

The complaint

Miss R complains that NewDay Ltd trading as Aqua (Aqua) didn't refund fraudulent payments to her account or adjust the interest.

What happened

Miss R had an Aqua credit card. In March 2018, there were suspected fraudulent transactions on her account. Her card was stopped on 9 March 2018. This was lifted on 22 March 2018. The transactions remained on her account. On 16 March 2018, Miss R complained about the stop on her account. Miss R contacted Aqua again about the transactions on 12 June 2020. There were seven suspect payments totalling £1764.89. Aqua refunded three payments totalling £842.89 – in June 2020. The balance was then £5806.59 debit. In June 2019 and October 2019, Aqua sent Notices of Default. In February 2020, they sent Notice of Registration of the default. The outstanding balance is now £4,881.44.

Miss R complained – that if Aqua had made the refunds of the fraudulent transactions when they should have - in March 2018 and adjusted the interest – she would have been able to make the payments to the card. Therefore, the defaults on her credit file were unfair and should be removed. She said the adjustment of interest hadn't been made.

Aqua said they didn't have any record of contact with Miss R about the suspect transactions in March 2018. But they'd refunded the three payments for £842.89 – as, with the elapse of time, they didn't have enough information to investigate them. So, they made the decision to refund them. But they were satisfied that the others were made by Miss R and didn't refund those. During our investigation, they realised they had made an error as they hadn't adjusted the interest for the payments made – and offered to refund £755.15 for this. They also admitted some service failings in not dealing with Miss R's complaint in time and in full. And offered compensation of £150 for this. But they said that Miss R hadn't made the contractual payments to her account, or to the payment arrangements that had been agreed – and therefore the default on her credit file should remain.

Miss R rejected Aqua's offer – and brought her complaint to us. Her main request was that the default on her credit file be removed. She said she refused to make any more payments to Aqua until the defaults were removed. Our investigator said Aqua had acted reasonably. Miss R was still required to make the minimum payments to her account. There wasn't a sufficient link between the disputed transactions in March 2018, and the default which occurred two years later. In March 2018 to June 2018 – Miss R was within her limits – and so, whether the transactions were refunded, or not - at that stage - wasn't relevant. And, Miss R continued to use the card – so could've followed up with Aqua on the fraud claims. She had stopped making payments to the card in April 2019, and given what he'd seen, Aqua were correct in applying the defaults when they did.

Miss R disagreed and asked that an ombudsman look at her complaint.

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.

The crux of Miss R's complaint is that Aqua should've refunded her with the fraudulent transactions of £842.89 in March 2018. And – In June 2020, they should have refunded interest charged of £755.15 on those payments – because her debt was too high – by £842.89 - as a result of the delay in the refunds. So, I must decide whether – if she had had the benefit of the £842.89 in March 2018 and had paid £755.15 less interest between then and June 2020 – whether things would have been different. Effectively, by June 2020, Miss R would argue that her debt was higher by £1598.04 than it should've been.

In considering Miss R's complaint, let me say that I've reviewed all of her and Aqua's letters about this and her other complaints. But I am only going to refer to what's necessary to deal with Miss R's specific complaint here.

Aqua took a commercial decision to refund the disputed transactions in June 2020 – because they hadn't got the information from two years before. So – that worked to Miss R's benefit, and I think that Aqua acted fairly here. Aqua say they didn't have any record of contact with her in March 2018 – other than that she had complained that her account had been stopped because of the suspected payments. This was then lifted. I must say that I find it odd that Miss R didn't raise the matter with Aqua again for over two years – when she had been receiving monthly statements, arrears letters and Notices of Default (all of which I've seen) during that period.

Looking ahead to what happened later – in April 2019, Miss R stopped making payments to the card. I can see she was then in arrears and was sent arrears letters as follows:

Letter Date	Arrears Amount	Balance of Credit Card	Account Limit
20 May 2019	£259.49	£6,580.37	£6,200
10 June 2019	£259.49	£6,592.37	£6,200
11 July 2019	£197.89	£6,194.95	£6,200
12 August 2019	£278.92	£6,200	£6,200
23 September 2019	£251.04	£6,290.32	£6,200

In July 2019, August 2019 and September 2019, she missed payments. In June 2019, Aqua sent a Notice of Default for £503.26. In August 2019, Aqua agreed a payment arrangement of £283 per month. But this wasn't kept to and they sent another Notice of Default in October 2019 for £496.06. In February 2020 – Aqua sent a notice to say the default would be registered within 28 days. In July 2020, Aqua agreed another payment arrangement of £170 per month. I've seen that one payment was made, but no more after that. I agree with our investigator that – no matter what happened, Miss R was obliged to make the minimum monthly payments to her account – but she didn't.

In considering whether the defaults were advised correctly, we follow the guidance from the Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. And – I can see that because Miss R was so far in arrears, they were justified in defaulting Miss R's account.

Aqua say they didn't get any contact from Miss R about the disputed amounts – until June 2020. So – I don't think it's fair to expect them to have done anything differently.

In matters such as this, I must make a decision based on the probabilities of what might have happened and in the circumstances of Miss R's complaint. And looking at what happened here, I'm not persuaded that Miss R would've acted any differently had she had the money (£1598.04) earlier.

I've considered whether Miss R could've made the payments to the account if she had had the benefit of the amount in question - £1598.04 – since March 2018. I've looked at the minimum contractual payments needed on her account. For five months between January 2019 and May 2019 – these averaged £261 per month – so, that's over £3,100 in a year. So, that's obviously a lot more than the money she might have had available to her. So - I think it's unlikely that it would've made a lot of difference in terms of how things played out.

And – Miss R had the chance to raise the issue of the refunds several times during the two years between March 2018 and June 2020 – but she didn't. Aqua have confirmed that.

And so – my final decision is to not uphold this complaint. If Miss R still wishes to receive the interest refund of £755.15, and compensation of £150, she should get in touch with Aqua to arrange this to be paid to her.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 15 September 2021.

Martin Lord
Ombudsman