Mr B – indeed, Mr B discovered the error after Aqua told him about it. In considering whether the default was correctly applied, I have looked to what Mr B would most likely have done had he received that notice. This is because this Service looks to restore a customer to the position he or she would have been in had the error not occurred.

In a conversation with our adjudicator, Mr B confirmed that he most likely would have continued making the £4 per month payments towards the debt. So even if the error hadn't occurred, it's very likely that the account would have been defaulted anyway. Because of this, I'm not going to ask Aqua to remove the default listing from Mr B's credit file.

I do agree with the adjudicator that Aqua's failure to send the notice ahead of listing the default would have caused Mr B distress and inconvenience. It means he wasn't told that a default was going to be listed on his credit file, and wasn't given an opportunity to revise his repayments. Because of this, I consider that Aqua should increase the amount of compensation for its error from its offer of £25 to £150, which I consider to be fair and reasonable in the circumstances. A default listing has a serious impact on a consumer's

ability to obtain credit, which is why lenders are required to provide notice of their intention to issue one.

**my final decision**

My final decision is that I uphold this complaint in part. In full and final settlement of it, I order NewDay Ltd to pay Mr B £150 compensation for its failure to provide him with the required notice of its intention to issue a default on his credit card account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 May 2017.

Catherine Wolthuizen  
**ombudsman**