

The complaint

Miss L complained that NewDay Ltd (trading as Aqua) failed to respond after she told them about her financial difficulties and made an offer to settle her debt with them

What happened

Miss L was accepted for an Aqua credit card account in February 2019. She wrote to Aqua on 18 July 2019. She said that her circumstances had changed, and she was unable to pay what she owed in full. She said that she was no longer in the UK and had no address for correspondence. She said she was corresponding by email. She offered Aqua an amount in full and final settlement of what she owed.

Miss L received an email from Aqua about her account in August 2019. So, she spoke to Aqua and told them about the letter she'd sent to them but heard no more.

Having returned to the UK, Miss L received a letter from Aqua dated 17 January 2020. They said that her account was in default and that this would be recorded on her credit file with the credit reference agencies. They told her to contact a debt management company (DMC) who were dealing with her account. So, Miss L rang Aqua. They told her that they'd replied by letter to her offer and made a counter offer for her to repay £276.81. They told her to speak to the DMC.

Miss L called the DMC. They said that they hadn't received her account yet. They suggested calling Aqua.

So, Miss L called Aqua again. She said that she'd written to them in July 2019 but hadn't received a reply. They said that her account was being handled by a DMC.

Miss L called the DMC again. They said they wouldn't receive her account from Aqua until 28 February 2020. So, Miss L wrote to both Aqua and the DMC on 21 January 2020. She explained the situation and said she would be prepared to pay their counter offer in full and final settlement of the debt. The DMC acknowledged her letter but there was no reply from Aqua. So, Miss L wrote to Aqua again on 17 February 2020.

The DMC wrote to Miss L again on 22 February 2020. They were awaiting a response from Aqua. She then received a further letter from the DMC telling her that a default would be registered from 28/02/2020. They said she should write to Aqua.

Miss L wrote to Aqua again on 12 March 2020. She'd still not received any response to her previous letters. She was unhappy with the default as she'd tried to resolve matters with them.

Miss L received a letter from Aqua dated 19 March 2020. They said that they'd sold her debt to another company. But they didn't refer or reply to any of her previous letters. Miss L then received a letter from this company, also dated 19 March 2020. They told her that they'd bought her debt and asked her to contact them. So, Miss L wrote back to them on 24 March 2020 and explained the situation. They replied and said that they'd put her account on hold and forwarded her letter to Aqua as a complaint. They were waiting for Aqua to reply,

Aqua replied to Miss L on 15 April 2020 acknowledging her complaint. They wrote again on 23 April 2020 apologising for the delay in dealing with her complaint. Then, on 20 May 2020,

they wrote to her again to say they were still looking into her complaint. They said she could refer matters to this service.

Aqua replied to Miss L's complaint on 27 May 2020. They said that they hadn't done anything wrong. So, Miss L contacted them again. Aqua agreed to reopen her complaint and investigate it further. Miss L also emailed them on 3 June 2020. She said she wasn't happy with their reply of 27 May. But by early September, she still hadn't received a reply from Aqua. So, Miss L decided to refer her complaint to this service.

One of our investigators thought that Aqua hadn't acted fairly here. He said that Aqua should accept the sum offered in their counter offer to settle the debt. He also said that they should arrange to remove the default from Miss L's credit history. Aqua didn't agree with our investigator. So, they asked for the complaint to be referred to an ombudsman for a final decision.

Having reviewed Miss L's complaint, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 21 May 2021 – giving both Miss L and Aqua the opportunity to respond to my findings below, before I reached a final decision.

In that decision, I said:

I looked at Miss L's monthly statements for her account with Aqua. I can see the account operated without problems until May 2019 when she incurred a late payment fee and an overlimit fee. These appear to have been fairly applied based upon the account situation at the time. Aqua also sent a notice of default to Miss L.

Miss L's account was benefitting from a promotional rate. Because of the default, Aqua wrote to her cancelling the promotional offer. This is not unusual where there has been a default against the agreement. They then wrote to Miss L on 24 May 2019. They said that she was over her credit limit and they'd stopped her account until it was adjusted. Again, this is what I'd expect to see. Miss L's June and July 2019 statements show that she'd corrected the situation.

I then looked at Miss L's letter to Aqua dated 18 July 2019. She specifically tells them that her earnings had dropped significantly, and she was unable to pay what she owed in full. She offered them £111 as full and final settlement. She explained that she was no longer at the address held and was living, temporarily, outside of the UK. She said, *"I am corresponding via email"*. So, I think it is clear that Miss L was in some financial difficulty and she was trying her best to offer a solution and settlement.

Aqua say that they replied to Miss L's letter in writing. But this was sent to the address they held for her. But she had already told them that she no longer lived at that address. Miss L said that she has never seen Aqua's reply and Aqua have not provided us with a copy of this letter. Aqua have also told us that mail had been returned from this address before then.

I've then considered the letters sent by Miss L to Aqua on 21 January 2020, 17 February 2020 (sent by recorded delivery) and 12 March 2020. In particular, Miss L agrees to pay Aqua's counter offer of £276.81 in full and final settlement. Aqua say that they didn't receive any of these. But the letters appear to be correctly addressed. I can't hold Miss L responsible if these letters failed to reach Aqua as they say. This was not her fault and it's clear she wanted to resolve matters.

Aqua responded to Miss L's complaint after it had been forwarded to them by the company that bought her debt from them. They said that *"we are unable to send a response by email as it is not a secure method of communication..."*. Aqua told us they *"don't have the facility to correspond about specific account details by email"*. This is why they wrote to her at the last address held. But they had emailed her about her account in August 2019.

I've looked at the account Terms and Conditions provided by Aqua. Section 18.1 says *"You must always tell us if you...change your address, email address or phone number..."*. Section 22.1 says *"We may contact you about your account using the most recent contact details that we hold for you. We may provide you with notices about your account including notice of any changes, by any means including...any electronic means, including by email..."*

I've also looked at the Credit Card Agreement provided by Aqua. Under *"How we will contact you"* it says, *"We will use the most recent address (post and email) and telephone and mobile numbers...for all purposes"*. So, I believe it's entirely reasonable for Miss L to conclude that Aqua would be able to respond to her letter by email as she'd requested. But Aqua didn't do that here.

Following Miss L's referral to this service, Aqua sent a further response to Miss L's complaint on 13 October 2020. In it they said that their terms and conditions *"state you must inform us of any changes to your personal details, this includes changes to your address"*. Miss L did inform Aqua of her circumstances in her letter of 18 July 2019. So, I think she complied with this requirement. Aqua were provided with a means through which to reply and contact her. Aqua also confirmed that they'd received this letter. Miss L had told them she was no longer at the address held and provided them with alternative contact information.

Aqua go on to say that Miss L claims she *"responded by letter advising that they would like to accept this (Aqua's counter offer for settlement). However, we did not receive this letter"*. I can see that Miss L's acceptance was included in her letter to Aqua dated 21 January 2021.

Also, in their letter, Aqua said that *"there is nothing to indicate you have ever contacted us to inform us you were experiencing financial difficulties or any other issues that may have impacted your ability to manage your account. If this was the case, we may have taken this into consideration if you contacted us at the time"*. I think that Miss L's letter of 18 July 2019 is very clear on this point. I also believe that Aqua were aware of this given that they confirmed that they'd made a counter offer for settlement.

Aqua have said that *"To have an Aqua account a customer must have a UK address at which they are resident"*. I have checked Aqua's terms and conditions, the credit card agreement and their website. I can't find any reference to this requirement within any of them. So, I can't see this has been formally communicated as a requirement. In any event, Miss L was resident in the UK when she applied for the account.

So, having considered all the information and correspondence available, I am persuaded that Miss L made continued efforts to resolve the situation with Aqua and was willing to reach a settlement agreement. On balance, I agree with our investigator her. I don't believe that Aqua have treated Miss L fairly. I believe that Aqua could've done more to support Miss L and resolve the matter far sooner. They'd received her original offer and had been provided with the means through which to contact her. Even if they were unwilling to email confidential information, they could simply have emailed or called her asking to discuss matters. They didn't do that here. So, I will be asking Aqua to put things right.

If Aqua had replied to Miss L using the details provided, I believe it's more likely than not that the situation would've been resolved, and the debt wouldn't have been sold on. So, I think Aqua should buy back the debt from the company that they sold it to.

CONC 7.3.4 within the FCA handbook states that *"A firm must treat customers in default or arrears difficulties with forbearance and due consideration"*. Miss L had clearly explained her situation to Aqua in writing and had done this promptly. CONC 7.3.5 goes on to say *Examples include (1) considering suspending, reducing, waiving*

or cancelling any future interest or charges...". I believe this is what a responsible lender would've done in these circumstances.

I believe that Aqua should have frozen Miss L's account at the point she advised them of her difficulties (i.e. 18 July 2019). So, any interest and charges added to the debt should be refunded from that point onwards. Aqua have confirmed that they were willing to accept a payment in full and final settlement of Miss L's debt in response to her letter. And I think that's what they should do here.

I also recognise that the situation has been ongoing for a considerable period of time. Miss L said that the situation has been distressing and frustrating for her. I can see why she would feel this way and so I believe that my decision should ensure that Miss L is compensated for Aqua's inaction here.

But Miss L also believes that the default should be removed from her credit file. I realise that Miss L will be disappointed, but I don't agree. A person's credit file must be an accurate reflection of what has happened. Miss L did default on the agreement. So, once Aqua have refunded any charges and interest applied after 18 July 2019, the defaulted debt amount should be amended to reflect this on her credit file. Once the amount of £276.81 has been received from Miss L (Aqua's counter offer), the debt default on her credit file should then be amended to show as 'Partially Satisfied'. Although Aqua will have accepted this in full and final settlement, the debt won't have been cleared in full. So, the credit file must reflect this.

Aqua responded to say that they had nothing more to add. Miss L didn't respond to my provision 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.

Having given both Miss L and Aqua the opportunity to consider my provisional decision, neither party have provided me with anything that leads me to change my mind. So, my decision here will remain as detailed in my provisional decision of 21 May 2021.

My final decision

For the reasons set out above, I uphold Miss L's complaint. I require NewDay Ltd (trading as Aqua) to:

- Buy back Miss L's Debt.
- Return the balance owed figure to that outstanding at the date of her letter (18 July 2019) by refunding any charges and interest applied after that date.
- Amend Miss L's credit file to reflect this new debt amount within the default recorded.
- Accept £276.81 in full and final settlement of the outstanding debt.
- Show the default registered on Miss L's credit file as 'Partially Satisfied'.
- Pay compensation to Miss L to reflect the distress and inconvenience caused of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 20 July 2021.

Dave Morgan
Ombudsman