

complaint

Mr E complains about the way NewDay Ltd trading as aqua ("aqua") increased the interest rate on his credit card. He also complains about charges that were added to his account, collection calls that were made to him and aqua referring to him by the wrong name.

background

Mr E has had a credit card with aqua for a number of years. Since he took it out the card's interest rate has been around 27%. Aqua says that it decided to increase the rate in late 2014. It says it wrote to Mr E in December 2014 to tell him about the rate increase. The increase would come into effect in February 2015. Mr E had the option of accepting the new rate or rejecting it. If he rejected it then he would no longer be able to use his account. But he would be able to repay what he already owed at the old rate. Mr E says he never received the letter. So he didn't know about the rate increase.

Mr E says he noticed the increase in April 2015 and so called aqua to complain. Since he made his complaint, aqua has continued to add interest and charges to Mr E's account. He has also missed a number of payments and aqua has reported this to a number of credit reference agencies.

In his complaint, Mr E asks that his card's interest rate is reduced to the old rate. He says that if he'd received the letter in December he would have rejected the rate. He also says that aqua shouldn't have added interest or charges to his account as it knew he disputed the amount he owed. And it shouldn't have reported any late payments to credit reference agencies for the same reason. Mr E also says aqua used bullying tactics by calling him so many times when it was chasing payment. Finally, Mr E has noticed that aqua has been referring to him by the wrong name. He thinks aqua may be referring to a different person in some of its information. He has also questioned whether this means the agreement between them isn't enforceable.

Aqua says it sent the letter to Mr E in December 2014. This is what it's required to do in its terms and conditions. And Mr E has accepted these. So it says it's done nothing wrong. It also says it's not required to stop charging Mr E interest and charges on his account. Aqua accepts Mr E's name was spelt wrong on its computer systems. This has now been changed. But it says it was always referring to Mr E and his account in this case. Overall, aqua has agreed to pay Mr E £76. This is made up of £36 in a refund of fees and £40 for the trouble caused to Mr E.

One of our adjudicators looked at the complaint and didn't think it should be upheld. Mr E disagrees and so the complaint has 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. Having done that, I'm sorry to have to tell Mr E that I'm not upholding his complaint.

the interest rate rise

Aqua's terms and conditions say that it can raise Mr E's interest rate if it gives him 60 days' notice. Aqua has provided me with its account notes. These show that it decided to raise

Mr E's interest rate in December 2014. It's also given me a copy of a screen print which says it sent Mr E a letter about the interest rate rise in mid-December. And it's given me a letter dated the same date which tells Mr E his interest rate will be rising. It also tells him what he can do about this.

Mr E says he didn't receive this letter. And I'm not saying he did either. But based on the information aqua has given me, I do think it's likely it sent the letter. And I don't think it was required to do anything more. Mr E says aqua could have phoned him. But I don't think it needed to do this. I think the letter was enough. It's unfortunate that the letter appears to have been lost in the post. But I think aqua did what it was supposed to do under the account's terms and conditions. And in this particular case I don't think it has done anything wrong.

interest and charges

Because Mr E didn't think the interest rate should have gone up, he said his account balance was higher than it should have been. And Mr E says aqua shouldn't have charged him interest or any other charges after he told it he disputed the amount he owed. He has referred to the FCA's Consumer Credit Sourcebook (which is often referred to as "CONC"). CONC sets out what the FCA considers to be good practice.

Mr E has referred to CONC 7.14.1. This says that a lender – or anyone acting on its behalf – must suspend any steps to recover a debt if the consumer has or may have valid grounds for disputing the debt. This includes if the consumer says the lender is asking for too much money.

I'm sorry to tell Mr E that I don't read the guidance in the way he does. This part of the guidance refers to "recovery action" or, put another way, debt collection. But the adding of interest and charges isn't debt collection. So I don't think this prevents aqua from adding these. Mr E also refers to CONC 7.3 which relates to people who are in arrears. It's right that this part of CONC says a lender must treat a customer fairly if they're in arrears. But this section is aimed at people who can't pay. And Mr E isn't saying he can't pay. He's saying he won't pay because he disputes the amount. And that's a very different thing.

If Mr E is saying he can't pay then he should contact aqua. And I remind aqua that it's required to treat him positively and sympathetically. But based on what I've been told so far – that Mr E isn't paying because he disputes the interest rate rise – I don't think aqua has acted unfairly in charging Mr E interest and other charges.

information shared with credit reference agencies and collection calls

I also don't think CONC stops aqua from recording Mr E's late payments with credit reference agencies. That's because Mr E isn't disputing the whole amount owing on the card. He's only disputing any parts that are caused by the increased interest rate and charges. So I think aqua is allowed to collect Mr E's minimum payments to put towards the rest of the balance. And if Mr E hasn't been making these then I don't think it's unfair to report this to the credit reference agencies.

I've also looked at a list of the phone calls aqua says it made to Mr E to ask for repayment. It sometimes makes up to six or seven calls a day. But these seem to be when the calls aren't answered. I say that because the records show a call is made to Mr E's landline number and then, around 20 seconds later, a call is made to his mobile number. So it looks like aqua

wasn't able to get hold of him. The calls also tend to be made either between 9 and 10am, lunchtime or 3.30-4.30pm. I know from experience that this is designed to increase the chances of speaking to the consumer as people work different hours. So I'm sorry to say that, overall, I don't think aqua acted unfairly in this case if it couldn't get hold of him.

Mr E's name

Aqua accepts it has been calling Mr E by the wrong name (the last letter of his name was wrong). Aqua says this is because his name was entered wrongly when Mr E first took out the card. Mr E questions whether aqua is even referring to him. He also says this may mean the agreement between them isn't enforceable in law. While I've taken the law into account, I have to come to a conclusion that I think is fair and reasonable. I can't see any evidence that aqua is mixing Mr E up with someone else. Given that the name is only one letter different to Mr E's, the address is the same and – more importantly – the account aqua is referring to is Mr E's account, I think it's very unlikely. Mr E has spent money on this card and I don't think it would be fair and reasonable in this case to stop aqua trying to recover this because of a typing mistake.

For the reasons I've given above I don't think aqua has acted unfairly towards Mr E. While it clearly spelt Mr E's name wrongly, it's offered Mr E compensation of £40 along with a £36 refund of fees. I think overall this is fair compensation. If Mr E wishes to accept this then he should contact aqua directly.

my final decision

For the above reasons I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 1 February 2016.

Ross Crawley
ombudsman