

## **Complaint**

Ms B has complained that Vanquis Bank Limited (“Vanquis”) irresponsibly provided a credit card as well and subsequent credit limit increases to her. She says that all of this credit was unaffordable and caused her continued financial difficulty as the repayments resulted in her struggling to repay essentials and having to take out further lending.

## **Background**

Vanquis initially provided Ms B with a credit card, which had a limit of £1,250.00, in August 2008. Vanquis subsequently offered limit increases to £2,000.00 in March 2011; £2,500.00 in August 2011; £3,000.00 in January 2012; £3,500.00 in April 2014; and finally £4,000.00 in May 2016.

In December 2023, Ms B complained saying that the credit card and the limit increases Vanquis provided were unaffordable and caused her continued financial difficulty as the repayments resulted in her struggling to repay essentials and having to take out further lending.

Vanquis did not issue a final response to Ms B’s complaint within eight weeks of receiving it and Ms B chose to refer her complaint to our service as a result. When responding to our request for its file on Ms B’s complaint, Vanquis told us that it believed she had complained too late.

One of our investigators reviewed what Ms B and Vanquis had told us.

He thought that he hadn’t seen enough to be persuaded that Vanquis failed to act fairly and reasonably either when initially providing Ms B with her credit card or the first three credit limit increases.

The investigator also thought that Ms B hadn’t used any of the additional credit that she was able to use as a result of being provided with the fourth credit limit increase to £3,500.00 in April 2014 and the fifth credit limit increase to £4,000.00 in May 2016. He therefore concluded that irrespective of whether it was fair and reasonable for Vanquis to have offered these limit increases, he didn’t think that Ms B will have lost out as she didn’t use the credit and therefore did not pay any interest, fees or charges as a result.

This meant that the investigator didn’t recommend that Ms B’s complaint be upheld. Ms B disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

*Basis for my consideration of this complaint*

There are time limits for referring a complaint to the Financial Ombudsman Service. Vanquis has argued that Ms B's complaint was made too late because she complained more than six years after the decisions to provide the credit card and all of the credit limit increases as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and Vanquis was unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Ms B's complaint. Given the reasons for this, I'm satisfied that whether Ms B's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Ms B's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Ms B has not only complained about the respective decisions to lend but has also alleged that this unfairly impacted upon her ability to pay for essentials and that this resulted in her having to take out other credit to make her repayments.

I'm therefore satisfied that Ms B's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Vanquis. I acknowledge Vanquis still doesn't agree we can look at Ms B's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Ms B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms B's complaint can be reasonably interpreted as being about the fairness of her relationship with Vanquis, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Vanquis) and the debtor (Ms B), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Ms B's complaint, I therefore need to think about whether Vanquis' decision to lend to Ms B and increase her credit limits, or its later actions resulted in the lending relationship between Ms B and Vanquis being unfair to Ms B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Ms B's relationship with Vanquis is therefore likely to be unfair if it didn't carry out reasonable enquiries into Ms B's ability to repay in circumstances where doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Vanquis didn't then remove the unfairness this created somehow.

*Were the decisions to provide the credit card and subsequent credit limit increases unfair?*

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Ms B's complaint.

Bearing in mind Ms B's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

*Vanquis' decision to provide Ms B with a credit card which had a credit limit of £1,250.00 in August 2008*

Vanquis says it initially agreed to Ms B's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Ms B would be able to make the low monthly repayments due for this credit card. Due to Ms B's account being relatively well managed and the information present on the credit checks it carried out, Ms B was then subsequently offered her credit limit increases.

On the other hand, Ms B says that the credit card and the subsequent limit increases were unaffordable and caused ongoing hardship as she was unable to pay for essentials and had to borrow from elsewhere as a result of the payments she had to make to Vanquis.

I've considered what the parties have said.

What's important to note is that Ms B was provided with a revolving credit facility rather than a loan. This means that to start with Vanquis was required to understand whether Ms B could repay £1,250.00 within a reasonable period of time. It's fair to say that it wouldn't have required especially large monthly payments in order to clear the full amount that could be owed, as a result of a credit limit of £1,250.00, within a reasonable period of time.

Vanquis has only been able to provide limited information on the credit checks that it carried out when providing the card. Given this application took place more than sixteen years ago I don't think that the lack of granularity in the information Vanquis now has, is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of it not being able to provide this. I'm also mindful that the information that has been provided appears to indicate that Ms B didn't have any significant adverse information – such as defaulted accounts or county court judgments (“CCJ”) recorded against her at this time.

Furthermore, I need to consider this part of Ms B's complaint in relation to the obligations and expectations that were in place on a lender at this time. And it would be fair to say that a lender's obligations and responsibilities were not the same as they are now. For example, the concepts of borrower focused assessments and proportionate checks were not part of the expectations or requirements in August 2008.

However, the good industry practice in place at the time of Ms B's application, required a lender to assess whether it felt that a prospective borrower would be able to repay any lending provided. Clearly Vanquis must have felt that Ms B could repay a credit card with a limit of £1,250.00.

As there isn't anything to indicate that Ms B had any significant adverse credit information recorded against her at the time and I've not been provided with any evidence or information which shows me that Ms B was in financial difficulty in August 2008, I cannot reasonably conclude that Vanquis acted unfairly in providing Ms B with her credit card.

Vanquis felt that Ms B could repay £1,250.00 within a reasonable period of time and I've not seen anything which clearly shows me that this wasn't the case. As this is the case, I've not been persuaded that Vanquis' decision to provide Ms B with her credit card was unfair or that it resulted in unfairness going forward.

*Did Vanquis carry out reasonable and proportionate checks before deciding to offer the first three credit limit increases to Ms B?*

As I've explained in the background section of this decision, Vanquis increased Ms B's credit limit on three occasions until it eventually reached £3,000.00 in January 2012. These increases took place between March 2011 and January 2013.

So these increases were not only provided while the OFT was the regulator for consumer credit (in the same way as the initial decision to provide the credit card was), but also after its Irresponsible Lending Guidance (“ILG”) had been published in March 2010. By this stage, the ILG set out that a lender was required to carry out proportionate checks into a customer's circumstances in order to reach a reasonable determination on whether they could repay any credit provided.

Vanquis' records suggest that it wasn't aware of Ms B having any defaults accounts or CCJs recorded against her at the respective times of these limit increases. I have deliberately referred to Vanquis' information indicating that it wasn't aware of Ms B having such information recorded against her, rather than it being the case that Ms B did not have any

such information recorded against her as the April 2014 search indicates that Ms B may have had a default account in September 2010.

For whatever reason the April 2014 credit search shows that Ms B had a defaulted account from 43 months prior although this did not appear to have shown in the earlier checks. In any event, whether or not Ms B did have a defaulted account at the respective times, as Ms B was being provided with limits of £2,000.00, £2,500.00 and then £3,000.00, I would have expected Vanquis to have found out more about Ms B's income and expenditure before providing these credit limit increases.

As Vanquis has been unable to evidence having done this, I don't think that the checks it carried out before it increased Ms B's credit limit in March 2011, August 2011 or January 2012, were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Ms B says she is unable to provide us with the information we've asked her for in order to be able to assess what Vanquis finding out more about her regular monthly living costs is likely to have shown. So I've not been provided with sufficient evidence to reasonably conclude that the limit increases were as a matter of fact unaffordable for Ms B.

I appreciate that Ms B has said it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Vanquis isn't required to have retained all of this information either and it was Ms B that chose to make her complaint in December 2023. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Ms B has said about not being able to make the increased monthly payments required should she owe the full amount of the new credit limits. I can't clearly see that Ms B's finances were worsening in the way she has said either.

For the sake of completeness, I'm also mindful that these credit limit increases were offered over a period of ten months. Most importantly, Ms B had a balance of just over £1,000.00 (against a limit of £1,250.00) when she was offered the March 2011 increase; a balance of just under £1,200.00 (against a limit of £2,000.00) when she was offered the August 2011 increase; and a balance of just over £1,700.00 (against a limit of £2,500.00) when she was offered the January 2012 increase. So Ms B doesn't appear to have been immediately using all the credit being made available to her.

Therefore, this isn't a case where I can reasonably say that the limit increases and Ms B's account usage ought reasonably to have shown Vanquis that Ms B's indebtedness, on her credit card, was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Vanquis to conclude that the facility had become demonstrably unsustainable for Ms B either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Ms B, I've not been persuaded that proportionate checks would have shown Vanquis that it shouldn't have provided the three credit limit increases it provided to Ms B between March 2011 and January 2012.

Furthermore, I don't think that Ms B's pattern of borrowing meant that Vanquis offered the credit limit increases in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either. As this is the case, I've not been persuaded that Vanquis' decisions to offer three credit limit increases between March 2011 and January 2012 was unfair, or that it resulted in unfairness going forward.

*The fourth limit increase to £3,500.00 which Vanquis offered to Ms B in April 2014 and the final limit increase to £4,000.00 which it offered May 2016.*

I've reviewed the monthly balances on Ms B's Vanquis account history. I can see that Ms B only ever exceeded a balance of £3,000.00 on a single occasion for a short period of time in January 2016. Therefore, Ms B didn't really use the extra credit that was made available to her from April 2014 onwards and so won't have lost out, even if proportionate checks would have shown that Vanquis shouldn't have offered these limit increases. As this is the case, I'm not persuaded that Vanquis' decisions to offer limit increases in April 2014 and May 2016 was unfair or resulted in unfairness going forward either.

Overall, and based on the available evidence I don't find that Ms B's relationship with Vanquis was unfair. I've not been persuaded that Vanquis created unfairness in its relationship with Ms B by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the first three limit increases. And any unfairness that could have been created as a result of limit increases four and five never materialised as a result of how Ms B used her credit card. I don't find Vanquis treated Ms B unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Ms B's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms B. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 19 February 2025.

Jeshen Narayanan  
**Ombudsman**