

The complaint

Mr B complains that Vanquis Bank Limited (“Vanquis”) registered a fraud prevention marker against him without due cause.

What happened

Mr B held a credit card account with Vanquis from December 2019 to March 2020. During this time, Mr B utilised the credit balance on the account through cash withdrawals (and associated fees), point of sale transactions, and other charges on the account. This led to a balance of approximately -£1,100 on the account. There were two direct debit payments made towards the account in January and February 2020, but these were reversed.

Vanquis contacted Mr B and offered him 60 days to contact them or rectify the returned payments. They said they didn’t receive any payments or any communication from Mr B. So they reviewed Mr B’s account and concluded that Mr B had misused his credit facility. So, they referred Mr B to Cifas who registered a fraud prevention marker in his name. In support of this they said:

- Mr B must have known he didn’t have the funds to repay the credit facility as by his own admission he was in financial difficulty, but continued to use the credit facility to make transactions and accumulate charges;
- The first direct debit was reversed in January, but Mr B continued to complete transactions on the account which included three cash withdrawals;
- After the second direct debit was reversed in February, Mr B attempted to make three further transactions which included a cash withdrawal of £500, one of £400 and a lower value point of sale transaction;
- He would have known his direct debits wouldn’t be honoured, and so the credit card debt would still be owed;
- He didn’t make any efforts to repay the debt; and
- He didn’t contact them to let him know of his personal circumstances.

Mr B said two of his bank accounts were closed later in 2020, which led him to discover Vanquis had registered the Cifas fraud prevention marker against him. He complained to Vanquis that the marker had been loaded unfairly. He explained that he suffers with depression and a gambling addiction. This has led to him having to go on long term sick in the past, and he has sought help from medical professionals. He suffered from a relapse in January 2020.

He said at the time of the relevant account activity, he was in financial difficulties for about two to three months. He said he hadn’t known that his bank had reversed his direct debit payments to Vanquis. He explained that most of his accounts were in their overdraft but allowed him to keep spending so he didn’t know the lack of funds would mean the payments were reversed – he thought they would just go through. He accepted he had not been on top of things financially but said he hadn’t set out to defraud anyone - and so he felt the Cifas marker was unfair.

When Mr B and Vanquis were unable to reach an agreement about the complaint, Mr B came to our service. He explained that the Cifas marker was having a negative impact on him. Our investigator looked at what happened and recommended that Mr B's complaint be upheld. They felt that he had allowed his financial situation to get out of control as a result of the relapse of his gambling addiction and depression – but that this amounted to being fiscally irresponsible rather than deliberately dishonest. This was not the only debt that had gone unpaid at the time – and they noted that Mr B had sought financial advice and set up payment plans for other debts he accrued whilst he was going through this difficult period in his life. They said he hadn't reversed the direct debits in question himself - they also felt that Vanquis had acted very quickly in deciding to register Mr B with Cifas – the account activity only occurred over two months before Vanquis acted on their concerns. So, when considered in its entirety, our investigator felt the most appropriate result of this complaint would be for the Cifas marker to be removed from Mr B.

Vanquis didn't agree. They said:

- They'd asked Cifas to review this matter, and Cifas had said the loading could remain as they'd followed the right guidance and had sufficient evidence to justify the loading;
- They had shown that Mr B had spent funds that were returned unpaid;
- There were two instances where Mr B had checked immediately to see if the payment was still spendable;
- Mr B made no attempts to contact Vanquis, or make payments towards the debt, despite them writing to him over two months before the decision to load the Cifas was made;
- They had evidenced that Mr B was trying to spend the next Direct Debit payment which was also returned unpaid;

Our investigator said their opinion on this complaint hadn't changed – so as an agreement wasn't reached, it has come 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.

Having done so, I have reached the same overall conclusion as our investigator, and for broadly the same reasons. I'll explain why.

The type of Cifas marker that Vanquis applied is for 'misuse of facility' – relating to Mr B utilising credit balance when he knew payments towards it would be reversed – sometimes known as 'uncleared effects fraud'. In order to file such a marker, Vanquis are not required to prove beyond reasonable doubt that Mr B is guilty of fraud or a financial crime. But it must show that there are reasonable grounds that amounted to more than mere suspicion or concern. Cifas guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

So the relevant finding I need to make is whether I believe Vanquis have sufficient evidence to conclude that Mr B intentionally spent credit balance when he knew that payments to his credit facility would be reversed, and that he was deliberately dishonest in doing so such that it would be able to escalate its concerns to Cifas. I do not think Vanquis were entitled to do so; I'll explain why.

There are two main elements I would expect Vanquis to show in order to make such a filing to Cifas. The first relates to the account activity – money being spent on a credit facility that would not have been possible but for a payment from the customer’s bank account, with that payment being reversed shortly thereafter. And I agree with Vanquis that this element was fulfilled in this case. Mr B was only able to spend on the account due to the funding made available by a direct debit due to his credit facility from his bank account – and his bank then reversed the payment due to a lack of available funds in his bank account. This does amount to Mr B spending money that was not legitimately his. For example – he withdrew cash twice the day after the first direct debit payment was reversed. He also made attempts to further spend after the reversal of a direct debit – with multiple attempted transactions on the 28 and 29 February 2020, when the direct debit had reversed on 28 February.

Secondly, I would expect Vanquis to be able to show strong evidence that the consumer was deliberately dishonest in relation to this account activity – in simple terms meaning that he knew the available funds on his Vanquis credit card weren’t his and proceeded with payments regardless.

I do think in the first instance Vanquis did make reasonable steps to contact Mr B about his account – they have been able to show they contacted him over the two months and asked him to rectify the problem or to get in touch. And I appreciate that the lack of contact from Mr B led them to believe that he was deliberately dishonest – he didn’t contact them or arrange payments to the account to rectify the problem. But I think this is where my thinking deviates from that of Vanquis – I don’t believe Mr B was deliberately dishonest.

I do recognise that Mr B made payments on temporarily available funds prior to the reversal of the payment to his credit facility. This means he was spending or attempting to spend when there were in reality no available funds to spend. But I have considered Mr B’s testimony and the evidence provided from his doctor. And I think on balance it is most likely that Mr B was struggling emotionally and financially, as well as with an addiction, and wasn’t wholly aware of the lack of available credit with the paying bank at the times the events in question took place. He said that he was aware that there weren’t available funds on his accounts, but that payments had continued to go through so he just assumed he was getting himself into further debt, knowing he would later need to repay this. So, I don’t think he understood he saw his actions as causing a loss to anyone other than himself in the long run. I am not saying that the information about the state of his finances wasn’t readily available to him – but I think this is a case of someone struggling, simply unable to cope, and so burying their head in the sand.

Vanquis told us that on the day of the first payment Mr B did call them twice but hung up before he spoke to someone. And I think this shows the extent to which he was made simply unable to cope with the sort of tasks that most of us complete with relative ease on a frequent basis – and that it was necessary for him to simply pretend it was not happening. He spoke to Vanquis again in February and didn’t mention the possibility of the direct debit reversing again – which I think goes to further prove this point.

I am pleased to see Mr B does appear to have been doing better since this difficult time in his life, and that he has made efforts to begin his journey of repaying the debts he owed. I have seen evidence of payment plans he has already entered to numerous debtors, and I do think he always thought he would have to repay the debts, but simply intended to delay dealing with any of it. And with this in mind, it seems unduly harsh to label him a fraudster, and make him deal with the many negative consequences that come with a Cifas marker. I am not saying his actions or lack of financial management should go completely un-noted – but there will be defaults or other negative markers on his credit file that more fairly reflect the circumstances here.

Putting things right

Having considered all of the evidence and circumstances of this complaint, I find that

Vanquis must remove the Cifas marker registered against Mr B.

My final decision

My final decision is that I uphold this complaint and require Vanquis to remove the Cifas marker registered against Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 April 2022.

Katherine Jones
Ombudsman