

The complaint

Mr C complains that Vanquis Bank Limited (“Vanquis”) didn’t do enough to protect him when he fell victim to a scam, failed to act when he notified it of the issue, and hasn’t reimbursed him for the loss.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them in full here. Instead, I’ll summarise what happened and focus on giving the reasons for my decision.

- In April 2021, Mr C said he became the victim of fraud when he gave his card details to a person who offered to track a previous BitCoin investment and reclaim it for him. He agreed to a charge of £436 for this service. Without his authorisation, two further payments of £500 were also made.
- Mr C said he contacted Vanquis and logged a complaint within 10 minutes of discovering the fraud. Mr C believes that it would have been possible to reverse the fraudulent payment given how quickly he notified Vanquis of the fraud. But he said he didn’t hear anything from Vanquis until July 2021.
- Vanquis raised a chargeback. But the chargeback was unsuccessful as the merchant involved in the transaction is a legitimate cryptocurrency provider that fulfilled the service it was required to – the purchase of cryptocurrency.
- While Vanquis didn’t agree to refund Mr C’s losses, it refunded two charges of £12 for ‘over limit’ fees. It also gave Mr C £75 to reflect some service failings, including matters around communication and a delay in freezing the transactions for the purposes of accruing interest etc.
- Our investigator considered this complaint and upheld it in part. He concluded that Vanquis should refund the two £500 payments on the basis that they were unauthorised transactions made using a credit facility. In addition, he said it should refund any interest, fees or charges associated with the £1,000, and remove any adverse information recorded on Mr C’s credit file as a direct result of the fraud. But he didn’t think it should refund the initial payment of £436.
- Vanquis agreed to the refund of the £1,000 plus associated interest, fees, and charges. In terms of the credit file, it said that, as Mr C is being held responsible for the first payment, there was still a minimum payment due by October 2021 – the month after the payments were re-debited – and no further payments were received. So, it believes the account position has been correctly reported to the credit reference agencies and sees no reason for removing any adverse credit history applied from October 2021.
- Mr C didn’t agree with the investigator. He reiterated how quickly he’d notified Vanquis of an issue and believes he must be entitled to a cooling-off period, or

similar. And he said that if Vanquis accepted liability for the second and third payment, it has to accept it for the full amount. He doesn't believe Vanquis pursued the fraudsters to any degree and feels it was seriously negligent in managing his account so should be held accountable for the whole loss.

- So the complaint has 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 agree with the outcome reached by our investigator. I'll explain why below. But, before I do, I'd just like to mention that I've not commented on every individual detail. I've focused on the details that are central to me reaching what I consider to be a fair outcome. This reflects the informal nature of our service as a free alternative to the courts.

- As Vanquis has accepted that the second and third payments should be refunded, along with the associated fees etc. I don't see the need to focus too much on this. Instead, I'll focus on the first payment. *However*, I would just note that these two payments of £500 were unauthorised – Mr C didn't agree to them being made. And it's because of this, and the fact the payments were made using a credit facility (a credit card) that Vanquis has been asked to refund these.
- Turning to the first payment of £436 (plus associated fees), it's not in dispute that Mr C authorised this, albeit not realising he was being scammed – he notes that he 'instigated the charge'. So, the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction.
- Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect Vanquis to have systems in place to monitor for indications of fraud. In some circumstances, when such a risk is identified, I'd expect it to make additional checks before processing a payment. If it failed to do so, and that failure led to a fraudulent loss, it might be fair to hold Vanquis liable.
- I've considered whether Vanquis ought to have made additional checks on the disputed payment. And I don't think it ought to have. I say this because the payment was made to a legitimate cryptocurrency provider. And, while I appreciate that it's not an insignificant amount of money to lose to a scam, it's a relatively low payment – and not one I'd expect to have flagged up on Vanquis' fraud alert systems as being unusual or out of character. So, I don't think it would be fair to expect Vanquis to have intervened with this payment.
- I recognise that Mr C contacted Vanquis very quickly after falling victim to the scam. But, as the payment didn't trigger Vanquis's fraud systems, it wouldn't have been able to stop the authorised payment, regardless of how quickly it acted. The only way this money could be returned by Vanquis from this point would be if the merchant didn't 'pull' the payment, in which case the funds would eventually have been returned to Mr C's account.
- Vanquis raised a chargeback, but it was unsuccessful. As outlined above, this is because the payment went to a legitimate cryptocurrency provider that carried out the service it was required to – the purchase of cryptocurrency.

- It doesn't appear that a Section 75 claim (under the Consumer Credit Act 1974) has been considered. However, to uphold a claim for a misrepresentation or breach of contract, there would need to be a valid debtor-creditor-supplier relationship. In this case, as the payment went via a legitimate merchant, the debtor-creditor-supplier chain is broken. I say this because the supplier that seems to have misrepresented themselves to Mr C – the caller – was not a party to the payments. And, as referenced above, the cryptocurrency provider carried out the service it was required to provide. So, I don't consider a Section 75 claim to have had a reasonable prospect of success.
- So, I don't think Vanquis acted in error by not intervening with these payments. And I think it did what it reasonably should have to try to recover the payments. I also note that Vanquis wouldn't be expected to pursue the fraudsters – that would be a matter for a relevant authority, such as the police.
- Mr C believes he must be entitled to a cooling-off period, or similar. However, once the payment was made to the merchant, it was outside of Vanquis's control. Any form of cooling-off period would involve contacting the merchant.
- So, in summary, I won't be asking Vanquis to refund Mr C for the first payment. And that does mean that he was, and remains, liable for this debt. It also means that where payments fell due on this portion of the debt, he was required to make these and has chosen not to. Banks are required to accurately report to credit reference agencies. It would be inaccurate for Vanquis to report that payments were made when they weren't, or not to report at all.

I'm sorry Mr C has been the victim of a scam. I note he's told us he was in a lot of pain at the time of falling for the scam and wouldn't normally have given his details out so readily. But I'm afraid this doesn't change that the first payment was authorised – Vanquis couldn't have known about this. So, for the reasons given above, I don't think it would be fair to ask Vanquis to refund the first payment.

My final decision

For the reasons given above, I uphold this complaint. I direct Vanquis Bank Limited to:

- Refund Mr C the two unauthorised payments of £500 (along with any associated interest, fees, and charges); and
- If applicable, amend Mr C's credit file to remove any adverse information recorded in relation to these two payments only.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 April 2023.

Melanie Roberts
Ombudsman