

## **The complaint**

Mr P complains that Vanquis Bank Limited won't compensate him for purchases he made using his credit card. Mr P believes the goods in question were misrepresented to him.

## **What happened**

In 2014 Mr P used his Vanquis credit card with a number of online retailers to buy what were known as 'Long-term Food Kits'. A few years later Mr P became aware that the kit manufacturer ("W") had been involved in a class action overseas. W had agreed to settle the action, which centred on the description of the kits – particularly, their calorific content and lifespan.

Mr P claimed (and received) a refund of some of the money he'd paid to one of the retailers ("A"). However, when Mr P approached Vanquis to seek a refund of the rest of the money he'd paid, Vanquis told him it didn't think it was liable to him. Vanquis said its initial response hadn't been as clear as it could have been. To recognise this, it was paying Mr P £50 compensation. However, because the way the transactions were structured broke the link between the debtor, creditor and supplier, it had no liability under section 75 of the Consumer Credit Act 1974 ("CCA1974").

Vanquis went on to say that some of the purchases in question didn't meet the financial limits set out in section 75, taking into account exchange rates. They were not more than £100 each. Further, the products Mr P bought weren't in the list detailed in the class action. And while Mr P had provided information on the class action, the matter had been settled without a determination by a court of law. Mr P hadn't provided evidence that the retailers had misrepresented the products to him, or that the retailers were in breach of contract.

Mr P didn't accept Vanquis's response, disputing that there was any break in the debtor-creditor-supplier arrangements. He said the products within the kits he'd bought were included in the class action list. Mr P also said his purchases should qualify under the section 75 financial limits, as they were made as part of an overall package or set, and should also include customs and shipping charges. He maintained his view that the class action – while not determined by a court of law – had been settled by W, and that itself was evidence of misrepresentation and breach of contract.

Our investigator set out what he considered the relevant tests for Mr P to make a successful claim against Vanquis under section 75 of the CCA1974. He was satisfied that in each of the transactions there was a valid debtor-creditor-supplier link. He wasn't persuaded that every transaction met the financial limits in section 75, but considered some payments did qualify. However, the investigator didn't think the claim would be successful, as Mr P's contracts were with the individual retailers rather than with W. As Mr P didn't have any information to show what he'd seen or relied on when entering into the contracts with the retailers, the investigator wasn't minded to uphold the complaint.

Mr P didn't agree with the investigator and reiterated his key points. He remains of the opinion that he has demonstrated there was misrepresentation and contract breaches. As a result, the matter has been passed to me for review.

## 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.

Mr P's credit card is regulated by the CCA1974. One effect of section 75 of the CCA1974 is that, where an individual (the debtor) buys goods from a supplier using credit provided under pre-existing arrangements between the lender (creditor) and the supplier, that individual can bring a claim for breach of contract or misrepresentation against the lender in the same way he could against the supplier.

This is the debtor-creditor-supplier link the parties have referenced in their complaint correspondence. On the evidence provided, I'm satisfied there's relevant debtor-creditor-supplier arrangements in place between Mr P, Vanquis and the retailers, and that at least some of the transactions were for more than £100, as section 75 requires. That means he can bring a claim. It doesn't mean the claim will be successful.

Misrepresentation is a false statement of fact or law, made by one party that induces the other to contract with it. In certain circumstances, that statement can be made by an agent acting within the authority of the contracting party, or by a third party where the contracting party knows the third party has made a misrepresentation. The breach of contract alleged here by Mr P involves being supplied with goods that don't conform to the contract because they weren't as described; a similar point, though a distinction is drawn in law.

I understand where Mr P is coming from. He strongly believes he's provided evidence to show there's been a breach of contract and/or misrepresentation. He may be right on that point, though the fact W chose to settle the class action rather than admit liability or have it determined in a court of law isn't itself conclusive. The fact a judge ratified the settlement is of no additional benefit in establishing that such a claim might be successful. But there's a more fundamental problem Mr P faces, which is that any claim he might have against W isn't necessarily a claim he can pursue against Vanquis.

Put simply, Mr P can only bring a claim against Vanquis under section 75 in respect of the contracts he entered into that were financed by the credit Vanquis provided. That definition, as set out in the CCA1974, doesn't extend to any duty or obligation on W's part. Mr P has provided evidence that demonstrates the contracts he entered into and paid for using his Vanquis card were with retailers selling W's products, rather than with W itself who wasn't party to the contracts in question. The supplier in each instance was the respective retailer, not W. So in order for Mr P's claim – whether in misrepresentation or in breach of those contracts – to be successful, he would need to demonstrate what the *retailers* did wrong.

Mr P hasn't put forward evidence regarding anything the retailers told him about the products he was buying such as might amount to misrepresentation or a breach of contract on the basis that they weren't as described. Indeed, he's told us that he doesn't have any of that information. Nor has he suggested that in 2014, when he made his purchases, that the retailers knew what W was saying about its products might be untrue. In addition, what Mr P has provided is in my view some distance from amounting to persuasive evidence of any other grounds for breach of contract, such as unsatisfactory quality. Taking all of this into account, I can't accept that Vanquis was wrong to decline his claim.

Even if Vanquis wasn't itself liable, it might have been able to help Mr P to recover his money, for example by raising a chargeback. It can only do so in line with grounds set out in rules issued by the card scheme. I've thought about the reason codes set out in those rules, but I'm afraid the circumstances described by Mr P don't give Vanquis suitable grounds to raise a chargeback on his behalf.

That's not to say that Vanquis dealt with everything entirely correctly. There are some points that it could – and should – have been clearer on, as it has itself acknowledged. But none of these changes whether it should be liable to compensate Mr P for the items he bought. It follows that I don't require Vanquis to reimburse any element of the transactions he made, or to pay him interest on those sums.

While I note Mr P's sentiments regarding the time he's spent on this matter, I don't think I can properly say Vanquis needs to offer Mr P more compensation than the £50 it has already paid him. Although some of the arguments made by the bank were open to challenge – the debtor-creditor-supplier arrangements, for example – I doubt Mr P would otherwise have accepted the rejection of his claim. In my view, the extent of any impact on Mr P of the way Vanquis handled his claim is suitably addressed by its existing payment.

### **My final decision**

For the reasons I've set out here, my decision is that I don't require Vanquis Bank Limited to pay Mr P further compensation, or to take any other action to resolve his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 September 2021.

Niall Taylor  
**Ombudsman**