

complaint

Mrs S complains about problems she's had with NewDay Ltd (trading as Aqua) following her offer to settle her credit card account at a reduced amount. Mrs S is represented by her husband – Mr S.

background

Mrs S had a credit card with Aqua. In October 2016 she made an offer to settle the balance at a reduced amount of £3,800. Aqua wrote back and agreed to a shortfall settlement, albeit slightly higher than Mrs S had offered. Mrs S was planning to move abroad. She says she accepted this offer but decided to continue to make monthly payments of £200 until she left the country, at which time she planned to pay the agreed settlement balance less the payments she'd made to date. Mrs S says she wrote to Aqua to explain her intentions, and assumed as she didn't get a response that it had agreed to her proposal. Mrs S moved abroad and Mr S continued to make payments to Aqua.

Mr S got in touch with Aqua in October 2017 asking to pay the shortfall settlement agreed in 2016. She assumed this would be less the payments she'd since made, leaving a balance of approximately £1,500. But Aqua said it couldn't speak with Mr S as it wasn't his account. Mrs S gave consent for Aqua to speak to Mr S. Aqua explained that because the full balance hadn't been repaid at the time the shortfall settlement was offered, the balance hadn't been reduced, and had continued to attract interest. So the amount they owed was much higher than they thought they should still owe.

Mr S stopped making payment to Aqua at this time. He raised a complaint with Aqua via this service on behalf of Mrs S. Aqua didn't think it had done anything wrong, but it did offer a payment of £100 as a gesture of goodwill. Aqua has since defaulted the account and sold the debt to a third party.

Mrs S wasn't happy with this and referred the complaint back to us. One of our investigators looked into the complaint. He didn't think Aqua had done anything wrong so didn't recommend the complaint be upheld. Mrs S and her husband didn't agree, they asked for an ombudsman to consider their complaint. So it's been passed to me.

my findings

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

Aqua agreed to accept a reduced settlement in October 2016. The letter Mrs S says she wrote to Aqua with her intentions says that she'd make payment in September 2017. Aqua says it has no record of this letter being received. Mrs S says that she'd assumed Aqua had accepted her offer due to not receiving a response. I don't agree that this was a reasonable assumption to make though. Given that no reply was received, I would've expected Mrs S to get in touch with Aqua to discuss her counter offer further. Especially as its letter had explained she should get in touch if she wasn't able to make the shortfall settlement payment. I don't think it was unreasonable for Aqua to assume Mrs S had decided not to go ahead with the shortfall settlement given that it didn't receive any further contact and payments continued to be made.

The letter agreeing to a shortfall settlement asks for a payment, and doesn't suggest monthly payments can be made to settle this. The point of a shortfall settlement is that the balance is cleared immediately, and this is why a business is likely to agree to it. Not that the balance is reduced and then cleared on a monthly basis as before with no further interest being added. I appreciate the letter accepting the reduced settlement didn't give a timescale for when it needed to be accepted or payment to be made – but this was a concession Aqua was making. I would've expected a bit of flexibility from Aqua had Mrs S gotten in touch sooner given that the letter didn't have a timescale for when payment needed to be made. But that said, I don't think it's reasonable for Mrs S to assume this offer was open ended and that she could make the payment at any time in the future - certainly not a full year later.

Statements continued to be sent to the address Aqua had for Mrs S. So I think she should've been aware that her balance wasn't reducing as she'd thought – and that further interest was being added. And she should've questioned this sooner.

Mrs S' husband says he has the money available to repay the balance and plans to do so once he joins Mrs S abroad. I can't see any reason for needing to wait until he moves abroad before the payment being made. And if he has the money available, he could've made the payment sooner and avoided the problems which have since arisen.

Aqua has agreed to consider a shortfall settlement again if Mr or Mrs S gets in touch. This is fair in the circumstances, but I would remind Mrs S that it isn't obligated to offer a reduced settlement.

As no payments have been received since October 2017, I'm satisfied Aqua was entitled to default the account. And because of this it's required to report this to relevant credit reference agencies. Aqua has since sold the defaulted balance to a third party collection agency. Again, this is something it's entitled to do.

Aqua has offered £100 as a gesture of goodwill. I don't think it's done anything wrong here, so I don't think it was required to make this offer. If Mrs S wants to accept this offer, she should contact Aqua directly to see if it's still available.

my final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 21 September 2018.

Rob Deadman
ombudsman