

## **The complaint**

Miss W complains that NewDay Ltd trading as Aqua sold her account to a third party and registered a default with credit reference agencies after she'd made an arrangement with it.

## **What happened**

Miss W had a credit card account with Aqua. She says she had health issues and experienced financial difficulties in 2019. She told Aqua she'd contacted Citizens Advice. Citizens Advice wrote to Aqua on her behalf and provided evidence of her health and personal circumstances.

Aqua sent Citizens Advice a response dated 13 May 2019. It confirmed it had set up a repayment plan for Miss W. The letter set out the monthly payments she was required to make and advised that, under the repayment plan, the interest rate would be reduced to 0%. Aqua also said Miss W's account would be reviewed in 12 months' time provided the payments were maintained.

Miss W started to make the payments as required under the repayment plan. She says she was surprised to find out in July 2019 that Aqua had sold the debt to a third party. Aqua also wrote to her at this time and told her it was registering a default with credit reference agencies. So, Miss W complained to Aqua.

Aqua investigated her complaint. It said it'd reviewed its letter dated 13 May and agreed that this might have led Miss W to believe that it wouldn't sell her debt to a third party. It apologised for this and offered to pay her £75 by way of compensation. But it said, despite the arrangement, arrears continued to accrue in the background. It said that was the reason why it had registered the default and sold the debt. In these circumstances, it said she'd need to approach the party which had purchased the debt in order to re-set the arrangement.

Miss W didn't agree and so she referred the matter to our service. Our investigator looked into her complaint. He said that after Aqua had become aware of her circumstances and had agreed the repayment plan it shouldn't have sold the debt. He referred to the Standards of Lending Practice which stated that if a borrower had ongoing health issues, as was the case here, it shouldn't sell the debt. So, he thought Aqua should bring the account back under its own administration.

He also thought that after it had agreed a repayment plan with Miss W, which she had kept to, Aqua shouldn't have entered a default with credit reference agencies. He referred to the "Principles for Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" – published by the Information Commissioner's Office (ICO). These principles stated that where a temporary reduction in payments had been jointly agreed between a borrower and a lender then although arrears may continue to accrue, a default shouldn't be recorded. So, he said the default should be removed.

Because of the distress and inconvenience caused to Miss W as a result of what happened he also thought Aqua should pay her more than the £75 it'd offered. He said it should pay her £150.

Aqua didn't agree. It said it was prepared to bring the account back under its administration and pay the increased compensation. But it wasn't prepared to remove the default which it said was accurate. It also said that removing the default wouldn't help Miss W since it would have to default her account after the repayment plan ended unless she was able to clear the arrears at that time.

Because Aqua didn't agree the complaint has been passed to me to decide.

### **What I've decided – and why**

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

I can see that Miss W provided information to Aqua about her personal and financial circumstances. She spoke to Aqua on 2 April 2019 and told it Citizens Advice would be contacting it on her behalf.

Just before she contacted it, Aqua had sent her a default notice dated 23 March 2019. I've carefully considered the terms of the default notice. It says that if she can't pay the amount requested, she should contact Aqua or get help from organisations such as Citizens Advice. Attached to the notice is an information sheet which tells her not to ignore the situation. It says there are things she can do and people who can help her. So, Miss W did the right thing. She contacted Citizens Advice and the repayment plan was agreed.

In these circumstances I agree with our investigator that a default shouldn't have been entered. That is also in line with the ICO's 'Principles for Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies.' Aqua had agreed to a temporary reduction in the monthly payments. The Principles say that in these circumstances, although arrears could've continued to accrue, a default shouldn't be recorded. So, the default should be removed.

I've thought about what Aqua has said concerning the position after the default is removed. It says a default would have to be registered again since the arrears would have continued to accrue. But if, at the review date, a balance was still outstanding I would've expected Aqua to try to agree an affordable repayment plan to clear the arrears within a reasonable period of time.

Miss W has advised us that her circumstances have changed. She has recently been able to clear the balance on the account. So, given that the account has been settled in full, the issue of registering a default, after the account comes back to Aqua, no longer arises.

I agree with our investigator that, given the circumstances in this case, the account shouldn't have been sold to a third party. It should be brought back under Aqua's administration. Aqua has agreed to do that. And, it says when this happens the party which purchased the debt will remove all its entries at credit reference agencies. I will require Aqua to take all reasonable steps to ensure that the default is removed.

I also agree with our investigator that £150 is fair and reasonable compensation for the distress and inconvenience which Miss W has experienced as a result of what's happened.

## **Putting things right**

Having considered everything here I think Aqua should take the following action to put things right:

- Bring this account back, to its own administration, from the third party-purchaser;
- Remove the default which has been registered at credit reference agencies. If the default was registered by the third-party purchaser, Aqua should take all reasonable steps to ensure that the default is removed by the third-party purchaser; and
- Pay Miss W £150 by way of compensation.

## **My final decision**

For the reasons given above I uphold this complaint about NewDay Ltd trading as Aqua and I require it to take the following actions:

- Bring this account back, to its own administration, from the third-party purchaser;
- Remove the default which has been registered at credit reference agencies. If the default was registered by the third-party purchaser Aqua should take all reasonable steps to ensure that the default is removed by the third-party purchaser; and
- Pay Miss W £150 by way of compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 15 September 2020.

Irene Martin  
**Ombudsman**