



## **complaint**

Miss A complains that she has suffered financial loss as a result of incorrect information that was provided by NewDay Ltd (trading as Aqua).

## **background**

I set out the background to this complaint in my provisional decision. I concluded that the complaint should be upheld in part because I had reached the following conclusions.

- Miss A had no valid claim under section 75 of the Consumer Credit Act 1974 ("section 75") as she had originally suggested.
- But she did have a valid claim for the reasonably foreseeable consequential losses she made as a result of Aqua's actions. On this basis I proposed that Aqua should pay Miss A £153.67 plus interest at the rate of 8% simple per year from the date she cancelled the airline tickets to the date of settlement.
- Further, I considered that Aqua had not provided the level of customer service that it should have done. On this basis I proposed it should pay Miss A £50 as a fair award for the distress and inconvenience this may have caused her to experience.

I invited the parties to respond to my provisional decision should they wish to do so.

I received no response from Aqua but Miss A did respond.

In summary, Miss A said, she wanted me to consider increasing the amount I had awarded her. She said, although she had not mentioned this previously, she had first bought the tickets to fly in May 2013 but due to family issues she could not fly at this time so postponed the trip until June 2013. She said she had to pay £70 to make this change and so wanted this money to be awarded to her too. She said 8% interest was not enough and she should also get back the late payment fees Aqua had charged her.

## **my findings**

I have re-considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

*there is no proper basis to ask Aqua to compensate Miss A for the £70*

Miss A says that her award should be increased by at least £70. When she first brought the complaint to us, she did not mention she had originally booked to fly in May 2013 and then changed her tickets for flights in June 2013. But this new information does not persuade me that I should fairly increase her award to take account of the £70. I say this because she tells us she made this financial loss because she had to change the date of the flight for personal reasons not because of anything Aqua did. So I cannot fairly ask Aqua to compensate her for this as she would always have made this loss regardless.

*8% interest is fair and reasonable in the circumstances*

Miss A says 8% interest is not enough as Aqua has charged her more interest. But I consider this would only be relevant if I was compensating Miss A for breach of contract. Because then I would need to compensate her to put her in the position she would have been in if the contract had been properly performed. In those circumstances it would be right to refund her for the interest she has paid on the purchase price. But Miss A is not being compensated for breach of contract on the part of Aqua. She is being compensated for the financial loss she made as a consequence of receiving incorrect information from Aqua which led her to cancel her tickets. These events happened after she had bought her airline tickets using her Aqua credit card.

In other words, her financial loss is not the amount she paid for the tickets but the amount of money she lost because she cancelled the tickets. The 8% figure is a rate which I consider to be a fair yardstick for compensating her for this loss. And it is a rate often (but not always) used by the courts in not dissimilar situations. Bearing all of this in mind, and again taking account of the particular circumstances of this complaint, I consider that the 8% simple rate is fair and reasonable.

*the business is entitled to apply the late payment charges*

It is likely that the late payment charges were applied in line with the relevant account terms and conditions. Miss A would have agreed to these terms and conditions when she opened the account. It appears Miss A incurred these charges because she did not make the payments to Aqua that she should have done. I cannot fairly say in these circumstances that Aqua should refund these charges.

As I have not accepted the new points Miss A raised in response to my provisional decision, it follows that I have reached the same conclusions for the same reasons as I did in it.

### **my final decision**

My final decision is that NewDay Ltd trading as Aqua should pay Miss A:

- £153.67 plus interest on this sum at the rate of 8% simple per year from the date she cancelled the June 2013 airline tickets to the date of settlement.
- £50 for distress and inconvenience.

It must pay the total compensation within 28 days of the date on which Miss A accepts my final decision. If it pays later than this:

- It must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from the interest portion of the award I have made, it must send a tax deduction certificate with the payment so that Miss A can reclaim the tax if she is able to.

Joyce Gordon  
**ombudsman**