

The complaint

Ms M complains that NewDay Ltd trading as Aqua (Aqua) closed her Aqua credit card account.

What happened

Ms M had an Aqua card and a Marbles card. They were both provided by NewDay Ltd. In September 2018, Aqua sold the debt of £1545 on Ms M's Marbles card to a debt collection agency. In May 2020, Ms M tried to use her Aqua card and found it was suspended. Aqua closed the account.

Ms M complained – she needed the card to do shopping. She hadn't been given any notice that Aqua were going to close her account. Her account had been managed well – she'd made all the monthly payments – and more - and it was well within the credit limit of £1600. She didn't know that Aqua and Marbles cards were owned by the same company.

Aqua said they'd decided to close the account as Ms M had told them she was in financial difficulty – in connection with her Marbles card - and couldn't afford to pay. When this happened, they looked at all cards that a customer had with them. As part of being a responsible lender, they might close another account – to make sure that customers didn't borrow more than they could afford. They accepted that when Ms M called them in May 2020 – she was told the account was closed because she'd asked for that. This was a mistake. So, they apologised and paid compensation of £10.

Ms M brought her complaint to this service. Our investigator looked at what had happened. He said that Ms M could've been considered in financial difficulty and therefore Aqua should've contacted her to understand how they could be helped. Ms M hadn't asked for her account to be closed. And Aqua's terms and conditions said that they should've given 30 days' notice to Ms M before closing her account. He said that Aqua should pay compensation of £100.

Aqua disagreed and asked that Ms M's complaint be reviewed by an ombudsman.

I reached a provisional decision where I said:

I take a different view to our investigator. While I uphold Mr M's complaint, it is in the basis of a different analysis.

Ms M's complaint is that her Aqua card account was closed by Aqua out of spite – because her other Marbles card had been sold to debt collectors. She says her Aqua account was being run properly – she was making regular payments to it, and she was well within the credit limit of £1600. She had no idea that Aqua were going to close the account – and was given no notice. She was therefore left without any means of buying day to day essentials such as food. She tried to log into internet banking but that was blocked. When she called Aqua to try to sort things out, she was told the account had been closed because she'd told Aqua that she couldn't afford the payments and had asked for it to be closed. She didn't know that the Aqua card and Marbles card were both owned by NewDay Ltd.

What happened - by way of background - is that Ms M's Marbles card debt of £1545 was sold to a debt collector in September 2018. That's not the subject of Ms M's complaint here. Aqua say that where a customer is in financial difficulty and having trouble in making payments – then they have an obligation to ensure that they don't borrow too much money. That's in the interest of its customers. And they can look at all the cards and products that they offer to do that. So – they could look at the Aqua and Marbles card together. And they can suspend, stop or cancel accounts without notice.

Their terms and conditions say *"We may refuse to authorise a transaction or reissue a replacement card, or we may cancel or suspend your use of the account or reduce your credit limit if not doing so would put us in breach of any legal requirements that apply to us or we reasonably...Believe that there is an increased risk that you may not be able to repay the amount you owe us (this could be because of the way you manage this account or other accounts you have with us, information we get from credit reference agencies or us finding that you are bankrupt or have made an arrangement with your creditors, or because you have not been making sufficient payments to your account and we reasonably believe that you may be in financial distress)"*

So – there's no doubt that Aqua were acting within their terms and conditions when they suspended Ms M's Aqua card account and then closed it – and they didn't have to give any notice.

But – I must decide whether they acted fairly in this case – and I don't think they did.

I've looked at how Ms M's account operated. The limit was increased from £600 to £1600 between September 2016 and October 2019. The increases in limits were offered proactively by Aqua. Ms M could've opted out of the offers but didn't. The month end balance varied between £492 and £1555 debit in the same period. There were only five over-limit fees charged, and no late fees made in the three-year period. So, the account was pretty well run.

I've looked at the statements for the card account for the six-month period from December 2019 to May 2020 (when the account was closed by Aqua). These show no instances of late payments or over limit balances. And the statement balances were:

December 2019 - £1405 debit (limit £1600)
January 2020 - £1369 debit (limit £1600)
February 2020 - £1006 debit (limit £1600)
March 2020 - £6 debit (limit £1600)
April 2020 - £1 credit (limit £1600)
May 2020 - £57 debit (limit £1600)

These do not suggest Ms M was in financial difficulty at all. Ms M said to Aqua in her call to them in May 2020 that she was running her account well – and I agree with her. On the face of it, she didn't appear to present an increased credit risk to Aqua.

And – if Aqua did consider Ms M to be in financial difficulty and was having trouble in making payments – then they should've got in touch with her to see what could be done to help. Where this is the case - businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like Aqua should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt. But – Aqua didn't get in touch with Ms M – they just closed her account.

I accept that Aqua followed their processes here, but strictly following a procedure or process can lead to an unfair outcome for a customer in the individual circumstances of their situation. I think that's what's happened here.

The outcome was that Ms M was left without a card – her account was closed without any warning. This was inconvenient and stressful. So, my provisional decision is that Aqua should pay compensation of £200. I can't insist that they re-open an account for Ms M.

Responses to the provisional decision:

Ms M accepted my findings – but said that Aqua hadn't paid the £10 compensation they offered.

Aqua disagreed. They said (in summary):

- It was clear to Ms M that Aqua and Marbles accounts were run by the same company – this was on statements and mailings.
- They acted within their terms and conditions to suspend and close Ms M's Aqua account.
- They agreed the account was being run well, but they'd been advised she was in financial difficulties and therefore they acted responsibly in closing her account – to ensure she didn't get into more debt. They didn't get in touch with Ms M to discuss how they could help – because the balance was zero – and so there wasn't any support that could be given.

So – I now need to make a final decision.

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've reflected on what Aqua have said in their response to my provisional decision.

I agree that the statements for Marbles and Aqua do say that "*credit is provided by NewDay Ltd...*". But - it's shown in the "small print" at the bottom of the final page. And – for a customer to make a connection between that reference shown individually on each card's statement – and then to consider what that might mean - is asking a lot.

I agree that Aqua had the right to close the account – within their terms and conditions. I reflected that in my provisional findings. But – there are occasions - when a business relies on its processes and term and conditions – that this results in an unfair outcome for a customer – and I think that's what's happened here. Given that Ms M's account was being run well – it just seems unfair to simply close her account without any warning or discussion. I accept that if Ms M's account wasn't being conducted as well as it was – then Aqua's actions might well have been justified.

I've considered Aqua's argument regarding Ms M's financial difficulties – that there was nothing to discuss with her because her balance was zero (or very low). But, there was still a credit limit of £1600 in place – and so Aqua's potential risk was for that amount. And, so – if she was in financial difficulty, then they should've contacted her to discuss matters. Especially as the account was running well – to find out what was happening.

So – my final decision is to uphold this complaint – and ask Aqua to pay to Ms M compensation of £200 for distress and inconvenience. This to include Aqua’s original offer of £10.

My final decision

I uphold this complaint.

NewDay Ltd trading as Aqua must pay to Ms M compensation of £200, to include their original offer of £10.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 4 May 2021.

Martin Lord
Ombudsman