

## **complaint**

Mr V says NewDay Ltd (trading as Aqua Card Services) hasn't done the right thing since he told it that two payments had been made using his credit card which he didn't recognise.

## **background**

Mr V took out a new Aqua credit card in December 2013. He used it once but then found two payments had been made to one merchant which he hadn't asked NewDay to pay. He told NewDay about this but NewDay didn't properly look into things until Mr V referred a complaint to us.

We asked NewDay to look into what had happened and it wrote to Mr V on 1 July 2014. NewDay admitted it didn't handle things as well as it should have. It asked Mr V to fill in another form to confirm what had happened. It then agreed to refund the two disputed payments and put the account back into the position it would have been in if the two disputed payments hadn't been made from his account.

Mr V used his credit card a few times in July 2014 thinking everything had been sorted out. But he then found out his credit file hadn't been corrected and there was still adverse information on it, which he thought related to the two disputed payments.

After our adjudicator got involved NewDay agreed to reduce the amount Mr V had to repay to £301.13 – the amount he had actually spent on the card – remove any late payment markers from his credit file and pay him £150 compensation in recognition of the trouble and upset he'd been caused.

But Mr V didn't accept NewDay's offer, not least because the adverse information was still showing on his credit file, so the complaint was referred to me. I issued a provisional decision on 20 August 2015 which explained why I thought NewDay's offer didn't go quite far enough. I said, in summary, that:

- Mr V should have been making regular, monthly payments and I think he knew this but chose not to. So, on the face of it, it didn't seem unfair that NewDay had applied charges to the account, reported missed payments to the credit reference agencies and defaulted the account. But that wasn't the end of the story.
- Mr V was trying to get NewDay to look into the disputed payments from January to 1 July 2014. And NewDay only looked into things properly because we got involved. At that point NewDay accepted it had made a mistake in the way it handled Mr V's complaint about the disputed payments. So I thought it fair for NewDay to take some responsibility for the mismanagement of the account that went on between January and July 2014.
- I could see, having looked at his statement, that Mr V might have been confused about what was happening with his account and this made him reluctant to make payments until the situation became clear. Between July and October 2014 the disputed payments kept being added on and removed with no explanation for this being given to Mr V. So I thought it may have been difficult for him to understand exactly what was going on.
- NewDay couldn't give me a copy of the letter it says it would have sent Mr V warning him that his account would be defaulted if he didn't start making repayments. And, given the conflicting information on file, I wasn't even sure when the account was defaulted. I

thought it seemed likely Mr V might have been similarly confused at the time the events were happening.

- I thought if Mr V had got a default notice, which clearly explained the implications of not paying – including, perhaps, that having a defaulted account might make it difficult for him to get lending in the future – he might have decided to start paying again.
- NewDay had already agreed to remove all the late payments markers from Mr V's credit file despite the fact he did owe it money. So I had difficulty understanding why it was refusing to similarly remove the default. Given what had happened and the offers NewDay had already made, I thought NewDay should arrange for the default to be removed from Mr V's credit file.
- Mr V had said the adverse information on his credit file stopped him from being able to get a mortgage and other lending. But I explained that lenders take a lot of different things into account when deciding whether or not to lend, and on what terms. And Mr V hadn't given us anything which showed he was refused a loan or mortgage just because of the adverse information on his credit file relating to his Aqua credit card. So I didn't think it was fair to pay him any more compensation than NewDay had offered – £150.
- I thought it was fair to reduce Mr V's debt to £301.13. That's how much he's spent on the account so far. He'd paid £31.17 towards the debt but that was a lot less than he strictly should have been charged in late payment and over limit fees. And NewDay and Mr V had already both accepted that it's fair for him to repay £301.13.

NewDay accepted what I said in my provisional decision. Mr V said, in summary, that:

- He was told by NewDay's staff that he shouldn't make any payments until his complaint had been sorted out. So he shouldn't be penalised for not paying.
- NewDay originally agreed to remove the default but now it's refusing to do so. That isn't fair.
- NewDay hasn't given me recording of all the calls that took place. There were over 50 conversations, some of them involving him being passed around various departments and being on hold for a long time. And promises made to him call back were broken.
- There's no other adverse information on his credit file. So the fact he's been refused other lending must be because of the information recorded against his Aqua credit card.
- He hasn't received any letters warning the account would be defaulted.

### **my findings**

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

I don't think it's likely anyone at NewDay told Mr V not to make repayments. But agree with Mr V that – for whatever reasons – it's not fair for any adverse information to be recorded on his credit file. That's why I've asked, and NewDay has now agreed, for both the late payment markers and the default to be removed.

Mr V still hasn't shown me that the only reason he's been unable to borrow money from other lenders is because of the adverse information relating to his Aqua account. And, as I've already said, there are many different things that lenders take into account when deciding whether to lend. So I don't think I can fairly tell NewDay to compensate Mr V for not being given the loans he's wanted over the years.

I've had another think about the amount of compensation Mr V should be paid given what he's said about the number of calls that took place. Having done so, taking everything into account, I still think £150 is fair.

I encourage Mr V now to get in touch with NewDay (or its agent) to agree a repayment plan for the debt. If Mr V doesn't start making repayments again, or stops doing so in the future, then NewDay will be entitled to record adverse information on his credit file and default the account again (once it's given the proper notice).

### **my final decision**

My final decision is that NewDay Ltd should:

- Remove all the adverse information from Mr V's credit file, including the default.
- Reduce Mr V's debt to £301.13.
- Pay Mr V £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 23 October 2015.

Ruth Lewis  
**ombudsman**