

complaint

Mrs S complains that an account with NewDay Limited, trading as Aqua, has been set up in her name and that she is being held liable for the spending on the account that she didn't make or authorise.

background

Mrs S says that she received a letter from Aqua in July 2016 asking her to pay the balance on a credit card account that she didn't know anything about. She says that a relative may have fraudulently applied for the credit card in her name and used it without her permission. The balance of the account is now more than £7,000 and Aqua has passed the account to a third party collection agency. It has also recorded adverse information on Mrs S's credit file. Mrs S complained to Aqua but wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She said that Mrs S's name, address and mobile phone number were used to open the account online in 2014 (although a relative's e-mail address was given). And she said that Aqua had sent letters to Mrs S's address including a letter in November 2015 about her account limit and a letter in January 2016 about an interest rate change. And Aqua says that statements were also sent to Mrs S – although she says that they weren't sent to her. Payments were made on the account using the credit card and the PIN at retailers, online and to payment services providers. The investigator said that the card and the PIN were sent to Mrs S's address and that she didn't know how they could've been obtained by a third party. And Aqua had shown that it sent text alerts to Mrs S's mobile number to tell her, amongst other things, when the account was close to its credit limit, when statements has been generated and for payment due date alerts (but Mrs S says that she didn't receive the messages). And she said that payments to the Aqua account were received from another of Mrs S's accounts (but Mrs S says that she didn't monitor payments from that account). The investigator concluded that Aqua was entitled to seek recovery of the money - which had clearly been spent – from Mrs S.

Mrs S has asked for her complaint to be considered by an ombudsman. She has responded in detail and has provided further documents. She says, in summary, that:

- it's an online account and statements weren't sent to her;
- the account was opened online and she didn't sign anything to open the account – so she isn't liable for it;
- she wasn't the beneficiary of the payments from the account;
- the payments were fraudulent; and
- she didn't sign a credit agreement.

my findings

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

To be able to uphold Mrs S's complaint, I'd need to be satisfied that:

- the account was opened online without Mrs S's knowledge or consent;
- the card and PIN that were sent separately to her address were both intercepted by a third party;

- Mrs S didn't receive any of the letters or statements that Aqua says were sent to her address;
- Mrs S didn't receive any of the mobile phone messages that Aqua sent to Mrs S; and
- Mrs S didn't monitor the account from which payments were made to the Aqua account and didn't notice the payments leaving her account.

I don't consider it to be likely that all of those things happened in these circumstances. And I consider it to be more likely than not that Mrs S knew (or ought to have known) that a relative had opened an account in her name and was using it to make payments. But she didn't contact Aqua about the account until July 2016. So I consider that Mrs S is liable for the account – even if it wasn't opened by her. And I don't consider that there's any requirement for Aqua to produce a copy of the credit agreement signed by Mrs S.

I'm not persuaded that Aqua has acted incorrectly in seeking payment from Mrs S of the outstanding balance on the account – or in passing the account to a collection agent. And I consider that Aqua was entitled to record adverse information about the account on Mrs S's credit file. So I find that it wouldn't be fair or reasonable for me to require Aqua to write-off the balance on the account – or to take any other action in response to Mrs S's complaint.

my final decision

For these reasons, my decision is that I don't uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 22 March 2017.

Jarrold Hastings
ombudsman