

The complaint

Mr C complains that Vanquis Bank Limited ('Vanquis'), irresponsibly granted him a credit card he couldn't afford to repay and caused him to get into financial difficulties.

What happened

In August 2013, Mr C entered into an agreement with Vanquis to have access to credit by way of a credit card account. He was given an initial credit limit of £500 and there were no increases after that. Mr C says that Vanquis didn't complete adequate affordability checks and so failed to ensure he'd be able to manage the card sustainably, causing him considerable distress.

Mr C started getting into difficulty with his account in 2014. Those difficulties continued and led to the account being closed in 2017.

Vanquis said the decision give Mr C the credit card complaint had been made too late. This was because the account had been opened more than six years earlier. Given the way Mr C was managing his account, Vanquis sent him numerous notifications about arrears in 2014. So, Vanquis said Mr C ought to have known he had cause for complaint more than three years before he started it and so was too late under the time limit rules set out with the complaint handling rules we must apply.

Mr C therefore referred his complaint to this service.

Our investigator didn't recommend the complaint be upheld. Ultimately, she thought Vanquis didn't act unfairly or unreasonably by approving the finance agreement. But she said Vanquis ought to have done about verifying his income. Unfortunately, the bank statement information Mr C provided, giving details of his financial situation in 2016, 2017 and 2018 wasn't sufficient to help determine whether or not Vanquis had made a fair lending decision.

As Mr C didn't agree, his complaint has been passed to me for a final decision.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Vanquis thinks this complaint was referred to us too late because some of the lending decisions took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mr C's complaint, and given the reasons for this (which I'll go on to explain), whether Mr C referred his complaint about the specific lending decision that happened more than six years ago in time or not has no impact on that outcome. Like

the investigator, I think Mr C's complaint should be considered more broadly than just the lending decision, seeing as he complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Vanquis. Mr C's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Vanquis. I acknowledge Vanquis still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr C's complaint can be reasonably interpreted as being about the fairness of his relationship with Vanquis, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Vanquis) and the debtor (Mr C), 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.

S.140B 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 what Mr C has complained about, I therefore need to think about whether Vanquis's decision to lend to Mr C or its later actions created unfairness in the relationship between him and Vanquis such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr C's relationship with Vanquis is therefore likely to be unfair if it didn't carry out proportionate affordability checks where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there wasn't a set list of checks that Vanquis needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr C would need to make repayments for.

Before granting the credit, Vanquis looked into Mr C's financial situation. Mr C's card application details showed him as being in full time employment and having a household income of £45,000. For the credit to be affordable, Mr C would need to be sharing household costs with his partner. And I've noted that the credit check showed he had £11,900 in unsecured borrowing and ongoing credit commitments. There were however no defaults against any of his borrowing and nor were there court judgments registered against him.

I therefore agree with our investigator that, considering the level of unsecured credit he already had, Vanquis ought to have done more to establish Mr C's personal earned income each month. On the other hand, I note that this was a relatively low opening credit limit that Mr C would likely be able to repay sustainably. But without knowing more about how his income was being used and put towards day-to-day living expenses and his existing debt, I can't say that Vanquis did enough by way of a reasonable and proportionate check before granting the credit.

Our investigator requested bank statements from the months leading up to the lending decision to help her assess what Vanquis would likely have seen had it carried out better checks. But Mr C has only been able to provide bank statements from 2016, 2017 and early 2018. I appreciate that these show details of Mr C's financial situation over that period. But the key issue I am looking at here is whether or not Vanquis made a fair lending decision. So, I need to understand what, if anything, Vanquis might have found out if it completed reasonable and proportionate checks. However, Mr C hasn't provided sufficient information to help me determine whether or not Vanquis made a fair lending decision.

Having looked at account history, I also don't think Vanquis acted unfairly or unreasonably in the way it provided support to Mr C when he got into difficulty with managing his account and making payments on time.

Overall, and based on the available evidence I don't find that Mr C's relationship with Vanquis is currently unfair. It's not clear enough to me that Vanquis created unfairness in its relationship with Mr C by lending to him irresponsibly. And I don't find Vanquis treated Mr C unfairly in any other way either based on what I've seen.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2025.

Michael Goldberg
Ombudsman