

The complaint

Mr T complains that Vanquis Bank Limited won't refund payments he made on his credit card to what he says was a scam investment.

What happened

The detailed background to this complaint is well known to both parties, so I'll only provide an overview of some of the key events here. In 2014 Mr T made three payments from his Vanquis Visa credit card to a merchant I'll refer to as 'L'. The payments were made between May and August 2014 and totalled around £2,600. Mr T also received a credit from L back onto his account for around £420 in September 2014.

In 2020 Mr T contacted Vanquis and asked that they reimburse him under section 75 of the Consumer Credit Act 1974 (CCA). He said L were a fraudulent company. Vanquis responded and said that they weren't prepared to offer a refund. Mr T complained and when Vanquis maintained their position the matter was referred to our service.

One of our investigators didn't recommend that the complaint should be upheld. In summary she thought that Mr T hadn't evidenced he had a valid claim under section 75 and she didn't think chargeback was an option given the time that had passed. She also didn't think there were any other reasons why Vanquis should provide a refund.

Mr T disagreed and asked for an ombudsman to review his complaint.

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've reached the same outcome as our investigator and for similar reasons. I'll explain why.

Where chargeback is concerned Vanquis are bound by the card scheme operator's (Visa) rules. The chargeback rules are clear that the absolute maximum time allowed from the date of transaction for a claim to be raised is 540 days. As this had already passed (for all the transactions) by the time Vanquis were informed, I think their decision not to pursue a chargeback was reasonable. They can only act within the schemes rules and the time limits are clear.

Section 75 of the CCA gives a debtor the right to pursue a 'like claim' for breach of contract and/or misrepresentation against a creditor as he would have against the supplier of goods or services. For a claim of misrepresentation to be successful it's necessary to show not just a false statement of fact but also that the statement induced Mr T into entering into an agreement.

Mr T hasn't presented evidence to persuade me that L made a misrepresentation that induced him into entering into the agreement with them. Nor that they breached any contract he had with them. I've not been able to find any information which suggests that (at the time) L were operating in a fraudulent manner. The fact that Mr T was able to receive a credit back to his account (albeit after some difficulties as I understand), makes that less likely to be the case. Mr T's own testimony supports that he had access to a trading platform. Overall, I find that Mr T hasn't established a claim under section 75 for either breach of contract nor misrepresentation.

As such, I think Vanquis' decision to not make a refund on that basis was fair and reasonable. For completeness, I also don't think there were any other reasons why Vanquis ought to have intervened in the payments at the time they were being made or that they need to do more to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 February 2022.

Richard Annandale
Ombudsman