

The complaint

Miss J complains that NewDay Ltd trading as Aqua ('Aqua') terminated her credit card account without warning, when she had an agreement with them.

Miss J wants her account reinstating.

What happened

Aqua placed Miss J's account on hold for several months as she was undergoing medical treatment. When this came to an end Miss J contacted Aqua and arranged payments going forwards, but by that time Miss J's account had terminated and she was unable to use her account.

Miss J complained to Aqua that this wasn't the agreement she'd made, and she hadn't been told her account would terminate. She said she was trying to pay her balance down so she could start using the card again and had been told this was fine.

Aqua didn't uphold Miss J's complaint, saying the account had been terminated in line with their usual process and Miss J had been informed in writing and verbally that this would happen.

Miss J referred her complaint to the Financial Ombudsman Service and our investigator undertook an extensive review of Aqua's call records, call notes and system notes. Our investigator concluded that Aqua had fairly informed Miss J of what was happening on her account, and didn't recommend Aqua take further action.

Miss J was very unhappy that some call recordings appeared to be missing and raised concerns about Aqua's record keeping and their willingness to comply with the Financial Ombudsman Service. She maintained that she'd been misled and Aqua had broken their agreement with her. She asked for recordings of the calls to be sent to her, which was arranged.

The matter came to me to decide.

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 taken into account any relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

I acknowledge Miss J says there are missing calls which are being deliberately withheld by Aqua. I recognise Miss J wouldn't have recorded these herself and she's depending on Aqua to provide evidence. I want to reassure Miss J that I've investigated her concerns and I made

a further request for calls from June 2024 as a result. I haven't found that Aqua have been obstructive to the requests of the Financial Ombudsman Service.

When reviewing this matter, where evidence is incomplete, inconclusive or contradictory, I have made my decision on the balance of probabilities – in other words, this means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

I am sorry to disappoint Miss J but having reviewed her complaint I've decided not to uphold it, for broadly the same reasons as our investigator. I'll explain why.

At the heart of this complaint is how Aqua communicated with Miss J, who was known to them as a vulnerable customer, when she was in financial difficulty.

As well as their wider obligations, I'd expect Aqua to comply with the Financial Conduct Authority's rules and guidance for firms engaging with customers in default or arrears. These are set out in the Consumer Credit Sourcebook ('CONC') within its Handbook ('FCA Handbook').

CONC 7.3.4(R) says that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

And the guidance in CONC 7.3.13A says that when engaging with customers in or approaching arrears or in default, firms are reminded to give customers information that's sufficient to enable them to understand their financial position in relation to their debt. This includes the potential impact of any forbearance or other support on their overall balance and how it will be reported to their credit file.

Given everything that's happened, and the length of time that's passed, I think it would be useful to set out the timeline of what happened from March 2024 to September 2024 when Miss J's account terminated.

On 27 March 2024 Aqua wrote to Miss J about a payment holiday applied to her account until 10 June 2024, saying her monthly payments were £0 but at the end of her payment holiday she'd need to pay any overdue sums and start her minimum payments again.

This letter also advised Miss J that no interest and fees would be charged during the payment holiday, but she may get regulatory notices. Miss J was advised her card would not be available for use during the payment holiday.

Miss J didn't make payments to her credit card in March 2024, April 2024 and May 2024.

On 4 June 2024 Aqua rang Miss J when she was about to start work. Miss J explained her circumstances and that she'd be calling to pay £152.49 on 10 June 2024, as the payment holiday was coming to an end.

The call recording from 10 June 2024 hasn't been located, and I acknowledge it'll be disappointing for Miss J that I've not been able to listen to this.

However, I've been provided with Aqua's contact notes for the call on 10 June 2024. These say Miss J paid £152.49 and a hold was arranged on her account. I think that's likely the case, because Aqua sent a letter dated 10 June 2024 about the hold, saying:

“..we have agreed to stop collections activity on your account until 8 September 2024. During this time we will allow reduced payments and we will suspend all interest and charges to help you.

...you will continue to receive statements which will request the overdue payments...we are not expecting you to make these payments at this time, given we are aware of your situation.

We would like to make you aware that making reduced payments may impact your credit file and we may report a default on your account to the credit reference agencies. This will stay on your file for six years and may make it harder for you to get credit in the future.

Your account may also be permanently closed for further spending if this hasn't happened already.

What would this mean for me?

- *You will never be able to use your account again for spending or any other transactions.”*

I think Aqua's letter from 10 June 2024 is reasonably clear that the hold placed on Miss J's account was not the same as a payment holiday and that missing payments could lead to a default and termination of her account.

I've listened to the next call on 10 July 2024 when Miss J rang to say she was waiting on her wages before making a payment. Miss J was reminded her account was on hold until 8 September 2024 so payments weren't expected, she couldn't use her card, and interest and fees were frozen. Miss J said she remembered that payments were voluntary but confirmed she'd call back and pay £152.49 on Monday 15 July 2024. Miss J mentioned she wanted to get the balance down by Christmas.

Miss J didn't pay in July 2024 and Aqua sent her a notice of sums in arrears and a default notice in August 2024. The default notice required a payment of £64 by 7 September 2024 to prevent Miss J's account defaulting and being terminated.

Miss J didn't pay the amount required by her default notice and was sent a letter on 11 September 2024 confirming her account was terminated.

It appears Miss J hadn't received the termination letter when she next spoke with Aqua on 13 September 2024. She said she'd missed a payment, and she paid £152.49 over the phone. Miss J was informed by Aqua's female representative that her account was terminated and only open for repayment, so there'd be no interest or charges going forwards. Miss J said she didn't intend to use her card, she just wanted to get back on track.

Miss J rang Aqua again on 19 September 2024 as she was very upset to receive Aqua's termination letter. Miss J said she'd not been told her account had been terminated and that she'd been told last week by a 'guy' that it would be fine to pay off her balance so she could start using the card again at Christmas.

I don't criticise Miss J's recollection of the call she'd had the week before on 13 September 2024, but this had been a conversation with a woman and, having listened to the call, it's clear Miss J was informed her account was terminated.

Miss J has referred to calls on 6 September 2024 or 16 September 2024 when she'd made a payment, so I've checked I'm not missing anything. Aqua don't hold notes relating to a call on 6 September 2024 or 16 September 2024 and can't produce call recordings for these dates. Aqua's notes say Miss J paid on 13 September 2024 which is reflected in her

statement. So I think it's likely the call on 13 September 2024 is the call Miss J referred to when she rang Aqua on 19 September 2024.

I haven't seen any evidence to suggest that there were calls in August 2024 which were not recorded or noted by Aqua. Miss J didn't mention calling in August 2024 when she spoke with Aqua in September 2024, but said she was ringing because she'd missed a payment.

I think if Miss J had contacted Aqua in August 2024 it's likely she'd have made a payment to avoid her account terminating and there'd be a record of this. In the circumstances I'm not persuaded there was contact between the parties between 10 July 2024 and 13 September 2024.

Having considered the evidence to hand and the chain of events I think Aqua can demonstrate they acted fairly and in accordance with the FCA's expectations. I say this because there's evidence Aqua considered and recorded Miss J's vulnerability and offered both short and long term support measures. Aqua applied a payment holiday and a hold on Miss J's account. And Aqua clearly informed Miss J both on the phone and by letter of what was happening with her account.

Unfortunately, Miss J accumulated arrears and she didn't clear these in accordance with her default notice. In those circumstances I don't think it was unreasonable for Aqua to terminate Miss J's account, which they'd warned her they might do.

I know my findings aren't in keeping with Miss J's overall recollection of what was happening on her account, and I appreciate she was juggling other creditors at a difficult time. However having reviewed the calls, system notes and letters I don't think Aqua have treated Miss J unfairly in these circumstances. I am sorry to disappoint Miss J but this means I'm unable to uphold her complaint.

I will remind Aqua to continue to treat Miss J positively and sympathetically when engaging with her about the balance outstanding on her account.

My final decision

For the reasons I've outlined, I don't uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 3 September 2025.

Clare Burgess-Cade
Ombudsman