

The complaint

Miss F complains that NewDay Ltd (trading as Aqua) unfairly reported a default to her credit file.

What happened

In August 2016, Miss F opened a credit card account with Aqua. The account fell into arrears in December 2017 and a couple of payments were missed. Miss F's account had also exceeded its credit limit. She made a payment of £50 towards her account on 2 February 2018. But despite this payment being made, the account was £24.44 over its limit. Miss F didn't make payments towards the account in March 2018 and April 2018.

On 13 April 2018, Miss F called Aqua and let it know that she had a reduction in income. She promised to make a payment of £146 to the account on 27 April 2018. Aqua issued a default notice on 26 April 2018 explaining that Miss F needed to pay £95.64 by 17 May 2018 to prevent the account defaulting. Miss F didn't make the payment as she had promised to. So Aqua sent a reminder default notice on 17 May 2018, closed the account and explained it had been passed to a debt collection agency. I'll refer to the debt collection agency as 'P'.

In June 2018, Miss F contacted Aqua and told it that she had agreed a payment plan with P to repay £50 a month. She told Aqua that P had said a default wouldn't be recorded on her credit file whilst she was making payments under the payment plan. She says Aqua told her she didn't need to make a payment until February 2019 and as long as she did this, her credit file wouldn't be affected. She says on this basis, she agreed to make reduced payments of £20 per month to P under a payment plan. In February 2019, the account was defaulted and sold to a company I'll call 'L'.

In January 2020, Miss F complained that Aqua had recorded a default on her credit file, despite her having agreed a payment plan with P.

In March 2020, Aqua looked into the complaint and said it may have provided incorrect information about the payment plan preventing a default being reported. It offered to pay Miss F £25 to cover any trouble and upset caused. Unhappy with this, Miss F referred her complaint to our service.

Our investigator looked into the complaint and upheld it. She thought the information provided by Aqua in June 2018 about the payment plan and the impact to the credit file could have been clearer. She said if it had been, Miss F could have explored other ways to pay her debt without her credit file being affected. Our investigator didn't think Aqua were entitled to default the account in February 2019 and asked it to remove the default and pay £50 for the trouble and upset caused.

Aqua disagreed, so the complaint was passed to me to decide. I sent both parties my provisional decision on 1 July 2021. My findings from this decision were as follows:
"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I've considered whether I think Aqua acted incorrectly or made any errors when it reported a default to Miss F's credit file. On balance, I don't think it did. I've explained why below.

Under the terms and conditions of Miss F's agreement, Aqua explains that missing payments can have serious consequences - such as making credit more difficult to obtain. When a minimum monthly payment under a credit agreement is missed, the account falls into arrears. If payments are missed for at least three months, a lender considers the account to be in default and can register a default to a customer's credit file.

All lenders have an obligation to notify credit reference agencies of accurate data on borrowers. The Information Commissioner's (ICO) guidance is that a default can be registered after three missed payments and is expected after six missed payments. And even where payment plans are agreed, a customer is still considered to have broken the terms of their credit agreement and so be in default of their agreement.

In April 2018, given that Miss F had missed more than three monthly payments, she had only made one payment in six months and her account was over its limit between December 2017 and April 2018, I think Aqua could have defaulted her account at this point.

However, Miss F made a call to Aqua on 4 June 2018 to discuss her account. I've thought about what Miss F told Aqua about the impact of a payment plan to her credit file during this call. I've also considered Aqua's response during this call and all the information it provided to Miss F, both in writing and on the phone.

During this call, Miss F called Aqua as she had received a letter from Aqua explaining her account was closed and it would be defaulted. She said P had told her she wouldn't receive a default to her credit file if she made payments under a payment plan. She explained that she didn't want her account to be defaulted. The advisor directed Miss F to P and told her the account was with them. The advisor said they couldn't confirm or deny whether a default would be registered to her credit file.

Aqua say they may have potentially provided incorrect information during this call. I think they did provide incorrect information when they told Miss F the account was with P and no longer with Aqua. P were collecting the debt on behalf of Aqua. But Aqua still owned the account and were still responsible for reporting information to Miss F's credit file. However, whilst the advisor wasn't clear on this aspect, the advisor didn't give any indication that a default wouldn't be registered.

As P is no longer trading, it's unclear what information it told her about the default. Miss F hasn't provided evidence of confirmation of her payment plan with P. I appreciate this may be due to the length of time that has passed.

Having said this, Aqua have provided system notes which confirm that P told Aqua it had agreed a payment plan with Miss F of £50 per month on 28 June 2018. At this point, the account was in over its limit by £153.98. On 2 July 2018, Miss F made a £50 payment. She didn't make any further payments and so the payment plan was removed by P on 16 October 2018. Miss F made a payment of £15 on 7 January 2019 and a payment of £20 on 21 February 2019.

I've thought about what other information Aqua provided Miss F.

I've seen copies of a number of missed payment letters and statements sent by Aqua to Miss F. The statements since December 2017 and February 2019 all confirm that Miss F's account is over its limit. They all state the following:

“You have failed to make a minimum payment. Failing to make your minimum payment can mean that you have broken the terms of this credit agreement and could result in us taking legal action against you. It could lead to your having to pay additional costs and make it more difficult for you to obtain credit in the future”.

And when Aqua sent Notices of Sums in Arrears statements, they enclosed an arrears information sheet issued by the Financial Conduct Authority (FCA). This information sheet provides debt advice and states:

“Doing nothing could make things worse. The lender could take legal action against you, and you could end up paying more in interest and charges. Missed payments could affect your credit rating and make it more difficult to get credit in the future”.

And the Default Notice dated 26 April 2018 said, “You must pay £95.64 by 17 May 2018...What will happen if I don’t pay before the date shown? We’ll terminate your credit agreement with us, close your credit card account and ask you to pay the full account balance immediately. If we terminate your credit agreement, we may sell your account to a third party. We will also share details of the status of your account with credit reference agencies which may make it harder for you to get credit in the future”.

So, the letters Aqua sent Miss F were clear – that legal action could take place and credit reference agencies notified.

In this case, I think it’s reasonable that Miss F should have been aware that her account may be defaulted, as Aqua hadn’t told her it wouldn’t be following the call in June 2018. And Miss F broke the terms of the payment plan with P in August 2018, when she didn’t make a payment.

Generally when the terms of a payment plan aren’t met, the ICO guidance confirms that a lender is entitled to apply a default as soon as a payment is missed, as long as a customer is three months in arrears on the original agreement. So Aqua could have defaulted the account in August 2018. Here, Aqua applied a default on 27 February 2019 when it sold the account to L and defaulted it. I think it was entitled to do this given the length of time the account had been in arrears and that it had notified Miss F that her credit file could be affected

Having said this, I think Aqua should have applied the default earlier. The default notice it sent in April 2018 stated Miss F needed to make a payment by 17 May 2018. Miss F didn’t make a payment until 28 June 2018. As Miss F hadn’t made a payment towards the account for six months – between December 2017 and May 2018 - and the account was in arrears, I think Aqua should have applied the default in May 2018 when it notified Miss F it would.

Lenders should stop applying interest and charges from the date of an account being defaulted. In this case, I can see Aqua stopped applying interest and charges to the account after 17 May 2018. So I don’t require it to make any amendments to the account balance.

I have every sympathy with Miss F’s situation, given the impact a default can have. But I must make a decision based on the balance of evidence here. And here given the letters and notices that Miss F was sent, she should have been reasonably aware that a default would be registered.”

I gave both parties four weeks to respond with any further comments or evidence. Both Miss F and Aqua got in touch and said they didn’t agree to my provisional 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 reviewed the points both Miss F and Aqua made following receipt of my provisional decision. Having done so, my provisional decision remains unchanged. I've explained why below.

Miss F said despite what Aqua told our service, she hadn't missed payments as it said she did. She said this meant she wasn't over her credit limit. She also said she hadn't received the letters Aqua claimed it sent her and Aqua didn't tell her the debt had been transferred to P. Aqua said it had applied the default in line with its internal policy.

The two bank statements Miss F sent showed payments made to Aqua between August 2016 and February 2018. These payments are reflected in the credit card statements that Aqua sent our service. But despite these payments, Miss F's account was still over its limit. And no payments were made to the account between 2 February 2018 and 2 July 2018. So Aqua was entitled to default the account in May 2018, as more than three monthly payments had been missed and the account remained over its credit limit.

Miss F also said she didn't receive the letters that Aqua claims it sent her. She accepts she received a copy of the default notice in June 2018, but says she didn't receive a default notice prior to this. I've seen a copy of the default notice sent to Miss F in April 2018, the missed payment letters and statements Aqua sent Miss F. I can see the letters it sent Miss F were all addressed correctly. There may have been postal issues, but I can't hold Aqua responsible for this. I think it's more likely than not the letters were sent to Miss F, given she received the default notice in June 2018 and her address hadn't changed.

In addition, Miss F called Aqua on 13 April 2018 and was aware that her account was in arrears and needed to be brought up to date. A payment wasn't made by the date she promised to pay by, so she would have been reasonably aware that Aqua may take further action if she didn't bring the account up to date. Miss F agrees the terms and conditions of her account state after three missed payments, there's a possibility for further action, including negative reporting to her credit file. She says it doesn't state this is a given. However, I'm satisfied Aqua sent Miss F a default notice in April 2018 explaining a default would be applied if the account wasn't brought up to date. So I think Aqua did make it clear a default would be applied to Miss F's account.

I sympathise with Miss F about the situation she found herself in, given that she said her income was significantly reduced. I also acknowledge that the account was passed to P and then sold to L. However, this is action Aqua was entitled to take to recover the amounts owed to it, given the account had been over its limit for some time.

I've also thought about whether it was reasonable for Aqua to default the account in February 2019.

I accept Aqua says it followed its internal policy when it defaulted the account. However, having considered the circumstances, I think Aqua should have defaulted the account earlier as Miss F's account had been over limit since December 2017 and so she was in breach of the terms and conditions of it. Miss F didn't make a payment towards the account until after date of the default notice, she hadn't made any significant payments to reduce the arrears and it was unlikely, given her circumstances, that she would have been able to reduce the

arrears for some time. In fact the account was still in arrears when the default was applied in February 2019. So, considering these reasons, I think it would have been fair for Aqua to default the account in May 2018 when it said it would.

My final decision

My final decision is that I uphold this complaint. I instruct NewDay Ltd (trading as Aqua) to arrange to amend Miss F's credit file to show the default date as 17 May 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 7 October 2021.

Sonia Ahmed

Ombudsman