

## **complaint**

Miss M is unhappy NewDay Ltd have sold her Aqua card debt to a debt collection agency and added a default to her credit file.

## **background**

Miss M had an Aqua card ending \*8178 with NewDay. But her circumstances changed, as in July 2018, she became unemployed. She experienced financial difficulties and struggled to make her card repayments.

Miss M didn't make her July 2018 statement's minimum payment which meant she incurred £36 of charges, three at £12 each for late fee, unpaid direct debit and over limit charges.

In August 2018, Miss M told NewDay she'd lost her job but said she was about to start a new one. NewDay acknowledged the change and asked Miss M to complete an income and expenditure form so that it could assess her ability to repay. Miss M didn't return the form and continued to miss her minimum payments. NewDay wrote to Miss M each month requesting payment and telling her of the charges she had incurred.

In October 2018, Miss M was still unemployed and had applied for benefit payments. NewDay sent her another income and expenditure form to complete. But NewDay said they didn't receive the form back. And Miss M didn't make any repayments.

In November 2018 Miss M found her account had been passed over to another team I'll call "A" who were acting on behalf of NewDay. From when Miss M's account was passed over to "A" the interest and charges were stopped.

In February 2019 Miss M said she tried to make a payment for £950 to clear her debt but it wasn't accepted. And said she'd been told if she made a payment of around £11 her account wouldn't be sold on to a debt collection agency. But NewDay said Miss M's account had been pre-selected for sale and she hadn't been told that this payment would stop this from happening. But it removed three £12 fees that had been applied to Miss M's account in September and October 2018.

Miss M wasn't happy with NewDay's response and referred her complaint to us.

Our investigator said NewDay had tried to help Miss M. And that Miss M hadn't engaged with it which could have helped her in her situation. But he said NewDay could have done more by allowing Miss M a payment holiday when she first got into difficulty. He said NewDay should refund Miss M three months of interest and charges.

NewDay disagreed and said it hadn't been able to set up a payment plan or refund interest and charges because Miss M hadn't completed the required income and expenditure form. NewDay has asked for an ombudsman to decide.

I issued a provisional decision in December 2019 which said:

### *Interest and charges*

*When someone is having financial difficulties, the relevant guide says a business should consider suspending, reducing, waiving or cancelling further interest and charges.*

*And I can see from NewDay's file notes Miss M was having financial difficulty before she lost her job in July 2018. But losing her job worsened her difficulties and she didn't make any payment to her account after June 2018 until February 2019. But Miss M did tell NewDay of her change in circumstances.*

*In August 2018, NewDay tried to help Miss M when she told it she had lost her job by placing a hold on her account. This action stopped collection activity, but it didn't stop Miss M's account from continuing to accrue interest and charges. NewDay asked Miss M to complete an income and expenditure form so that it could assess her ability to make any repayment. Miss M did say she had another job she was about to start, so at this time the situation did appear to be a temporary one. So, I think NewDay could have suspended interest and charges on Miss M's account to give her the chance to get back on her feet.*

*I imply no criticism of Miss M when I comment that the reason this complaint arises is largely due to unexpected circumstances and things not working out quite as she anticipated. She did tell NewDay she had another job and when that didn't work out that she was expecting a benefit payment. In her calls with NewDay I think she was unrealistic in saying she would be able to make some form of payment when clearly, she couldn't. Miss M said on several occasions that she was behind with her loans and priority bills including her rent. And that she was living on "nothing". So, her ability to pay the amounts she said should I think have been questioned.*

*When Miss M spoke to NewDay in October 2018, a check was made with NewDay's escalation team. The escalation team said if Miss M couldn't pay anything the income and expenditure form could be completed over the phone. Miss M said she had applied for benefits but was still waiting for a benefit payment and hoped to be able to pay £30. But because she had mentioned an amount, she might be able to pay, the income and expenditure form was sent out to her. And she was advised to call back after she had completed it.*

*But during this call Miss M had said "can't give you something I don't have" and confirmed she was struggling with her bills. So, I think this was a missed opportunity and NewDay should have completed the income and expenditure form during the call. NewDay could then have considered what it could do to help Miss M in her situation. So, I think it was at this point NewDay should have cancelled the interest and charges accruing on Miss M's account from August 2018.*

#### *Default and sale*

*Miss M's account was passed over to "A" in November 2018, and the interest and charges were stopped. Each time Miss M spoke to them, she said she was struggling and "nothing had changed". She was told her account would be put on hold each time for another 30 days. And that she had until the end of February 2019 before a default would be applied. But I don't think this was addressing the situation Miss M was in, but simply delaying what was to come. But I accept Miss M was told the amount she needed to pay to satisfy the minimum monthly payment and advised about a debt advisory service.*

*Miss M's circumstances appear to have improved in February 2019 as she wanted to pay £950 to clear her debt. And she wasn't happy that if she paid the £950 to clear her credit limit, she would still have a remaining debt and her credit file would be noted as partially settled. She had already complained to NewDay that the interest and charges applied to her*

*account were the cause of her going over her credit limit. She didn't make the payment and it was arranged for a manager to call her back.*

*In the call back from one of "A"s managers it was agreed she'd make a payment for the minimum contractual payment of 1% while her complaint about charges and interest was being considered. It's clear from this call Miss M was concerned about a default being applied. And I think given some assurance that by making the minimum payment this wouldn't happen. But this payment was taken after NewDay's finance department had closed. The manager did say that "hopefully" the late payment would be accepted and said he would send an email to NewDay about it. Again, I think it should have been made much clearer to Miss M that the default could still be applied as her payment was made after 4pm. So, I can understand Miss M's frustration as she thought she'd stopped the default action. The Information commissioner's Office says "The term 'default', when recorded on a credit reference file should be used to refer to a situation when "the lender in a standard business relationship with the individual decides the relationship has broken down".*

*And NewDay has said it has a legal obligation to report to credit reference agencies how Miss M managed her account. But Miss M's account had been put on hold several times in the preceding months, she'd discussed making a large payment, she'd made the minimum payment and was waiting for a response from NewDay about interest and charges. So, I don't think the relationship had broken down and NewDay shouldn't have applied the default to her account.*

#### *Trouble and upset*

I have heard Miss M say several times that she felt no one was listening to her. I can see that NewDay and "A" did signpost her to debt advisory services and placed a hold on her account. But as outlined above Miss M said, on more than one occasion, that she had "nothing". So, I think there were missed opportunities, and I can understand Miss M's frustration in thinking no-one was listening to what she was actually saying. And I think this added to the trouble and upset she was feeling at a very difficult time in her life.

*So I'm thinking of asking NewDay Limited to;*

- remove any remaining interest and charges that had been applied to Miss M's account for three months from August 2018 (if this has since been paid by Miss M, NewDay should refund the amount to Miss M and add 8% simple interest;*
- remove the default marker from Miss M's credit file; and*
- pay £150 for the trouble and upset caused to Miss M.*

#### **responses to my provisional decision**

Miss M accepted the provisional decision.

NewDay agreed to refund the interest and charges and to pay compensation for trouble and upset. But didn't agree to the removal of the default from Miss M's credit file.

NewDay said as a responsible lender it was obliged to provide a true and accurate reflection of a customer's payment history. And the default that has been recorded is a true reflection of how the account has been maintained. It also said it has a responsibility not only to itself but to other companies to ensure that a customer has an accurate credit record.

### **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 done so, I've not been persuaded to change my decision.

I understand the importance of providing accurate information to the credit reference agencies as any potential lender will look at the information to decide what importance it attaches to the information as to whether to lend to a customer or not.

And Miss M had been struggling with her repayments for some time. But while I accept NewDay had a responsibility to provide an accurate record to the credit reference agencies, I don't think the default was a true reflection.

As I outlined in my provisional decision Miss M was trying to settle her debt in full before the default was applied. I think there were missed opportunities which meant Miss M didn't settle her account by paying the £950 she had clearly intended to do. And when she later spoke to a manager, she made a minimum payment in the belief this was enough to prevent the default happening. So, I don't think it was fair for the default to be applied.

### **my final decision**

So, I uphold Miss M's complaint and I require NewDay Limited to:

- remove any remaining interest and charges that had been applied to Miss M's account for three months from August 2018 (if this has since been paid by Miss M, NewDay should refund the amount to Miss M and add 8% simple interest;
- remove the default marker from Miss M's credit file; and
- pay £150 for the trouble and upset caused to Miss M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 January 2019.

Anne Scarr  
**ombudsman**