

complaint

Mr N complains NewDay Ltd (trading as Aqua) defaulted his account and sent incorrect letters.

background

Mr N entered into a credit card account with Aqua. He suffered financial difficulties and was unable to make the minimum payments. He says he spoke to Aqua and was told he could pay off the account at an amount and at a timescale which suited him. But later he received a letter which he says stated he had entered into a repayment plan. This letter gave the wrong contact number. When he phoned Aqua he was told it couldn't find the notice and knew nothing about the wrong number. He received another letter and this time Aqua said it knew about the wrong number and agreed he hadn't entered into a repayment plan. It credited him with £30 for giving him the wrong number. Mr N received further letters and the account was defaulted in the second half of 2014.

Aqua has been unable to provide a copy of the call during which Mr N says it was agreed he could pay off the account at an amount and at a timescale which suited him.

The adjudicator considered the complaint should be upheld in part. In summary, in her view:

- Aqua should have provided the correct number and been able to explain the arrears letters to Mr N when he called - instead 12 weeks elapsed before the position was explained;
- she was satisfied that his account was 180 days in arrears at the time it was charged off and the default was recorded on his credit file correctly;
- she was not satisfied that Mr N had been sent a notice of default but was satisfied he was reasonably aware of the need to make a payments; and
- Aqua should pay Mr N £150 compensation on top of the £30 already credited to his account.

Mr N disagrees. In summary he says:

- he was told that he could pay what he wanted when he wanted;
- Aqua carried on giving the wrong phone number even after he's been compensated; and
- he maintains the letters sent to him set out a payment arrangement.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I am sorry to hear Mr N has been experiencing financial difficulties.

Mr N says he was told he could pay what he wanted when he wanted. I haven't seen any evidence of this and – on balance – consider Mr N is mistaken.

Mr N believes the letters sent out to him set out a repayment plan of £5 a month. They don't they are letters about arrears. The letters refer to missed minimum payments which are mostly for £5. The minimum payments shown on Mr N's statements are for more than £5 so I can see how he was confused. But the minimum payments on his statements include missed payments whereas the minimum payments on the letters don't.

Like the adjudicator, and for much the same reasons, I consider Aqua was entitled to default the account as Mr N had failed to make the contractual payments. But I consider its communication with him was poor – for all the reasons set out more fully by the adjudicator in her view – and this didn't help him. Mr N has said that he was paying what he could when he could so I'm satisfied that even if Aqua had communicated more effectively and sent a default notice he wouldn't have been able to avoid the default.

I therefore need to consider whether the compensation recommended by the adjudicator is adequate for the poor communication. I consider that Mr N has been caused frustration and that fair compensation would be for Aqua to pay Mr N £150 on top of the £30 it had credited to his account.

my final decision

My decision is that I uphold this complaint in part. I order NewDay Ltd (trading as Aqua) to pay Mr N £150 on top of the £30 it had credited to his account.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 30 July 2015.

Nicola Wood
ombudsman