

## **The complaint**

Miss G complains that NewDay Ltd trading as Aqua has added fees and charges to her account which have kept it constantly over its limit. She also complains about poor service.

## **What happened**

Miss G had a credit card account with Aqua. She says that Aqua has kept her in a constant circle of debt.

Miss G says she hasn't been using the card but each month Aqua adds fees and charges to her account which means she is constantly over the credit limit. She says she's complained to Aqua about this, but its call handlers have poor attitudes and failed to respond to her complaint in a timely manner.

She complained to our service. Miss G provided us with a letter she'd received from Aqua which stated it was sorry it hadn't been able to resolve her complaint within eight weeks of when she'd first contacted it. So, it told her she could contact our service without waiting for its response. Shortly after she complained to our service, she says she received a final response letter from Aqua. She says Aqua had backdated its final response letter. She says it posted it to her one month after the date of the letter.

Our investigator looked into her complaint. He said that Miss G had made a previous complaint to Aqua about fees and charges that'd been applied to her account and the effect they were having in keeping her over her credit limit. It had sent a final response letter to her dated 19 April 2019. She hadn't referred that complaint to us within six months. She hadn't told us about any exceptional circumstances which prevented her from referring that complaint to our service. So, he said that under our rules we could only consider any fees and charges applied to the account since April 2019.

He said he'd looked at the charges applied to her account since April 2019. He thought that these had been applied in line with the terms and conditions which Miss G had agreed to. He also noted that Aqua had refunded some overlimit fees that'd been applied. He thought Aqua had acted fairly as regards the fees it had applied.

Our investigator then considered what Miss G had said about the poor service she'd received in November and December 2019. He said Aqua hadn't provided any telephone recordings of these calls. So, without any evidence to the contrary, on balance he was persuaded that she'd received poor service. So, he thought Aqua should pay her £75 by way of compensation.

Aqua didn't agree. It said it had provided notes of the calls in November and December 2019. It said these notes showed that during these calls Miss G had been very irate and used inappropriate language. It also said she'd hung up. It said it had registered her complaint as it was required to do. It said its service had not been poor and thought that no compensation should be paid to Miss G.

Because Aqua didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

***What I've provisionally 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.*

*Having done so, I intend to reach a different outcome to the one reached by our investigator. I know this will come as a disappointment to Miss G. So, I'll explain why.*

*At the outset, I'd just point out that I'm not considering any of the issues dealt with in Aqua's final response letter dated 19 April 2019. As our investigator said, those issues weren't referred to our service within six months of the date of that letter. So, in this decision, I've only considered fees and charges applied to Miss G's account after April 2019.*

***Fees and charges added to the account***

*Miss G has complained about the amount of the fees and charges added to her account. She's explained that even though she hasn't been using her card she's been left in a 'circle of debt' with more fees and charges being added each month.*

*I've looked at the statements for the period since July 2019 which was when an overlimit fee of £12 was applied to the account. Prior to that date, I can see the account was very close to the credit limit. Miss G had set up a direct debit so that the minimum contractual payment was made each month.*

*In July a payment was taken from the account for a subscription. I'll refer to this as "the disputed payment" and comment further about it later in this provisional decision.*

*As soon as this payment was taken, the account went over the credit limit. And, in line with the terms and conditions for the account, Aqua charged an overlimit fee.*

*Miss G knew this. She'd complained to Aqua previously about overlimit fees being applied to her account. It had sent her its final response on 19 April 2019. In that letter it told her that a transaction made on 1 November 2018 had caused her account to go over the limit. It explained to her that this meant a further payment was required to be made into the account to bring the account back under its agreed limit. And it explained to her that until the account was brought back under the credit limit overlimit fees would continue to be applied each month.*

*So, when the payment was taken from her account in July 2019, she would've known that in addition to her usual minimum payment she'd have to clear any overlimit amount. This was also made clear on the statement Aqua sent to her in August 2019. But despite this she continued to pay only the minimum payment each month. This meant that overlimit fees were applied in July, August, September, October and November 2019.*

*As mentioned above I don't think Aqua did anything wrong when it applied these fees which are set out in its terms and conditions. Each statement sets out that in addition to the contractual minimum payment an immediate additional payment is required to clear any overlimit amount. And, she knew because of what she'd been told in April, that if the overlimit amount wasn't cleared, an overlimit fee would be applied.*

*So, I'm satisfied Aqua didn't do anything wrong when it applied the fees and charges to her account.*

### The disputed payment

*I've mentioned above that the reason why the account went over the limit was because of a payment that was taken from the account in July 2019. The payment was for £27 and the statement refers to this payment as a "Subscription." Further reference information is set out on the statement.*

*During a call with Aqua on 13 August 2019, Miss G challenged this payment. The notes provided by Aqua indicate her call was transferred to its fraud department to discuss the transaction.*

*I've asked Aqua to explain what happened when Miss G was transferred to its fraud department. But it says there's no evidence on its records that after the call was transferred, she spoke to anyone in the fraud department. It says this suggests she may have ended the call before she spoke to the fraud team. Aqua says this can happen when there are delays.*

*Miss G says that although there have been instances where Aqua told her it was transferring her calls, it didn't put her on silent hold and so she could hear conversations in the background. She also says she's been given a number to ring but all calls to that number just go to an answerphone.*

*I've thought about what both Aqua and Miss G have said here. As I've mentioned above, I've not been able to listen to the call on 13 August 2019. But the notes state that Aqua told Miss G it was transferring her to its fraud team. She wasn't given an alternative number to ring. It may be, as Aqua has acknowledged, she was put on hold for a lengthy period of time and that's why she ended the call before she spoke to the fraud team. And, on balance, I'm persuaded she did hang up before the call was put through to the fraud team.*

*I've also considered the fact that Miss G didn't raise this matter again until December 2019 (some four months later). On that occasion the notes indicate Aqua again offered to transfer Miss G to its disputes team, but she hung up.*

*Aqua says this suggests she cancelled the subscription herself. But I don't think that's correct. I can see a further payment of £27 has been taken from her account on 27 March 2020. That payment has the same description and reference as the payment taken in July 2019.*

*So, I think Miss G may have a recurring payment arrangement set up with this merchant.*

*Miss G says she got a text message about the payment taken in March 2020. She says she has challenged it once. But, if she didn't recognise the payment and was concerned about fraud, despite the issues she's told us about when she contacted Aqua, I would've expected her to have pursued the matter further after August 2019. She doesn't appear to have done that. After August 2019, she didn't raise it again until December, but Aqua says she hung up before being transferred to the fraud team. And, there's no evidence she's asked Aqua to cancel this payment.*

*Having considered the matter, on balance, I think Aqua did try to transfer her to its fraud team in August and again in December. Miss G didn't speak to that team and didn't provide Aqua with the information it would've reasonably required to investigate the matter.*

*I also haven't been provided with any evidence to indicate Miss G asked Aqua to cancel the recurring payment. In these circumstances I don't think it would be fair or reasonable to expect Aqua to have initiated an investigation or to have refunded the money to her.*

#### Poor service

*Miss G contacted Aqua on 14 October 2019 and raised a complaint about charges. She also raised issues about poor service during this and a subsequent call which I'll deal with later in this decision. But, in its final response letter about her complaint I can see Aqua agreed as a gesture of goodwill to refund the overlimit fees applied in October and November 2019.*

*Miss G has queried why the final response letter was sent to her dated 31 January, but the envelope was post marked 28 February. I haven't been provided with an explanation for that. But I can see that Aqua applied the refund, referred to in the letter, to her account around 9 January 2020 which is the date of the statement where the refunds appear.*

*I can also see, on the January statement, Aqua recommended that in addition to the minimum contractual payment Miss G should pay a "recommended extra payment." The statement says this is an additional amount, on top of the minimum payment, which it suggests she should pay "to help you clear your balance faster and avoid persistent debt."*

*So, I think Aqua took her complaint seriously and refunded any overlimit charges applied to the account after the date she'd first complained to it. It is also the case that it recommended she should start to pay more than the minimum monthly payment each month.*

*She wasn't obliged to do this, but I think Aqua was trying to encourage her to reduce her balance so that it would be less likely she'd exceed the limit in the future. By doing that, charges were less likely to be incurred and the "circle of debt" Miss G has referred to was also less likely to continue.*

*Miss G appears to have amended her direct debit instruction so that the additional recommended payment is made each month. And, having considered the actions Aqua took, I think it acted fairly and reasonably. So, I don't intend to uphold this part of her complaint.*

*Our investigator considered the poor service which Miss G said she'd received from Aqua. He said Aqua hadn't provided call recordings and so there was no evidence to contradict what Miss G had said. Aqua disagreed. It said it had provided notes of the calls.*

*It is the case that Aqua hasn't been able to provide us with copies of the calls. We'd asked for these call recordings to be provided but Aqua said it hadn't been able to obtain them. Aqua did provide notes of the calls which Miss G had made to it. And, in cases where call recordings are not available to us, I can take account of what has been recorded in the notes which Aqua made. I can also consider any other information which is available to support what each party has said.*

*Miss G says the behaviour of Aqua's call handlers was poor and rude. The notes indicate that on 14 October Aqua recorded that Miss G was making a complaint about charges. The call handler wasn't able to transfer the call to the complaints team because no one was available at the time. It suggested Miss G should call*

*again the next day. The call handler has recorded that Miss G was very angry during the call, used inappropriate language and hung up.*

*I haven't been able to listen to the call. But, on balance, it appears that Miss G may have been frustrated because of the charges on her account and she couldn't get through to the complaints team straightaway. Having read the notes, I think Aqua was trying to assist her.*

*Miss G phoned back on 26 November and asked for a call back about her complaint. This didn't happen and so she telephoned again on 3 December. She was told that it can take up to eight weeks to hear back from the complaints team. She phoned again on 19 December. The call handler notes that a complaint is outstanding and there is an indication that Aqua has agreed to refund two of the overlimit fees. The call handler offers to transfer Miss G to the disputes team about the payment taken in July but records that Miss G hung up.*

*It is the case that Aqua accepts it hadn't been able to fully resolve the complaint within eight weeks. But it did inform Miss G she could contact our service without waiting for a response. Our service isn't able to tell Aqua what procedures or processes it should put in place as a business. Nor can this service look into concerns about complaint handling processes, which are not a regulated financial activity.*

*Having considered the various points Miss G has raised in her complaint, I don't think Aqua did anything wrong when it applied fees and charges to her account in line with its terms and conditions. It has refunded the overlimit fees it applied in October and November 2019, as a gesture of goodwill. I think that is fair and reasonable. I don't expect it to do anything more.*

*I'm also satisfied it wouldn't be fair or reasonable to have expected Aqua to investigate what Miss G's told us about a fraudulent payment taken from her account in July 2019, when I think, based on the available evidence, she didn't give it the information it would've needed to enable it to do so.*

*And, I'm not persuaded, on balance, there's enough evidence to support what Miss G has said about poor attitudes on the part of Aqua's call handlers. Based on the information I've seen, I'm currently satisfied Aqua recorded her complaints and progressed them in line with its policies and procedures.*

### ***My provisional decision***

*For the reasons given above my provisional decision is that I do not intend to uphold this complaint against NewDay Ltd trading as Aqua.*

Miss G responded to my provisional decision. She made several points:

- She didn't agree that we should accept what Aqua had said when it hadn't provided call recordings; and
- She said she didn't have any faith in our process.

Aqua said it had nothing further to add.

### **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.

Miss G doesn't agree with my provisional decision. She says we shouldn't accept what Aqua has said when it's failed to provide call recordings. I had commented on this in my provisional decision. And, I asked Aqua to check again if it had been able to locate any of the call recordings. It hasn't been able to do that.

As I said in my provisional decision, the call recordings would certainly have provided primary evidence of what was said during the calls. But, where these are not available, it is the case that I can consider the notes – which are Aqua's record of what was said. So, I did take the notes Aqua had recorded on its systems into account. And, as set out in my provisional decision, I also took into account all of the other available information to see whether it supported what had been said or recorded in the notes.

Miss G says she has no faith in our process, and she's queried our independence. Our service was set up as a scheme to resolve certain disputes quickly and with minimum formality. We determine complaints based on what is fair and reasonable in the circumstances of each case. And our role is to resolve disputes fairly and impartially.

So, having considered everything here, I haven't changed my view as set out in the provisional decision. For the reasons set out there, I don't require Aqua to take any further action to resolve this complaint.

### **My final decision**

For the reasons given above I do not uphold this complaint about NewDay Ltd trading as Aqua.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 16 March 2021.

Irene Martin  
**Ombudsman**