

## **Complaint**

Mr M has complained about a personal loan Vanquis Bank Limited (“Vanquis”) provided to him. He says the loan was unaffordable and was therefore irresponsibly lent to him.

## **Background**

Vanquis provided Mr M with a loan for £1,500.00 in March 2023. This loan had an APR of 29.5% and a term of 24 months. This meant that the total amount to be repaid of £1,931.61, including interest, fees and charges of £431.61, was due to be repaid in 23 monthly instalments of £80.49 and 1 final monthly instalment of £80.34.

One of our investigators reviewed Mr M’s complaint and that thought that it didn’t do anything wrong when providing Mr M with his loan. So he didn’t recommend that Mr M’s complaint be upheld. Mr M disagreed with our investigator’s assessment. So the case was passed to an ombudsman as per the next step of our dispute resolution process.

## **My provisional decision of 22 November 2023**

I issued a provisional decision – on 22 November 2023 - setting out why I intended to uphold Mr M’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I’d used this approach to help me decide Mr M’s complaint.

What this in effect meant was that Vanquis needed to make sure it didn’t lend irresponsibly. In practice, what this meant was Vanquis needed to carry out proportionate checks to be able to understand whether Mr M could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Vanquis said it agreed to Mr M’s application after he provided details of his monthly income and it cross-checked this against information on a credit search it carried out. In its view, this information showed Mr M could afford to make the repayments he was committing to. On the other hand, Mr M said that he shouldn’t have been lent to.

I could understand why the low monthly payments might have led Vanquis to argue that a lighter touch assessment of affordability might have been proportionate here. This was

particularly as it said that it didn't see anything concerning on the credit check that it carried out on Mr M. That said, I was mindful that this wasn't Mr M's first loan with Vanquis.

Indeed, not only was this not Mr M's first loan with Vanquis, but Vanquis had written off the outstanding balance on the previous loan, in circumstances where it hadn't received even 20% of the amount it lent let alone any interest, because it accepted that Mr M shouldn't have been advanced those funds. Furthermore, although the decision to write off Mr M's previous loan with Vanquis was taken in November 2022 it was still corresponding with Mr M about this matter in February 2023, which was a mere matter of weeks prior to Mr M applying for this particular loan.

Given the proximity of these events and notwithstanding that Vanquis could well have argued that Mr M was brazen in applying for another loan with it so quickly, I could not reasonably argue that Vanquis did not need to take this into account (at the very least it would have seen a balance was written off even if it might not have seen that this was because of a successful irresponsible lending complaint), when deciding whether to provide Mr M with further funds.

I thought that there was an argument for saying that Vanquis ought to have declined Mr M's application outright. In any event, I thought that at the very least it probably needed to take a closer look into why Mr M's previous loan was written off. And if Vanquis had done this it would have seen the reason for Mr M's previous indebtedness and apparent inability to manage his money.

Given what I thought that Vanquis was likely to have seen if it had looked into why it wrote off Mr M's previous loan, it was apparent to me that it would have realised that Mr M was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty. I was therefore satisfied that Mr M's actions in this matter were not a reason for me not to uphold his complaint. Nonetheless, I did think that these were matters for me to take into account when deciding on my direction to Vanquis on how it should put things right.

As this was the case, and while acknowledging all of the facts, I did think that Mr M's existing financial position meant that he was unlikely to be able to afford the repayments to this loan, without undue difficulty or borrowing further. And I was satisfied that reasonable and proportionate checks would more like than not have shown Vanquis that it shouldn't have provided this loan to Mr M.

As Vanquis provided Mr M with this loan, notwithstanding this, I was minded to conclude that it failed to act fairly and reasonably towards him. And it was my intention to uphold this complaint. I then went on to set out a proposed method of putting things right which I thought addressed Vanquis' shortcomings as well as the unique circumstances of this complaint.

### **Responses to my provisional decision**

Mr M confirmed that he accepted my provisional decision and didn't provide anything further to me to consider.

Vanquis also confirmed that it accepted my provisional decision and said that it didn't have any further points for me to consider.

### **My findings**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I thank the parties for their responses and I'm pleased to see that they have accepted my conclusions.

I set out in some detail why I intended to uphold Mr M's complaint in my provisional decision of 22 November 2023. As neither party has challenged these conclusions and haven't provided anything further for me to consider, I see no reason to alter my conclusions.

So overall and having considered everything, I'm still upholding Mr M's complaint and I require Vanquis to put things right in the way that I set out below.

### **My thoughts on fair compensation**

At this stage I wish to make it clear that this complaint involves a truly exceptional set of circumstances. I've been required to decide irresponsible and unaffordable lending complaints for a number of years. And even I haven't had to decide a case where a customer has complained after having fully repaid a loan, in circumstances where that loan was provided shortly after a firm not only waived interest but wrote off over 80% of the capital lent, because it accepted it shouldn't have lent to the customer.

Given the uniqueness of the situation here, I'm not persuaded that merely following our usual approach produces a fair and reasonable outcome. And I've given a lot of careful thought to what fair compensation should look like in this case.

As we explain on our website where we find, or a lender agrees, credit was provided irresponsibly, we typically say it's fair reasonable to expect the borrower to repay the funds they were lent but not any associated interest, fees or charges. So as a starting point I'm satisfied that Vanquis should refund Mr M any extra he paid over and above the £1,500.00 he was lent.

I'm also mindful that we typically award a customer interest for being deprived of the funds that they overpaid – in this case, any extra over and above the £1,500.00 Mr M was lent. So in this case this would mean Vanquis paying Mr M interest at 8% per year simple from the date Mr M paid more than £1,500.00 to the date that Vanquis settles this decision. This typically accounts for the fact that the customer has not had the use of the funds and it is unclear what the customer would have done with the funds had they not been deprived of money.

However, in this case, I'm mindful of the reason Mr M's complaint has been upheld and in particular what Vanquis is likely to have seen if it had followed through in checking its reasons for writing off Mr M's previous loan. In my view, it's a safe assumption that Mr M is unlikely to have seen a return on the funds in question. There is even an argument to be made that the funds could have dissipated by now had they not been paid to Vanquis and instead remained with Mr M at this time.

In these circumstances, while I'm satisfied that Vanquis should not keep Mr M's overpayment, I'm nonetheless also satisfied that there is a strong, fair and reasonable argument for saying that he would not still be in possession of those funds now. As this is the case, I don't think that Mr M should be compensated by payment of further interest and I'm satisfied that a refund of the overpayment is sufficient compensation here.

I turn now to Mr M's credit file. We'd typically expect a lender to remove any adverse information on a loan, from the borrower's credit file, where a complaint is upheld for

irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given the circumstances of Mr M's loan application here.

To explain, Mr M was not deterred from applying to Vanquis for a loan despite having recently told it he couldn't repay what he owed. He says that it is perplexing that the previous loan's history wasn't taken into account, although, as I've explained Vanquis could quite reasonably argue that Mr M's decision making was at least equally as perplexing here. This and the reasons why the balance on Mr M's previous Vanquis loan was written off, has played a large part in my intended decision to uphold Mr M's complaint.

In these circumstances, where Mr M applied for a further loan a mere matter of weeks after what had previously happened clearly didn't have the effect of deterring him from going back to Vanquis for more funds, it seems to me removing adverse information from Mr M's credit file, thus increasing the chances of him being able to borrow further would be counterproductive. In my view, making such a direction here would arguably not be in Mr M's best interests, or those of any potential lender.

So, in these circumstances, I'm satisfied that it would be fair and reasonable for Vanquis to leave any adverse information it might have recorded about this loan on Mr M's credit file.

### **Fair compensation - what Vanquis needs to do to put things right for Mr M**

Given the above, I'm directing Vanquis to put things right for Mr M by:

- refunding all interest, fees and charges Mr M paid on this loan†.

† HM Revenue & Customs requires Vanquis to take off tax from this interest. Vanquis must give Mr M a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained and in my provisional decision of 22 November 2023, I'm upholding Mr M's complaint. Vanquis Bank Limited should put things right in the way I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 January 2024.

Jeshen Narayanan  
**Ombudsman**