

## **The complaint**

Mr O is unhappy Vanquis Bank Limited (“Vanquis”) won’t reimburse him the money he lost when he fell victim to a scam.

## **What happened**

The details of this case have been clearly set out by our investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here.

In summary Mr O held a credit card with Vanquis. On 10 June 2020, Mr O fell victim to an ‘impersonation scam’. Mr O had intended on purchasing tickets for some flights abroad and, after looking online, was directed to what he thought was a legitimate travel company.

Unfortunately Mr O was in fact communicating with fraudsters. Mr O had correspondence with the fraudsters over phone, email and through messages.

After the relevant flights and dates had been chosen Mr O ended up making card payments for the flights.

Mr O paid £100 as a deposit and was told he could pay the remainder of the balance before the flight. After the initial payment, Mr O was led into making a further £700 payment on his credit card.

Mr O, during his correspondence with the fraudsters, provided them with his banking details and other information as he believed he was liaising with a genuine travel company.

The two payments of £100 and £700 were sent to a money transfer service provider whom I’ll refer to as “P”.

Further payments were attempted from the credit card by the fraudsters, which were declined and didn’t go through, but two further smaller amounts of £50 and £25 did go through.

Mr O contacted Vanquis to report what had happened and sought a refund of the £875.

Vanquis ultimately considered that Mr O had authorised the transactions of £100 and £700 with it sending Mr O a one-time-passcode for the £700 transaction which was entered successfully. So it considered Mr O was liable for the two amounts. It also advised the two other payments of £50 and £25 that had been taken, had been refunded by “P” as those amounts remained. But unfortunately the £100 and £700 had already been moved on so couldn’t be recovered.

Unhappy with Vanquis’ response, Mr O referred the matter to our service.

Our investigator looked into the complaint and didn’t recommend the complaint be upheld. They considered Mr O, despite being a victim of a scam, had ‘authorised’ the first two transactions of £100 and £700. They also didn’t think Vanquis ought to have done more to

identify the payments as potentially fraudulent in the circumstances. And they also considered that a Section 75 or chargeback claim would have been unsuccessful.

Mr O responded as he considered more should have been done to recover the funds as he reported the fraud to Vanquis shortly after he had made the payments.

Our investigator explained to Mr O that “P” had confirmed to Vanquis that the £100 and £700 had been moved on to another foreign bank so the funds weren’t recoverable – but the £50 and £25 hadn’t, which was why “P” returned them to Vanquis.

Mr O has asked for the matter to be referred to an ombudsman, so it’s been passed 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’m not upholding Mr O’s complaint. I’ll explain why.

Before I explain my findings, I would like to clarify that within this decision, I can only look at the actions of Vanquis. Any concerns Mr O has with “P”, would need to be raised with them in the first instance.

In deciding what’s fair and reasonable in all the circumstances of a complaint, I’m required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer’s account. This is set out within the ‘Payment Service Regulations 2017’ (“PSRs”) and these are the relevant regulations in place here.

Under ‘Section 67’ of the PSRs it states:

*“67.— (1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—*

*(a) the execution of the payment transaction; or*

*(b) the execution of a series of payment transactions of which that payment transaction forms part.*

*(2) Such consent—*

*(a) may be given before or, if agreed between the payer and its payment service provider, after the execution of the payment transaction;*

*(b) must be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider; and*

*(c) may be given via the payee or a payment initiation service provider.”*

So the question I have to ask myself here is whether the payment transactions made are considered as authorised as set out by the PSRs. So, whether Mr O consented to the execution of the payment transaction. Consent, in this context, is explained as being given in the form and in accordance with procedure agreed between the payer (Mr O) and the payment service provider (Vanquis). Consent is typically given by a consumer providing the relevant card details over the phone or entering them online, or by other means such as contactless or entering a PIN on a terminal or ATM. A consumer, using the card or its details in this way is, for the purposes of the PSRs, a consumer authorising a payment transaction. They have consented to the execution of the payment transaction by providing their card or the details of their card.

It is important to point out that consenting to the execution of a payment transaction is an objective test and it doesn't depend on what Mr O knew at the time they completed the procedure for giving consent.

Mr O provided the relevant card details for the initial £100 to be paid. And then Mr O agreed to a further £700 payment and this payment also required a one-time-passcode from Vanquis which was sent to his mobile. Mr O was aware of these payments and amounts (albeit under deception) and unfortunately, by providing his card details and the one-time-passcode for the second payment, Mr O has, in line with the PSRs, given his consent (in accordance with the procedure, agreed between him and Vanquis) to the execution of the payment transactions.

This means that under the PSR's Mr O has authorised the two credit card transactions of £100 and £700 and is therefore responsible for them. That remains the case even though Mr O was the unfortunate victim of a scam.

There are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Vanquis have certain obligations to protect customers from fraud.

In this case, I need to decide whether Vanquis acted fairly and reasonably in its dealings with Mr O when he made the credit card payments or whether it should have done more than it did.

I've thought about this carefully. From what I've seen, there isn't anything unusual or remarkable about the credit card payments or the amounts that ought to have alerted Vanquis to the possibility Mr O was being scammed. Banks process a high volume of transfers and transactions each day. And a bank has to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests.

I have also looked to see whether Vanquis acted appropriately once the scam was reported and whether it acted promptly to see if any of the funds could be recovered. Mr O considers Vanquis should have done more for him here, as he contacted Vanquis around 30 minutes after the payment of £700 which was made at 15:32pm.

I can see Mr O did log the fraud with Vanquis, and Vanquis' records show that the call ended at around 16:20pm.

Unfortunately the payments were moved on from "P" by the fraudster shortly after Mr O had reported the fraud to Vanquis. So even if Vanquis had reported the fraud instantly, it still would have required "P" to also have acted instantly. Unfortunately fraudsters will typically move on funds as soon as they are sent. In this case I don't think there was anything

Vanquis could have done sooner that would have meant the £100 and £700 could have been recovered.

I am also mindful, given the nature of the payments being made here – to a money transfer service provider, other alternative methods to share liability or an attempt to recover the funds, such as through a 'Section 75' claim (under the Consumer Credit Act 1974) or a 'chargeback' wouldn't have had any reasonable chance of success.

Overall, while I appreciate Mr O's been the unfortunate victim of a scam, I think Vanquis' decision not to refund him in this instance was fair and reasonable in the circumstances. I say this because I'm satisfied that Mr O, by providing his card details, consented to the execution of the payment transactions. Vanquis followed Mr O's instructions to make the payments of £100 and £700 and I haven't seen any reason why it shouldn't have done this. And unfortunately, the funds were moved on meaning Vanquis were unable to recover them or do anything to help Mr O further.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 18 February 2022.

Matthew Horner  
**Ombudsman**