

The complaint

Mr C complains that Vanquis Bank Limited (Vanquis) put his account into default too late.

What happened

I issued my provisional decision on this case on 8 November 2021. I wanted to give both parties the chance to respond with anything else they wanted me to consider before I came to my final decision. Both parties have now responded, and so I'm in a position to issue my final decision.

I have copied my provisional decision below, which also forms part of this final decision.

"What happened

Mr C took out a credit card account with Vanquis in 2013. At this time, he also took out a repayment option plan (ROP). The purpose of the plan was that it would make repayments to the credit card account in certain circumstances if Mr C wasn't able to.

Mr C says that he has experienced financial difficulty since he had the account. But Vanquis eventually defaulted the account in 2019 due to Mr C not making any payments to it.

Mr C says the default has affected him severely and he doesn't think that it was fair of Vanquis to apply the default when it did. He says his relationship with Vanquis broke down in around 2014, and so the default ought to have been applied then.

Vanquis responded to Mr C's complaint, but it didn't uphold it. It said that it had sent a Notice of Default (NOD) letter to Mr C's address on 19 January 2019. The letter explained that it would default the account and register this with the credit reference agencies if Mr C didn't bring his account up to date. It said it didn't receive a payment or hear anything back from Mr C and so it registered the default.

It said that it also sent Mr C a text message on 5 March 2019 letter him know that it would be sending his account to a third party to collect the debt owed. Mr C responded to the text message to say he would make a repayment that day. Vanquis also asked Mr C to email it with supporting evidence to activate the ROP.

Vanquis said that it continued to contact Mr C by text message in April 2019 regarding the evidence it needed to activate the ROP. While Mr C was responding the text messages, he didn't provide the evidence Vanquis needed and so it passed his account to an external agency.

It added that it has a duty to report factual information to the credit reference agencies, and so it felt it had fairly and correctly applied the default.

Our investigator looked into things for Mr C, but they didn't uphold his complaint. They found that while Mr C had missed payments to the account, these were generally sporadic and not enough for Vanquis to have considered defaulting the account sooner. They also found that

there were periods of non-payment, but these were covered by the ROP – so while Mr C wasn't making the repayments himself, the ROP was doing this.

Mr C responded to our investigator to say he didn't agree. He explained that he wasn't happy with the way the ROP was sold to him. And he was unhappy with the way Vanquis passed his account to a debt collection agency when the default was applied. He said that Vanquis weren't willing to discuss the account with him properly at the point the default was applied – so there was no clear way for him to maintain a relationship with Vanquis. Mr C doesn't feel that Vanquis did enough to resolve the issue prior to the default.

Because Mr C didn't agree, the complaint has been passed to me to make a decision on the matter.

What I've provisionally 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 intending to uphold this complaint.

I know Mr C has more recently raised concerns about how the ROP has been sold to him. I haven't looked at those concerns in this decision, because he hasn't raised these with Vanquis, nor did he mention this when he first brought his complaint to this service. So Vanquis will need a chance to look into this further first.

Firstly, it's worth noting what the Information Commissioner's Office (ICO) says about when a default should be registered. It says that a default should be registered when a consumer is at least three months behind with their payments. And it would expect a default to be registered by the time the consumer is six months behind with their payments.

Looking at what has happened in this case, I can see that the last payment Mr C made to the account was in October 2018. After this, he didn't make a payment. I can see Vanquis sent Mr C a 'Notice of Default' letter in January 2019 to ask that Mr C brings the account up to date by 9 February 2019, and if he didn't do this it may default to his account.

But Vanquis didn't default the account until May 2019, which was after Mr C had missed seven repayments to the card, which is more than the maximum of six missed payments as recommended set out in the guidelines set by the ICO.

The Notice of Default letter that Vanquis sent to Mr C in January 2019 stated that Mr C had until 9 February 2019 to make the payment, otherwise it would likely default the account. Given that Vanquis's own correspondence to Mr C sets this out, it isn't clear why it took it a further three months after this to default the account. And I don't think this was fair on Mr C.

Vanquis continued to apply charges and interest to the account after the date it told him it would default. And it continued to charge him for the use of the ROP. So I think Mr C has lost out here.

Based on what I've said above, and while taking into account the ICO's guidance, I think that Vanquis fairly defaulted the account, but I think it should have done this in February 2019 as stated in its letter.

Mr C believes that the default should have been registered even sooner than this. He says that he missed payments between 2013 and 2014, and so it should have been clear at this stage that he was struggling financially, and the default should have been applied then. I've

looked through the information provided by Vanquis. And while I agree that Mr C has clearly missed payments, I can't agree that a default should have been applied sooner.

I can see from the information sent by Vanquis that Mr C did make some payments during these dates and so he wasn't ever three payments or more in arrears. I don't think it would have been appropriate for Vanquis to register a default at this time. While Mr C did go on to miss more payments while he had this credit card account, I can't agree he missed enough for a default to be registered.

The marking of a default on a consumer's credit file is likely to impact on their ability to obtain credit, or the terms or cost of their borrowing – so it could have serious consequences for Mr C. Because of this Vanquis would need to be sure that Mr C wouldn't be able to repay the account under the current terms. And because he did, on each occasion, bring the account back up to date or activate the ROP, I don't think it did anything wrong by not applying a default prior to 2019.

I appreciate Mr C feels as though Vanquis didn't do enough to help him before applying the default. Based on what I've seen, I can see Vanquis contacted Mr C quite a few times, both by letter and text message from the date he first missed the payment, until it applied the default. So, I can't agree that it didn't do enough to contact him.

I can also see that Vanquis text Mr C to let him know it would pass the account to a third party debt collector. Mr C responded to the text message agreeing to pay later that day, but no payment was received. Vanquis continued to text Mr C explaining what he needed to do to activate the ROP, but it didn't receive any documents to evidence his financial situation, and so it passed his debt onto a third party to collect it.

I've looked at the terms and conditions of Mr C's account, and they state that:

"We may instruct any other person to exercise our rights or carry out our responsibilities under this agreement e.g., we could instruct a debt collection agency to assist in recovering any amounts owed to us."

Given that Mr C had stopped making repayments towards the account, I don't think it did anything wrong by instructing a different party to help it collect the debt. So, I don't find this to have been unfair to Mr C.

Based on everything I've said above, I currently think Vanquis needs to backdate the default to February 2019. And it needs to refund any charges, interest or ROP payments it added to Mr C's account after this date."

Vanquis responded to my provisional decision to say it didn't have anything further to add. Mr C responded and made the below main points:

- No payments were made between December 2014 to June 2015. There were more than six missed payments at this time and so the account should have defaulted. And had he not had the ROP, then his account would have defaulted during this period of non-payment.
- He has had other defaults applied to his account in 2014, that have since dropped off his credit report.
- The impact of the default showing on his credit file is having big consequences for him on how he is able to support his business. And he's also not able to buy a house as a result of the default. He believes that the default only being applied in 2019 is

eliminating his right to a fresh start.

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 considered everything again, I've decided to uphold Mr C's complaint, broadly for the same reasons as stated in my provisional decision, but I will respond to the points made by Mr C in more detail.

Firstly, I'd like to thank Mr C for taking the time to respond to my provisional decision. Clearly, he has been through a difficult time over the years, and I'm sorry to have read about his current situation and how the default is impacting on him.

In reaching my conclusion, I don't wish in any way to downplay or disregard the situation Mr C has found himself in. But being independent means, I have to take a step back and consider what both parties have said. And I have to look to see if Vanquis has acted fairly and reasonably when applying the default.

I've looked at the evidence provided by Mr C in relation to what repayments he has made to the credit card over the years. And I can see that he didn't make a payment to the account for around six consecutive months in 2015. But I can also see that Mr C made an application for the ROP to activate based on his circumstances at the time.

The purpose of the ROP was, amongst other things, that the account holder wouldn't need to make repayments to the account if they got into short term financial difficulty. The ROP was activated in early 2015, so Mr C didn't have to make the repayments to the account until May 2015. So, I don't find that Vanquis not defaulting the account back in 2015 was unfair.

Because Mr C had applied to have the ROP activated, it wouldn't be fair of me to now decide that Vanquis shouldn't have activated this and defaulted the account instead. While I appreciate that in hindsight, Mr C thinks it might have been more beneficial to him if the account had defaulted instead, it appears that this was something he was trying to avoid at the time, given his actions.

I'm sorry to have read Mr C's comments in relation to the impact the default is having on his current situation. And while I empathise with this, it doesn't mean that Vanquis has treated him unfairly. As I've already stated in my provisional decision, Mr C did miss payments in 2019, and this is the reason for the account defaulting.

Putting things right

Vanquis appears to have accepted that it should have applied the default in February 2019. So Vanquis needs to put things right for Mr C by:

- Backdating the default to February 2019
- Refunding any interest and charges that were applied to Mr C's account after February 2019.
- Refunding any payments made for ROP after February 2019.

My final decision

For the reasons set out above, I uphold Mr C's complaint. Vanquis Bank Limited should put things right for Mr C by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 December 2021.

Sophie Wilkinson
Ombudsman