

complaint

Ms Q is unhappy about a default which NewDay Ltd, trading as Aqua, registered on her credit record.

background

I set out the background to this complaint and my provisional conclusions by way of a provisional decision – a copy of which is attached and forms part of this final decision. For the reasons I set out, I concluded that Aqua had not reasonably registered a default against Ms Q's credit file. I thought the registration of the default caused Ms Q trouble and upset which could have been avoided. I proposed that Aqua remove the default, recall the debt and pay Ms Q £200 by way of compensation. I felt the conclusions reached by my colleague, Anna Jackson in a Provisional Decision ('the Provisional Decision') issued in May 2019 on the matter of a chargeback issue was fair in the circumstances.

I invited Ms Q and Aqua to let me have any further evidence or augments they wanted me to consider before making my final decision. Both parties responded to the provisional decision.

Ms Q said in summary:

- The compensation for the matter of the chargeback did not fully reflect the amount of times she needed to contact Aqua.
- In the background section of the provisional decision, the amount she had paid to a firm called 'A' in June 2016 was less than the amount quoted.
- She did not receive the default notice issued by Aqua in November 2016.
- Aqua formed verbal contracts with her stating if they had made a mistake they would remove the default and she agreed to give them more time in return.
- The overall compensation should be higher for the delays on Aqua's part in responding to this service and for the impact the default had on her business.

Aqua said in summary:

- They would not hold their collections process while an investigation was ongoing.
- Ms Q had broken the terms of their arrangement and repeatedly missed payments so the default was registered correctly.
- They told Ms Q about the impact withholding payment would have on her credit file.
- The relationship between them and Ms Q had broken down prior to the disputed transaction to A.
- During a phone call of March 2017, Ms Q said she would call back in two weeks to make a payment but she did not do this – which emphasised the breakdown in the relationship.
- There has been no further impact since the Provisional Decision of May 2019 to warrant the additional £200 compensation.
- Interest, fees and charges applied in November and December 2016 had already been refunded in accordance with the Provisional Decision.
- As a responsible lender they are obliged to record an accurate reflection of the payment history.

Aqua also provided a snapshot of Ms Q's credit record to show that the default recorded by them was not the only adverse information on her credit record and this alone would have had minimal impact on her credit record.

I shared this information with Ms Q who disputed the legitimacy of the screenshot provided by Aqua and felt this could have been fabricated. Ms Q offered to provide me with her personal login details for a credit reference agency website so that I could access her credit record. I declined and explained that Ms Q had a number of opportunities to provide her credit record information and I accepted her choice not to provide this information.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as I did in my provisional decision.

I do not intend to outline and address all of the individual points raised by Aqua and Ms Q as my provisional decision does cover some of those points. I acknowledge some of Ms Q's concern with the Provisional Decision but I do not intend to comment on those specific concerns as they are not about the substance of the decision I have made. I have also noted the evidence Ms Q provided in relation to the June 2016 payment to A, this was £197.33 and not £244.96 quoted in the provisional decision. This does not have a material impact on the overall complaint because this amount is not in dispute.

I did however note that the disputed payment to A was £244.92 not £244.96 quoted in the background of my provisional decision.

I acknowledge Aqua's points but it cannot be denied that Ms Q withheld making a payment towards her account when she disputed the balance of it. She was not initially aware of the disputed transaction to A and was led to believe – by Aqua – that the balance of her account had increased as a result of interest and charges applied to it. This prompted Ms Q to withhold payment as she wanted to challenge what she felt was unfair interest and charges. When Aqua talked through transactions that had been made by Ms Q, it prompted her to dispute the payment to A and this was roughly the amount her credit limit had been exceeded by. Ms Q agreed to make a payment once the matter had been resolved – which seemed to be largely accepted by Aqua over the telephone. It is unfortunate it took a long time for that matter to be resolved but it was concluded that Ms Q should not have been held liable for that payment and it has since been refunded to the account. I do think if this matter had been resolved sooner, Ms Q would have resumed making payments and this is based on her past account conduct.

I do not agree the relationship between Aqua and Ms Q had broken down prior to the disputed transaction to A. Ms Q was in financial difficulties and Aqua arranged a short term repayment plan to assist her – she adhered to the plan and successfully completed it. Aqua's assistance allowed Ms Q to resume the use of her credit facility with them. So I cannot say this constituted a breakdown of their relationship and I would expect any responsible lender to assist a customer in financial difficulties.

I have noted the letters Aqua sent Ms Q about the terms of her repayment plans and that regular statements were also sent to her. But some of the conversations Aqua had over the phone with Ms Q were misleading. Aqua seemed to accept Ms Q's reasons for withholding payment until December 2016 – when they made it clear that Ms Q needed to make payments towards her account. However, the matter of the disputed payment to A was still ongoing up until the point Ms Q contacted this service about her complaint. So I do not think this was handled very well on Aqua's part and I do think some of the misleading statements made by their staff contributed to the misunderstanding on Ms Q's part. While Aqua stated it would not hold their collections process during an investigation, I have not found that they made this clear to Ms Q during telephone conversations with her.

I also accept there was confusion between Ms Q and Aqua when it came to the signed declaration relating to the disputed payment to A. I appreciate Ms Q highlighted the number of times she needed to speak to Aqua in relation to this matter. But some of the calls made by Aqua were in relation to arranging a payment for the arrears or offering a repayment plan – not solely the disputed transaction to A. But I'm satisfied £50 and a refund of interest and charges while the payment to A remained on Ms Q's account was a fair way to compensate Ms Q for Aqua's handling of things.

When a new repayment plan was set up in December 2016, Ms Q satisfied the requirements of the default notice issued to her in November 2016 and Aqua restructured the arrears and her payments as a result. It is not disputed that Ms Q made and missed some payments of that new plan. But I have seen evidence that explains Ms Q was going through a very difficult time during that period - albeit she did not tell Aqua about the full extent of the issues she was having.

Aqua and Ms Q have given different accounts of what was discussed in the March 2017 call. Aqua stated that Ms Q was due to call them back with another payment in two weeks. Ms Q stated Aqua were due to call her back after they resolved the matter of the disputed transaction to A. I think both accounts are correct and I will explain why.

Ms Q was in a repayment plan and at the time she spoke to Aqua, payments towards that plan were overdue. She made a payment to account for two of the missed payments, so it is plausible that she would have told Aqua that she would call them back shortly to make the next payment. Aqua were also in receipt of Ms Q's signed declaration so it is equally plausible they told Ms Q they would get back to her once the disputed transaction to A was resolved. I had previously invited Aqua to provide a copy of this call to help me understand what was discussed. Aqua did not provide this call, so on balance, I think both parties were due to get back in touch with one another. I am not of the view that the parties lack of following up demonstrated a breakdown in the relationship. I see this more as a misunderstanding of the next steps, which has been a common theme between the parties since the disputed transaction to A was raised.

In any event, Aqua did not send a new default notice when the new position of default arose. For the default to have been fairly registered, Aqua should have sent a new notice of default detailing what Ms Q needed to do to remedy the breach outlined. Instead, Aqua registered the default against Ms Q's credit record without giving her the opportunity to put things right. From a fair and reasonable stand point, it would have been reasonable for Aqua to tell Ms Q they intended to default her account. If they had - based on what I have seen from Ms Q when this happened before - I think she would have complied with their request.

Prior to issuing my provisional decision I had not had sight of Ms Q's credit record – so I did not conclude on the wider impact Ms Q described the default to have had on her business. The evidence provided by Aqua shows that Ms Q had other adverse information on her credit record. I acknowledge Ms Q's concerns that this could have been fabricated but I have no reason to believe this to be the case, so I do not doubt the legitimacy of this information. And Ms Q had been clear that she did not want to share her full credit record information with this service, so I have no cause to dispute the information provided by Aqua.

In light of this information, I do not intend to increase the award I set out in my provisional decision. I do believe the default was registered by Aqua incorrectly and they relied on a default notice issued in November 2016 that had already been remedied in accordance with

the terms of that notice. Given the severe impact a default has on a credit record, I think it would have impacted Ms Q. But I cannot agree, with any certainty, that this was the only reason Ms Q's business was impacted in the way she described as she did have other adverse information on her credit record at the time. So I do not intend to increase the award.

I appreciate Ms Q's concern that Aqua has not co-operated with our service's investigation and has delayed her case moving forward. As a result she feels the compensation award should be increased. I do not find that Aqua has not complied with this service's time limits to warrant a direction for a payment. There have been delays on Aqua's part and they have not provided all of the information requested but they have responded to this service on time and requested extensions when they needed more time. Their failure to provide some information has not been material to the outcome I have reached. When I have not had a complete picture of the events, I have been able to make a decision on what I think was most likely to have happened at the time. This service also has the discretion to extend time limits – so I do not intend to make an award on this point.

I would like to take this opportunity to remind Aqua of their duty to be positive and sympathetic to customers in financial difficulty. So I would expect them to treat Ms Q fairly when arranging repayment of the outstanding debt. Ms Q is also reminded that she is required to co-operate with Aqua when arranging payment of this debt. Should a suitable arrangement not be reached, Aqua would be entitled to start the default process.

While I realise this is not the outcome either Aqua or Ms Q were hoping for, I confirm my provisional decision.

Aqua has already refunded the disputed payment to A, the associated interest and charges relating to it and £50 compensation set out in the Provisional Decision. They should provide Ms Q with a statement evidencing the refunds made, so I make no further finding on this point.

my final decision

For these reasons – as well as those set out in more detail in my provisional decision – my final decision is that Aqua, trading as NewDay Ltd, should:

- Refund the interest, over limit and late payment charges applied to Ms Q's account in November 2016 and December 2016 and rework the account to take into consideration any additional interest and charges caused by these fees.
- Remove the default recorded on Ms Q's credit record.
- Recall Ms Q's account from the third party and contact Ms Q to arrange repayment of the outstanding balance.
- Pay Ms Q £200 to recognise the trouble and upset this matter would have had on her. This is in addition to the compensation already awarded in the Provisional Decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 31 January 2020.

Dolores Njemanze
ombudsman

copy of provisional decision

complaint

Ms Q is unhappy about a default which NewDay Ltd, trading as Aqua, registered on her credit record.

background

My colleague, Ombudsman Anna Jackson, issued a Provisional Decision on 3 May 2019 (“the Provisional Decision”) explaining that she was minded to uphold the complaint in part and setting out her reasons for reaching those provisional conclusions. For the sake of completeness, I’ll repeat the background section of the Provisional Decision here:

“In October 2016, Ms Q contacted Aqua to make a payment towards her credit card account. She says Aqua informed her that she had exceeded her credit limit due to a payment of £244.96 made in September 2016, to a company I will refer to as A.

Ms Q says she explained to Aqua that she made a payment to A amounting to £244.96 but, this was in June 2016. Because of this, a chargeback was raised on the basis that the September 2016 transaction was fraudulent. Aqua also sent Ms Q a statutory declaration to complete. Due to issues relating to the statutory declaration and obtaining evidence from A, the disputed transaction value was credited and re-debited from Ms Q’s account a number of times. But, once these issues were finally resolved in March 2017, Aqua concluded that the disputed transaction was genuine and declined Ms Q’s chargeback claim.

During the above period, no payments were made to Ms Q’s account. So, on 7 November 2016, Aqua issued Ms Q a default notice and subsequently registered a default against her on 30 June 2017.

Unhappy with this, Ms Q referred her complaint to our service. She said –

- *Aqua should remove the default because she didn’t receive the default notice and in any event the default would be for the incorrect amount because of the disputed transaction*
- *her account should be correctly readjusted*
- *she should be refunded the disputed transaction value plus any interest and charges resulting from it*
- *she should be compensated for the impact Aqua’s actions have had on her*

One of our investigators upheld the complaint. In relation to the chargeback, he said he wasn’t persuaded that the September 2016 transaction was a genuine one. So, he said Aqua should remove this transaction from Ms Q’s statement; refund this amount including any related charges and interest; and pay Ms Q £50.00 compensation for the trouble and upset she experienced.

In relation to the default, the investigator said Aqua should remove it for the following reasons –

- *the default only gave Ms Q 21 days to make payment instead of 28 days*
- *the default itself was registered seven months after the notice was issued*
- *Ms Q would’ve caught up with payments had the disputed transaction not been on her account*
- *the default was disproportionate in the circumstances*

Ms Q agreed with the investigator’s findings. But, Aqua only partially agreed and asked for an ombudsman to review things. It accepted that the dates provided by A relating to the disputed transaction were questionable, and so agreed to refund Ms Q £244.96 plus any related interest which accrued during the period the payment remained on Ms Q’s account.

In relation to the default, Aqua said –

- *Ms Q already had a significant balance before the disputed transaction*
- *Ms Q was made fully aware of the consequences if she didn’t bring her account up to date*

- *it was Mrs Q's responsibility to ensure she made minimum monthly payments in line with the terms and conditions of her account*

Aqua said that ultimately, Ms Q used the disputed transaction as an excuse to withhold payment because she didn't want to pay the interest and charges that had accrued on her account since June 2016."

The Provisional Decision went on to explain that the Ombudsman intended to uphold Ms Q's complaint in part and directed Aqua to:

- *refund Ms Q £244.96 plus any related interest which accrued during the period the payment remained on Ms Q's account*
- *pay Ms Q £50 compensation for the distress and inconvenience caused in connection to the disputed payment*
- *change the date of default registration from 30 June 2017 to 28 November 2016 and refund Ms Q's account with any interest and charges accrued during that time.*
- *amend the default amount to take account of the refunded payment of £244.96 plus interest mentioned above*

As the parties are aware, the complaint has now been passed to me to determine.

since the Provisional Decision

Ms Q disagreed with the outcome and felt strongly that Aqua made a mistake with registering a default on her credit record. She disputed the date the repayment plan was set up and said this happened in November 2016 not December 2016. Ms Q also stated Aqua had acted unlawfully and were purposefully withholding and/or tampering with the evidence it supplied to our service. She explained the default was preventing her from obtaining the credit she needed for her business and was seeking damages of £5,000.

Aqua accepted the Provisional Decision and actioned all four bullet points outlined by the Ombudsman.

responses to my enquiries

Following my involvement, both parties have provided further evidence. Ms Q requested that we consider the interest and charges applied to her account following the setup of an earlier repayment plan in December 2015/January 2016. I explained this was a new issue and any new issues would usually be considered as a separate matter. But I asked Aqua if it consented to our consideration of this new issue as part of this complaint. Aqua didn't object, so I will consider this in my provisional decision.

I asked Ms Q to provide a full copy of her current credit file, so that I could consider the impact the default had on her and how much weight I could place on the default being the reason she was prevented from obtaining the credit she needed for her business. I also asked for an explanation as to why there were gaps in payment and communication on her part. And finally, I asked for evidence that Ms Q had funds to make a payment in November 2016.

Ms Q sent the following:

- Evidence to show she had the funds to make the payment she said she could make in November 2016;
- Information showing the improvement to her credit score following Aqua's backdating of the default as a result of the Provisional Decision;
- Ms Q stated she was reluctant to provide her full credit file due to its sensitive nature and she felt it was more important to see the individual impact of the adverse information Aqua recorded in isolation;
- Evidence to show she was going through a very difficult time with her ex-partner in 2017 - which had police involvement.

Aqua sent the following:

- Correspondence sent to Ms Q following the setup of both repayment plans;
- Contact notes from November 2016 to October 2017;
- Confirmation that the repayment plans were agreed in February 2016 and December 2016 and that when a plan is agreed, customers can't spend on their accounts;
- Evidence to show Ms Q was sent monthly paper statements;
- Confirmation that arrears were restructured following the setup of the repayment plan in December 2016 and acceptance that the default should have been backdated following the Provisional Decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the fair outcome here.

In the absence of some information, I've had to base my findings on recorded notes provided by Aqua, Ms Q's recollection of the conversations she had with it and what I think was most likely to have happened at the time.

I'll start with the first repayment plan set up in February 2016. I appreciate Ms Q feels the plan was set up earlier and I've reviewed the notes of conversations Ms Q had with Aqua from November 2015. It's clear Ms Q had conversations with Aqua in December 2015 and January 2016. It looks as though Ms Q made promises to pay and explained she was having a difficult month. Aqua offered help in the form of a repayment plan early on but Ms Q declined this due to the impact it would have on her credit file. In February 2016, Aqua got in touch with Ms Q and a repayment plan was put in place following a review of her income and outgoings.

Prior to the repayment plan being agreed, I don't intend to tell Aqua to refund any interest and charges applied to Ms Q's account. The terms and conditions of the account detail the scenarios in which interest and charges would be applied and what charges were applicable when payments were missed. So I'm satisfied Aqua acted in accordance with the terms and conditions of Ms Q's account when applying interest and charges to it. I'm also satisfied it gave her the option of a repayment plan early on, which Ms Q declined.

We would expect Aqua to be positive and sympathetic to customers in financial difficulty but customers would also need to be open to assistance. I've seen that when Ms Q spoke to Aqua about her financial difficulties in February 2016 and discussed her income and expenditure details, a repayment plan was agreed. A letter dated 16 February 2016 to Ms Q stated the following key information:

'We can confirm that we have set up an informal payment arrangement for £43.14 per month with the interest rate reduced to 0.000% per annum.

The arrangement will remain in place until further notice or until your financial circumstances change. We will let the credit reference agencies know that you are on a payment arrangement and this may affect your ability to obtain credit...

...As your payment is now lower than the minimum amount required to satisfy the terms of your credit card agreement your account will accrue arrears and this will be reflected on your monthly statements. Your account may, in due course, be defaulted and we may register a default against you with the credit reference agencies which will stay on your file for six years and which may make it more difficult for you to get credit in the future.

If a payment is not received by the due date we will review your account, which may result in the arrangement being cancelled, charges being applied and the removal of your reduced interest rate.

Your account may be reviewed within 4 months. In the meantime you must contact us to let us know if your circumstances change...'

I think this letter is clear in explaining the informal arrangement, along with the consequences of it not being adhered to.

Looking at Ms Q's statements from February 2016 I can see that interest was suspended on the account as agreed and Ms Q made the following payments:

- £43.14 February 2016
- £15 - 15 March 2016
- £78.20 – 14 March 2016 (listed as 'fee refund')
- £65.90 – 6 May 2016
- £1,154.92 – 1 June 2016

An over limit charge of £12 was applied to the account in February 2016. I don't think this was fair given that a plan had been agreed and Ms Q made her first payment in accordance with that plan. Aqua provided evidence to show this fee was refunded to Ms Q in March 2016.

I can also see from the notes that Ms Q had a conversation with Aqua on 1 June 2016 and it was confirmed the plan had come to an end. Ms Q was advised of her next minimum payment due date and was told she could resume using her account. Statements confirm that Ms Q did resume using her account shortly after this conversation. Aqua stated that it wouldn't allow customers to use an account whilst on a repayment plan. It's clear this is the case having reviewed Ms Q's account activity, so I'm satisfied the plan had come to an end.

It wouldn't be fair or reasonable for Ms Q to have benefitted from using the account on an interest free basis when she was able to resume her minimum contractual payments. I think Aqua treated Ms Q fairly and was clear about how the repayment plan would work. I'm satisfied Aqua suspended interest and charges in accordance with the agreed repayment plan. And the one charge applied during the period of the repayment plan, was refunded. So I won't be telling Aqua to refund any further interest and charges towards the account up until the point of the fraudulent dispute, which I'll now move on to.

disputed transaction and default

Ms Q continued to make substantial payments towards her account until September 2016 where no payment was made. The notes state that Ms Q spoke with Aqua in September and explained she had an 'unexpected bill/expense'. It was agreed that if Ms Q made a payment by 19 September 2016 a refund of charges would be applied to the account. As no payment was made and no alternative agreement was arranged, I'm not satisfied any refunds of interest or charges are due for the month of September 2016.

In October 2016 Ms Q called Aqua to say she was making a payment online and noticed a transaction she was disputing. The disputed transaction was sent to a company I'll refer to as 'A' and it was debited from Ms Q's account on 29 September 2016. Aqua agreed to raise a chargeback – a process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme.

Ms Q spoke with Aqua on 20 October 2016 about the outstanding minimum payment due and explained she was self-employed and was waiting for money to come in. The notes state Ms Q said she would make a payment by 26 October 2016. I don't see that a payment was made in October, so I don't intend to tell Aqua to refund interest and charges that were correctly applied to the account for this particular month.

Aqua required Ms Q to return a declaration in relation to the disputed transaction to A. Over the next several months Ms Q told Aqua that she had returned the declaration, with Aqua disputing receipt of it. This resulted in the disputed transaction to A being temporarily credited and re-debited from Ms Q's account a number of times.

The default notice sent to Ms Q on 7 November 2016 required her to pay arrears of £258.97 or make satisfactory proposals to do so within 28 days, or by 28 November 2016 as stated. The dates on the notice were factually incorrect as it gave Ms Q 21 days not 28 days to take action but the spirit of Aqua's intention was clear, which was, Ms Q needed to settle the arrears or agree an alternative arrangement soon.

Ms Q spoke with Aqua in November 2016 and I've listened to a call of 13 November 2016 specifically. Ms Q questioned an earlier conversation she had with a staff member in which she queried why her balance was so high and was told it was due to interest and charges.

This wasn't quite correct. Ms Q exceeded her limit as a result of an undisputed transaction on 1 September 2016. The disputed transaction to A took her further over her limit but it wasn't the cause of Ms Q exceeding her limit.

Ms Q made it clear and has evidenced that she had the funds to make a large payment in November 2016. She explained to Aqua that she would make the payment once the matter had been resolved. I don't find that Aqua made clear to Ms Q that the action she was taking wasn't acceptable. Aqua should've been clearer about Ms Q's obligation to continue making her minimum payment while the disputed transaction to A was investigated.

I don't think Ms Q's intention was to avoid making a payment towards the account as she was in touch with Aqua between November 2016 and December 2016. I also don't think this represented a breakdown in Ms Q and Aqua's relationship, which is what the default intended to signify. But I do believe Aqua's automated systems pushed Ms Q's account through its 'normal processes' as no payments were being made. But there was no recognition of the conversations Ms Q was having with Aqua and it would've been reasonable for any recovery action to have been placed on hold until Aqua was in a position to give Ms Q accurate information.

To be clear, I don't think Ms Q was correct to withhold a payment in its entirety. I appreciate Ms Q felt the disputed transaction to A meant that her contract with Aqua was invalid. But this wasn't the case. The majority of Ms Q's balance was undisputed and there wasn't a provision in Ms Q's terms and conditions that permitted her to withhold a payment because of a disputed transaction to a third party – in this case, A.

However, I do think it was Aqua's obligation to provide Ms Q with clear and accurate information explaining why she'd exceeded her balance and that she was required to continue making her minimum payment whilst the transaction to A was disputed. And I don't see that Aqua provided sufficient information to Ms Q until its letter of 6 December 2016.

Shortly after this letter, Ms Q spoke to Aqua to explain she was experiencing financial difficulty and a repayment plan was arranged. A letter was sent to Ms Q on 21 December 2016 and the wording of the letter mirrored the wording I quoted earlier in my decision regarding a letter sent to Ms Q on 16 February 2016. The arrears were restructured and Ms Q was asked to make minimum payments of £43.49 per month. Interest and charges were suspended but I've seen an over limit fee was applied to Ms Q's account in December 2016.

It's clear there was confusion around the disputed transaction to A, both on Aqua and Ms Q's part. I think a reasonable step to take on Aqua's part would've been to suspend interest, charges and recovery action until it could provide Ms Q with a clear explanation about what had occurred or until the matter had been resolved.

Aqua confirmed that Ms Q's arrears were restructured following the repayment plan of December 2016. Because of this, I'm not persuaded that Aqua can rely on the default notice of 7 November 2016 to justify defaulting Ms Q in June 2017. If Ms Q was in a new position of default following the restructuring of her arrears, Aqua ought to have sent a new default notice. Aqua confirmed it didn't do this.

As a reminder, the default notice of November 2016 required Ms Q to pay the arrears or make satisfactory proposals to do so within 28 days. Ms Q was in touch with Aqua following this notice and was led to believe the disputed transaction to A was the cause of the problem and once this problem was resolved, she promised to make a payment. Following the clarity provided by Aqua in December 2016, a mutually acceptable repayment plan was agreed.

This didn't signify the breakdown of a relationship, or a lack of intention on Ms Q's part to make a payment towards the account. I've seen that Ms Q missed the first two payments of the new repayment plan and made a payment of £86.98 in March 2017. She advised Aqua that she would make a further payment of £86.98 in two weeks and stated she was going through a divorce and hadn't been home. Ms Q stated Aqua was due to get back in touch with her as she'd re-sent the declaration in relation to the disputed transaction to A.

No further payment was made towards the account and there was no further telephone contact between Ms Q and Aqua until October 2017 – at which point Ms Q complained about the disputed transaction to A and about the default recorded against her.

I've seen that Ms Q was going through a very difficult time in 2017 but I don't see that Aqua were aware of the full extent of this. Given Aqua's previous offers to assist Ms Q, I think it would've continued to assist her if it was aware of the difficult time she was having.

Having said this, Aqua ought to have issued Ms Q with a new default notice, outlining the breach and what Ms Q needed to rectify by a specified date. Given that Ms Q got in touch with Aqua upon receipt of the earlier default notice, I think she would've got in touch with Aqua had it made it clear her credit file would be severely impacted with a default. I appreciate the letter of 21 December 2016 stated:

Your account may, in due course, be defaulted and we may register a default against you with the credit reference agencies which will stay on your file for six years and which may make it more difficult for you to get credit in the future.

But this wasn't enough for Aqua to apply a default to Ms Q's credit record. Given the impact a default has on a credit record, Aqua needed to have been clear with Ms Q about what she needed to do by when – whether that was to pay outstanding arrears or the entire balance. And I don't dispute a default recorded on Ms Q's credit record would've impacted her.

However, in the absence of Ms Q's full credit file, I'm not in a position to determine the consequential loss Ms Q has described as a result of the default applied by Aqua. That's because I'm unable to determine whether this information was the only reason Ms Q was unable to obtain the credit she needed for her business. I don't doubt it would've contributed to a decision any lender was likely to make. And I've reviewed the impact the backdating of the default following The Provisional Decision had. But a score alone isn't enough for me to determine that Aqua were responsible for the difficulties Ms Q experienced obtaining credit.

So I've considered the impact this had on Ms Q based on the information I do have. I've taken into account of the length of time it took Ms Q to get back in touch with Aqua and that no payments have since been made towards the account. I've also taken into account the difficult time Ms Q was having but she also had obligations to make payments towards her account or inform Aqua about any changes to her financial circumstances. I don't see she did for an extended period of time. And I think Ms Q could've mitigated some of the trouble she went through given that Aqua had previously assisted her in times of difficulty.

I'm aware Ms Q's account has been sold to a third party. I intend to tell Aqua to recall the debt and get in touch with Ms Q to organise a repayment of the outstanding balance. As a reminder to Aqua, it's still obliged to be positive and sympathetic should Ms Q be experiencing financial difficulty and it should be clear about any future steps it intends to take should this account be in a position of default in the future.

The disputed transaction to A has now been resolved with Aqua refunding Ms Q's account with the disputed transaction, along with associated interest and charges to. Aqua paid her £50 following the Provisional Decision. I'm satisfied this was a fair way of resolving things and taking into account Aqua's handling of the matter, so I don't intend to make a further finding on this as I'm satisfied this has now been put right.

putting things right

For the reasons I've explained, but subject to any further information I might receive from Ms Q or from Aqua my provisional decision is that I'm minded to uphold this complaint in part.

To put things right NewDay Ltd should –

- Refund the interest, over limit and late payment charges applied to Ms Q's account in November 2016 and December 2016 and rework the account to take into consideration any additional interest and charges caused by these fees.
- Remove the default recorded on Ms Q's credit record.
- Recall Ms Q's account from the third party and contact her to arrange repayment of the outstanding balance.
- Pay Ms Q £200 to recognise the trouble and upset this matter would've had on her. This is in addition to the compensation already paid.

my provisional decision

I intend to uphold Ms Q's complaint in part against NewDay Ltd.