

## **Complaint**

Miss S has complained that NewDay Ltd (trading as “Aqua”) charged her even more interest on her credit card despite being on a repayment plan as a result of being in persistent debt.

## **Background**

In September 2018, Aqua wrote to Miss S to let her know that over the previous 18 months she had paid more in interest fees and charges than she had paid towards the amount she’d borrowed and this meant that she was now in ‘persistent debt’. Aqua’s letter encouraged Miss S to increase her payments, by paying a recommended extra payment over and above the minimum due, so that she could repay more of the amount borrowed and ensure that she didn’t remain in persistent debt.

In line with the regulator’s prescribed timings, Aqua once again wrote to Miss S nine months later, in June 2019, to explain that the position hadn’t changed and that she remained in persistent debt. Miss S was once again encouraged to increase the amount of her monthly payments by the recommended extra payment.

In January 2020, Aqua wrote to Miss S for a third time to explain that the position hadn’t changed and that she’d now been in persistent debt for 34 months. And if Miss S remained in persistent debt in two months time – March 2020 - she would be moved to a ‘PayDown Plan’ to repay what she owed more quickly.

Miss S’ account remained in persistent debt and she was moved onto a paydown plan in March 2020, where she would now pay 48 monthly instalments of £232.61 to clear what she owed. Miss S accepted being placed on a paydown plan. However, after making four of the scheduled payments – paying a total of £1,134.00 – she noticed that her balance had only reduced by £244. Miss S was unhappy with this and complained to Aqua. She couldn’t understand why she was now being charged more interest than she was being charged before and why the monthly payments on the paydown plan were less than what she’d been paying in the months prior.

Aqua didn’t uphold Miss S’ complaint and as she remained dissatisfied she referred the complaint to our service. Miss S’ complaint was then considered by one of our investigators. She didn’t think that Aqua had treated Miss S fairly and reasonably when transferring her to her paydown plan. So she recommended that Miss S’ complaint be upheld. Aqua disagreed with our investigator so the case was passed to an ombudsman for review.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’ve decided to uphold Miss S’ complaint. I’ll explain why in a bit more detail.

In February 2018, the industry regulator, the Financial Conduct Authority ("FCA") published *PS18/4 – Credit card market study: Persistent debt and earlier intervention – feedback to CP17/43 and final rules* ("PS18/4"). PS18/4 sought to implement new rules which were being brought in to address some of the harms in the credit card market which the FCA found in its Credit Card Market Study, which was published in 2016. In particular, in paragraph 1.5, the FCA stated that it was concerned about:

*"1.5 In particular, our analysis of the CCMS dataset found that in 2014 around 5.6 million people were potentially in problematic debt. This includes 2 million people who were either in arrears or had defaulted, a further 2 million who had held a balance above 90% of their credit limit for at least 1 year, and a further 1.6 million people who were only making the minimum repayments."*

And in paragraph 1.8 the FCA went on to say:

*"1.8 But the downside of this flexibility is that consumers can accumulate and sustain debt over a long period without making significant contributions to repaying the outstanding balance. Such customers are profitable for lenders, meaning firms have an incentive to allow this to continue. This harms customers because it can be an expensive way to carry longer-term borrowing and can hide deeper financial difficulties."*

The FCA's response to this was to set out a package of rules and guidance entitled '*Credit cards: persistent debt*' – set out in CONC 6.7.27R to CONC 6.7.40G and which came into force in March 2018. As part of this package of rules and guidance the FCA defined persistent debt as where a customer, over a period of 18 months pays more in interest, fees and charges than they have repaid of the principal balance on their card.

Credit card providers are required to write to customers at this point, and also should they remain in persistent debt, after 27 months, notifying them that they are in persistent debt and encouraging them to pay more. And if a customer doesn't take sufficient action and remains in persistent debt after 36 months, the rules require a credit card provider to help a customer repay more quickly in a way that does not adversely affect their financial position – typically by setting up a repayment plan over a reasonable period of time.

It isn't in dispute that by September 2018, Miss S had paid more in interest, fees and charges than she had to her principal balance on her Aqua card in the previous 18 months. And Aqua in accordance with the rules sent Miss S her first persistent debt letter. Furthermore, it isn't in dispute that Miss S' increased payments over the following 18 months, after she was sent her second persistent debt letter in June 2019, were not enough to ensure that she paid more towards what she owed than she did in interest, fees and charges either.

So I'm satisfied that Miss S was in persistent debt according to the rules and guidance set out in CONC 6.7.27R to 6.7.30R. And that under the regulator's rules and guidance Aqua was required to take steps to help Miss S repay what she owed more quickly.

Aqua says that it did this by moving Miss S onto a paydown plan in March 2020. This paydown plan required Miss S to repay £232.61 a month for 48 months. It's important to note that Miss S was automatically moved onto this repayment plan, which effectively converted Miss S' outstanding balance of £5,730.27 into a loan for this amount with a four year term. I can't see that the terms of this arrangement – such as what the total charge for credit would be – were clearly and properly set out for Miss S before she was moved onto this arrangement. And I've not seen anything to suggest that Miss S was offered any alternative options either.

It should be borne in mind that the purpose of these new rules was to encourage borrowers, who found themselves in persistent debt, to make payments higher than the minimum payment so that they clear what they owed more quickly and pay less in interest. By my calculations the repayment plan Aqua moved Miss S onto meant that she would pay £5,627.01 in interest over four years at an interest rate of 37.6% a year. So Aqua's paydown plan certainly wasn't cheap.

I am also mindful that on this payment schedule, 18 months in, Miss S would have made £4,258.98 in payments and only reduced what she owed by £1,228.82. And this would mean that she would still have paid more than double in interest, fees and charges than she paid towards the amount she owed. So even though Miss S was moved onto this paydown plan because she was in a persistent debt, she still would have been in a position where had she paid significantly more in interest fees and charges than she would have paid towards the amount she owed for a further 18 months.

Indeed, it seems to me that on the amortisation schedule of the paydown plan Aqua imposed, more of Miss S' monthly payment would go towards paying interest, fees and charges than towards the principal amount owed for the first 27 months of the 48 month term. And while I do accept that turning Miss S' balance into a loan in this way provided her with a fixed end date to clear what she owed, nonetheless I can't see how moving Miss S onto a plan that would see her pay significantly more in interest fees and charges than she would towards what she owed for such a significant period of time, was a fair, reasonable and proportionate response to Miss S being in persistent debt.

That said, what I'm most concerned here is that the payments on the paydown plan were less than what Miss S had been paying in the months leading up to March 2020. For example, I can see that in November 2019, Miss S' contractual minimum payment was £247.92 and her payment from the previous month was £240; in December 2019, Miss S' contractual minimum payment was £245.72 and her payment from the previous month was £248; in January 2020, Miss S' contractual minimum payment was £236.82 and her payment from the previous month was £250; and in February 2020 Miss S' contractual minimum payment was £251.54 and her payment from the previous month was £237.

Given the rules and guidance in CONC 6.7.31R and CONC 6.7.32G refer to increased payments, I can't see how it was fair and reasonable for Aqua to automatically set up and impose a paydown plan with a monthly payment that was less than the amount Miss S had been paying at that point. I say this while especially mindful that CONC 6.7.33G(1) refers to the customer's balance being repaid within a reasonable period and CONC 6.7.33G(2) refers to a reasonable period usually being between 3 and 4 years.

Aqua appears to have selected the maximum period of time for Miss S' paydown plan, where the most amount of interest would be paid, without any apparent justification for doing so. I appreciate that Aqua has said the method it has used to calculate Miss S' paydown plan has been reviewed and agreed with the FCA. But even if the FCA might have considered the broad parameters of Aqua's approach to calculating paydown plans, it won't have said that this approach would produce a fair and reasonable outcome in every situation and it most certainly won't have looked at the question of whether Aqua treated Miss S fairly and reasonably when imposing this specific paydown plan.

Furthermore even though I accept that the amount of the selected monthly payment would ensure that there was an increase in the percentage of the outstanding principal Miss S paid each month as the balance reduced, nonetheless, the amount Miss S was being asked to pay each month was less than the amount of her contractual monthly payment in the previous four months and also less than the amount Miss S paid during this time. So I don't think that the payment plan and specifically the amount of the monthly payment was in

accordance with the guidance in CONC 6.7.34G either. And I'm satisfied that this means Aqua failed to act fairly and reasonably towards Miss S.

As I've explained, the rules refer to a reasonable period being between three and four years. A repayment plan at the same rate of interest over a three year, rather than four year, term would have resulted in increased monthly payments. I estimate increased payments of around £20-£25 a month more than what Miss S was paying in the lead-up to the paydown plan would have seen Miss S clear the balance within three years had the same interest rate been applied. And this would have also led to Miss S making a significant interest saving.

Miss S' monthly payments, prior to the paydown plan, were typically around the amount Aqua told her to pay on her monthly statements. I've not seen anything persuasive to indicate that Miss S wouldn't have been able to pay the extra amount required to complete her paydown plan over three years instead of four years. In these circumstances, I'm satisfied that it is more likely than not that had Miss S been presented with the option of a three year paydown plan with increased monthly payments, as I think she should have, in a clear, fair and not misleading way, she would have gone for this option instead of the four year plan Aqua automatically placed her on.

As this is the case and Miss S has gone on to and is being expected to pay more interest and charges on her persistent debt paydown plan. I'm satisfied that she has lost out as a result of Aqua failing to act fairly and reasonably towards her. And I'm satisfied that Aqua now needs to put things right.

### **Fair compensation – what Aqua needs to do to put things right for Miss S**

Having carefully considered everything, I think that it would be fair and reasonable, in all the circumstances of Miss S' complaint, for Aqua to put things right in the following way:

- rework Miss S' account so that the total amount of interest added reflects what would have been added had her paydown plan been arranged over a three year term (at the same interest rate) rather than a four year term. The payments Miss S has made should then be deducted from the new total amount to be repaid;
- the payments Miss S has made so far have been with a view to repaying the balance over four years, rather than three years. So the payments made won't be enough for the balance to be cleared after three years. As this is the case, Aqua should either give Miss S the option of making up the shortfall over the remaining time that would have been left had the paydown plan been agreed over three years, or allow Miss S to make up the shortfall with additional payments (of the same amount) after the three years have ended without charging her any extra interest.
- pay £75 in compensation as it has already agreed to do.

### **My final decision**

For the reasons I've explained, I'm upholding Miss S' complaint. NewDay Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 17 January 2023.

Jeshen Narayanan  
**Ombudsman**

