

The complaint

Mr R complains that Vanquis Bank Limited irresponsibly agreed credit for him.

What happened

Vanquis opened a credit card account for Mr R in February 2019 with a £1,000 credit limit. Mr R didn't meet his repayments and the account was passed to a third party debt collector in October 2022.

Mr R complained to Vanquis in October 2023 that it should not have opened the account for him due to his prevailing personal and financial circumstances. He said that the credit was unaffordable and that Vanquis would not have agreed to lend to him had it carried out further checks before opening the account. Mr R shared that he has a gambling addiction and difficulty with his mental health. He said that dealing with this debt has had an adverse impact on him.

Vanquis didn't uphold Mr R's complaint and explained this in a final response to him in November 2023. It said it carried out proportionate checks before lending to him, and offered him a modest amount of credit after he passed its credit scoring. Vanquis also said that while it understood that dealing with a gambling addiction must be stressful, it didn't know about Mr R's circumstances until he made his complaint.

Mr R was unhappy with this response and referred his complaint to us. Our investigator looked into things but didn't recommend that it be upheld. They found that Vanquis should have looked into Mr R's circumstances in more detail before lending to him but that further checks would likely have shown the credit to be affordable for him. Mr R didn't agree and his complaint was passed to me for a decision.

I concluded that Mr R's complaint should succeed and that Vanquis should write off the outstanding balance on the account in order to put things right for him. I sent out a provisional decision to both parties to explain why and to share the information I'd relied on.

Vanquis responded to say that it agreed to put things right as I'd proposed, given Mr R's ongoing health issues. Mr R responded to say that he had shared information about his ongoing health issues with Vanquis several times and provided it with medical evidence.

This is my final decision this complaint and will be binding on both parties should Mr R accept it.

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 reviewed the matter again, including what both parties said in response to my provisional decision, I see no reason to depart from my provisional conclusions. I'll set out again my reasons for upholding Mr R's complaint in this final decision.

As before, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Vanquis need to abide by. Vanquis will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Vanquis needed to check that Mr R could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr R's particular circumstances and Vanquis needed to have proper regard to the outcome of its assessment in respect of affordability risk.

The overarching requirement was that Vanquis needed to pay due regard to Mr R's interests and treat him fairly. CONC 2.2.2G gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did Vanquis complete reasonable and proportionate checks when it opened the account for Mr R to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks Vanquis did carry out and did it make a fair lending decision? Did Vanquis treat Mr R unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

Vanquis provided its affordability assessment which included what Mr R said about his income and expenditure in his application, information obtained from his credit file and its affordability calculations. Vanquis also provided account statements and customer contact records.

When Mr R applied for his credit card, he said he was unemployed with an income of £9,000 and Vanquis relied on a net monthly figure of £827 in its assessment. Mr R gave his monthly housing costs as £50 and Vanquis estimated his monthly living costs as £329 and his active debt repayments as £70.

Vanquis noted in its assessment that Mr R's housing and living costs would amount to £190 and £365 respectively according to figures from the Office of National Statistics (ONS) but I understand it didn't use these figures. I asked Vanquis how it calculated its net monthly income and expenditure figures and why it didn't rely on the higher ONS figures on this occasion, but it didn't provide an explanation.

Vanquis noted that Mr R had less than £300 of existing debt. He had defaulted on a balance of around £1,350 over two years prior to his application, but had no adverse markers since then. I don't think that there was anything on Mr R's credit file that, on its own, would have raised the concern that he was in financial difficulty. Although there were two defaults recorded, these were over two years old and Mr R had a low level of current debt with no recent adverse markers.

In some circumstances I might consider that Vanquis carried out a proportionate check but, having carefully considered this point, I'm afraid I can't say that it did so here. The figures Vanquis relied on for Mr R's net monthly income and expenditure differed from what he'd said about his income and from the ONS figures. And although Mr R's defaults weren't recent he still owed a balance of £1,155 which he may or may not have been making

payments towards. Altogether, and given the amount of credit Mr R was offered relative to his declared income, I think it would have been reasonable and proportionate for Vanquis to have verified the figures it relied on in its assessment on this occasion.

Mr R provided his bank statements covering the period 4 November 2018 to 1 February 2019 and I've reviewed these. I'm not suggesting this is the information Vanquis ought to have relied on but it is the information I have and I think it's reasonable to use this in my considerations of what a proportionate check would likely have revealed.

The statements show that Mr R was in receipt of two regular benefits, one of which was to support a long-term physical or mental health condition or disability. These payments amounted to around £468 and £353 every four weeks, a total of £821. Mr R received direct payments of £142 a month from his local council which he said were to cover council tax payments, and I haven't considered these as income to meet other debts. I have also disregarded a one-off benefit payment in December 2018 and ad-hoc payments from a global online retailer which Mr R said were payments for old items sold online.

There are few identifiable costs on the bank statements. There are variable car costs of around £180 a month on average, payments of £40 to a debt collector, £55 towards a loan and a £10 account fee – a total of around £285 a month. Mr R told us that he had costs of around £300 a month for food and £180 for bills, which doesn't seem unreasonable, and I can see from the statements that he made cash withdrawals of up to £490 a month. I think there was an evident risk that Mr R would not be able to meet his repayments for the credit out of his usual means, even without considering other regular spending.

That said, Mr R's biggest regular expense was his gambling, which amounted to £900 a month on average. The statements show a clear pattern where Mr R transferred his benefit into a savings account then withdrew it in smaller amounts, and gambled these amounts until he had no money left in his account.

Altogether, I don't think a proportionate check would have reassured Vanquis that Mr R would have been able to meet his repayments when they fell due out of his usual income and it would likely have declined to lend to him. I've concluded that Mr R would not have been offered the account but for shortcomings in Vanquis's assessment, and that it was irresponsible to open the account for him and now needs to put things right.

Putting things right

The credit card account statements show that Mr R used the credit for gambling from the beginning and had spent above his credit limit by April 2019. The customer notes show that within the first month Vanquis had explained to Mr R that he would be charged cash fees for cash advances and for gambling transactions. By July 2019 Mr R had let Vanquis know that he considered himself a vulnerable customer and was being supported by a national advice charity. Vanquis continued to apply interest and charges to the account until July 2020 and Mr R's balance remained above the credit limit. The balance reduced from then until August 2022. The outstanding balance of £816.31 was passed to a third party debt collector that October and the account was reported as defaulted.

Vanquis said in its final response to Mr R that it first became aware of his gambling addiction, as he'd called it, when he made a complaint (October 2023). As mentioned above, Mr R spent the credit on gambling and Vanquis was aware that he was a vulnerable customer with mental health conditions a few months after opening the account. Mr R told Vanquis in May 2020 that his conditions were long term and that he wouldn't be able to return to work.

Mr R recently shared with us that his circumstances haven't changed since he made his complaint, though he has sought help with his gambling and is being supported by the NHS. Mr R also told us that he was provided with a Debt and Mental Health Evidence form (DMHEF) from his doctor which he shared with the third party debt collector. I understand that this form holds information about a person's mental health and how it impacts on their debt management. It is completed by health and social care professionals to share with the person's creditors in order to help them decide what action to take. Mr R said that the third party closed his account on receipt of the form, but he was informed by Vanquis that the debt was still outstanding.

I said in my provisional decision that I hadn't seen a copy of the DMHEF and I didn't know if Vanquis had, but I had no reason to doubt what Mr R told us about it, especially in the context of all the other available information. In response to this Mr R provided a copy of this form and confirmed that he had previously sent a copy to Vanquis.

CONC 7.10.1R states that a lender must suspend the pursuit of recovery of a debt from a customer when it's been notified (or understands or ought reasonably to be aware) that a customer might not have the mental capacity to make relevant financial decisions about the management of their debt and/or to engage in the debt recovery process at the time. CONC 7.3.5G states that an example of forbearance when a customer is in arrears might be accepting token payments for a reasonable period of time from a customer who would not be otherwise able to meet their priority debts or other essential living expenses.

It seems likely to me, given the support and evidence provided by professionals, that Mr R's mental health conditions impact on his ability to repay or communicate with his creditors. It also seems likely to me that, as Mr R's conditions are ongoing, he will not be able to repay this debt within a reasonable period of time. I've concluded that the fairest thing for Vanquis to do now to resolve Mr R's complaint is to waive the full balance of the outstanding debt.

I did consider whether an additional award for the emotional impact this lending decision had on Mr R was warranted but decided that waiving the full amount of the outstanding debt reflected this impact, in addition to putting things right for him financially. I also considered whether it would be appropriate for Vanquis to remove the adverse information it reported to Mr R's credit file - the account is shown as having defaulted in September 2022. This reflects what actually happened with the account and so I think it's fair in this case for the default to remain however, Vanquis should mark the account so as to make it clear that Mr R doesn't owe any money under the agreement and is not being pursued for any debt.

I also considered whether Vanquis treated Mr R unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I haven't made any finding as to whether or not Vanquis got something wrong after the account was opened, as I've found it should not have entered into the agreement with Mr R in the first place, and any proposal for putting things right for him on this point would likely be encompassed in the redress I've set out. Altogether, I'm satisfied the redress I have set out results in fair compensation for Mr R in the circumstances of his complaint and that no additional award would be appropriate.

In summary, Vanquis should now:

- waive the full balance of the outstanding debt; and
- mark the account so as to make it clear that Mr R doesn't owe any money under the agreement and is not being pursued for any debt.

My final decision

For the reasons I've explained above, I am upholding Mr R's complaint about Vanquis Bank Limited and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 November 2024.

Michelle Boundy
Ombudsman