

## **The complaint**

Ms K complains that NewDay Ltd (trading as Aqua) recorded a default on her credit file and sold her debt to a third party, despite a payment plan being agreed and being told not to worry about letters she received.

## **What happened**

Ms K held an Aqua credit card account. In March 2020, Ms K contacted Aqua as her household income had been adversely impacted by the effects of the global pandemic. So, Aqua agreed a payment holiday until June 2020.

When the payment holiday expired, Ms K was still struggling financially. So, she approached Aqua to see what additional support they could provide. Aqua requested details of Ms K's income and expenditure to see what she could afford to pay. They agreed a 'fair treatment' payment plan with payments of £1.00 per month for 12 months.

Ms K says Aqua told her she would receive default letters, but she shouldn't be too concerned, and this was part of the normal process. In October 2020, Ms K received a default notice from Aqua. This was followed by a letter in January 2021 confirming that Aqua were registering the default with credit reference agencies.

Ms K says Aqua then sold her outstanding debt to a third-party company, but they didn't tell her they were doing this. The first she knew about it was when she received a letter from the third-party company.

Ms K complained to Aqua. She wasn't happy they'd recorded a default as she said she hadn't been told this would happen. She also didn't know her debt had been sold on.

Aqua responded to Ms K's complaint in May 2021. They agreed that she hadn't received the level of service they would expect. But they didn't agree they'd done anything wrong. They said they'd followed the correct process in registering a default, in view of the arrears on Ms K's account. They also confirmed that a business decision had been made to sell the remaining debt to a third-party company. They believed they were entitled to do that.

Ms K wasn't happy with Aqua's response to her complaint. So, she referred her case to this service to consider further.

Having investigated the circumstances of Ms K's complaint, our adjudicator didn't think Aqua needed to do anything more. He thought Aqua were entitled to take the actions they did.

Ms K didn't agree with our adjudicator's findings. She said she'd made it clear to Aqua she wanted to avoid a default being recorded on her credit file. She thought the fair treatment plan would avoid this. Ms K also didn't understand how Aqua had taken responsibility for their poor service. She thought they should pay her compensation.

As an agreement couldn't be reached, Ms K's complaint has been referred to me to consider.

## **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.

NewDay's final response to Ms K's complaint upheld that she hadn't received the expected level of service. As it was unclear what this related to, I asked NewDay to explain their finding. NewDay have since confirmed to me that it recognised they were unable to recover a call recording requested by Ms K. But they didn't feel an award was appropriate for this. As businesses aren't required to record calls or retain recordings, I'm unable to disagree with their findings here.

In March 2020, Aqua agreed to defer Ms K's credit card repayments. The support they gave appears to meet the requirements set out in subsequent special guidance issued by the Financial Conduct Authority (FCA). But that guidance was limited in terms of how much support Aqua could provide.

In situations where support under the FCA's special guidance has been exhausted or is not appropriate because financial difficulties are not considered temporary, Aqua would be expected to consider alternative forms of forbearance. The key rules and standards that apply are set down in the FCA's Consumer Credit Sourcebook ("CONC") Section 7. These include:

- Suspending, waiving or cancelling any further interest or charges
- Allowing arrears to be deferred where immediate payment could cause payments to be unsustainable or where the term would not be increased excessively
- Accepting token payments for a reasonable period of time in order to allow the consumer to recover from an unexpected reduction in income.

When Ms K's payment freeze ended, NewDay reviewed her circumstances together with her income and expenditure. At this point, a substantial shortfall against her expenses was identified which wasn't likely to be resolved in the short term. Ms K confirmed she couldn't afford the contractual repayments. NewDay's offer of a fair treatment plan appears sensible here. This would relieve payment pressure and ensure Ms K's debt didn't rise further as a result of charges and interest. This appears to comply with the FCA's guidance under CONC 7.

But it's important to understand that such a payment plan doesn't remove Ms K's contractual repayment obligations. Where contractual repayments aren't made, they accrue as arrears. While a recording of the call in August 2020 isn't available, NewDay's file notes show that they told Ms K this. They read from a set script – a copy of which I've seen. They said that due to being in arrears, it may impact Ms K's credit file. Also, the account will continue to be overdue and they will send regulatory notices as required.

Aqua also confirmed that in a letter to Ms K in August 2020. They said, *...your account will continue to be overdue and we will send you the notices we are required to...We'll also let credit reference agencies know if you have missed payments...We may also sell your account to a debt purchaser*". So, I think the potential consequences of the plan agreed were clearly explained to Ms K here.

Ms K says that NewDay told her not to worry about letters she received. I think this was because they were part of the process NewDay had already explained to Ms K and she'd accepted as part of the fair treatment plan. The letters remained relevant albeit NewDay understandably believed Ms K was aware of why they were being sent.

The Information Commissioner's Office (ICO) issue guidance and principles for the reporting of arrears, arrangements and defaults (PRAAD) at credit reference agencies. It says that as a general guide, *"a default may be recorded when you are three months in arrears, and normally by the time you are six months in arrears"*.

From the information I've seen, it appears the arrears on Ms K's account met this requirement. So, I don't think Aqua did anything wrong when they issued a default notice and recorded this on Ms K's credit file. I also believe Aqua were entitled to sell Ms K's

outstanding debt on once the default had been issued and registered. They'd said that in their letter to her.

I appreciate that Ms K has experienced significant financial difficulty which also impacted upon her general health. This would've been a very difficult time for her. But the support provided by Aqua does appear to have complied with the FCA's guidance. While I realise she may not agree, I can't reasonably conclude that NewDay have done anything wrong here. And, while I know she will be disappointed, I'm unable to uphold her complaint.

### **My final decision**

For the reasons set out above, I don't uphold Ms K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 16 June 2022.

Dave Morgan  
**Ombudsman**