

## **complaint**

Mr S complains that NewDay Ltd (trading as Aqua) was wrong to default his account and pass it to debt collectors without notice.

## **background**

Aqua says the account fell into arrears. And it sent letters and statements to the address held on file, but Mr S didn't respond. A default was registered on his credit file and the account was sold on to debt collectors in July 2015.

Aqua realised later that Mr S hadn't been provided with notice and sent that in October 2016. Mr S was unhappy about the default and late notice. And Aqua offered to pay him £35 as a goodwill gesture. Aqua didn't pay all of that money and Mr S complained to this service.

Aqua says Mr S didn't respond to earlier correspondence about the debt so he probably wouldn't have reacted any differently if notice had been given at the right time. It considers the default was properly registered with credit reference agencies - because it's an accurate reflection of the status of the account.

Our adjudicator considered Mr S's financial situation at the relevant time. She's not persuaded he's likely to have been able to avoid the default if Aqua had given notice beforehand. So she doesn't recommend the default should be removed now.

But, she thinks Mr S experienced some additional upset and inconvenience because Aqua didn't give notice - or pay all of the money offered. She recommends Aqua should pay the balance of £10 along with another £50 to compensate Mr S for everything that's happened.

Aqua doesn't agree. It says Mr S wasn't disadvantaged financially because of the lack of notice. And £35 is fair compensation, in line with awards it has made to other customers in similar circumstances.

Mr S thinks it unfair that Aqua can register a default without notice. He'd like it to write off the debt and remove the default from his credit file.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached much the same conclusions as our adjudicator for broadly the same reasons.

I understand Mr S feels upset by what happened. There's no dispute that Aqua was required to send him a default notice under the Consumer Credit Act 1974 here. And Aqua should have told Mr S in advance if it intended to apply a default to his credit file, under industry guidance<sup>1</sup>.

That guidance says it's generally acceptable for a lender to enter a default when an account is three or more months in arrears. I'm satisfied Mr S had missed at least three of the payments due on his account in July 2015. So I can't fairly criticise Aqua for deciding the relationship had broken down and it was appropriate to report the default.

I accept Aqua should have given Mr S notice of the actions it intended to take – to give him the chance to resolve the matter by arranging to pay off the debt. So I've reviewed Mr S's

financial circumstances at the time. Like our adjudicator, I think Mr S probably wouldn't have been able to do anything different even if notice had been provided. I find it's more likely than not the default would still have been registered and the debt sold on. And I can't fairly find Aqua should remove the default now or write off this debt now.

Aqua accepts it didn't give Mr S notice when it should have. I think that failure probably increased the upset he experienced. I note Aqua didn't pay the entire goodwill sum it offered either. It agreed to process the balance, after Mr S complained to this service. But, that payment didn't go through because Aqua used the wrong account number. I've no doubt that's been frustrating for Mr S as well.

Having considered what's happened overall here, I think the outcome recommended by our adjudicator is fair and reasonable. I find Aqua should pay Mr S the balance of the compensation offered along with another £50 for the upset and inconvenience caused by its poor service.

### **my final decision**

My decision is I uphold this complaint in part. In full and final settlement, I order NewDay Ltd (trading as Aqua) to pay Mr S the balance of £10 (if it hasn't done so already) along with another £50 for the additional upset and inconvenience he has experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 April 2017.

Claire Jackson  
**ombudsman**

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<sup>1</sup> Principles for the reporting of arrears, arrangements and defaults at credit reference agencies published by the Office of the Information Commissioner