

The complaint

Mr H complains that Vanquis Bank Limited (“Vanquis”) held him liable for transactions he didn’t recognise.

What happened

What Mr H says

Mr H has said that he lost his Vanquis credit card sometime in 2023 and subsequently lost his bus pass with his name and address on it. He explained that he tried to report the matter to Vanquis to get a new card and was unsuccessful. He said he couldn’t access his online account and he tried to speak with Vanquis by phone but was unsuccessful.

Mr H said it took months before he got any response. By this time Mr H had received numerous parcels from a popular online marketplace which I’ll refer to as E.

Mr H reported the matter to the police and was unable to get through to E as his account was no longer available.

In November 2023, Mr H reported around £500 of disputed transactions to Vanquis. They contacted E using a chargeback process and later received numerous responses from them that indicated the purchases had been made by Mr H. They held him liable for the transactions.

Vanquis received a complaint from Mr H and they looked into how they’ handled his dispute. Once they’d concluded their investigation they wrote to Mr H and told him they were still holding him liable for the transactions he’d disputed.

Mr H was left unhappy with Vanquis’s treatment of his situation and brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the issue and asked both parties for information.

Mr H was able to confirm what had happened although he couldn’t be specific about when he’d lost his card or when he’d contacted Vanquis (mainly due to the time that had passed). Mr H confirmed he hadn’t provided access to anyone else for his card or given anyone else the details from it.

Vanquis provided a sample of the chargeback responses from E and maintained their position that they were holding him liable.

After considering the information, the investigator didn’t uphold Mr H’s complaint, believing that Vanquis had acted appropriately as they had evidence the purchases had used Mr H’s card and had been delivered to his home address. The investigator concluded that the evidence suggested Mr H had authorised the transactions he later disputed.

It was further commented that there was no clear point of compromise of his card’s details and that the use of a stolen card was untypical as it stopped, rather than continue to be used.

The investigator also thought it unusual that Mr H didn't pursue the cancellation of his card with Vanquis.

Mr H disagreed with the investigator's outcome and asked for a further review of his complaint.

Mr H believed his circumstances hadn't been properly considered and confirmed he'd said his card had been lost and that he'd also lost other items with his name and address on them. He said he did pursue it weekly but got no response from Vanquis.

Mr H said that the unauthorised transactions continued to be made against his card (rather than stopped).

Mr H had always said he'd received some of the parcels and had tried to deal with them. He'd notified the police, but they couldn't do anything. Mr H said they were low value items sent from abroad.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my own investigation, I asked Vanquis to provide evidence of the transactions they believe Mr H was responsible for and the relevant call logs or other contact records they held.

Despite sending reminders, Vanquis only provided part of the details I requested.

I issued my provisional findings on the merits of Mr H's complaint on 31 December 2024. In my provisional findings, I explained why I intended to uphold Mr H's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

What I've provisionally 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.

This provisional decision is being issued based on the lack of evidence provided by Vanquis. It's disappointing that they haven't done so, given the time that has passed since the original request. I've informed Vanquis that I intend to uphold Mr H's complaint if they are unable to comply with their obligations set out under the Payment Service Regulations 2017 (PSRs).

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974 (CCA). The basic position is that Vanquis can hold Mr H liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but Vanquis cannot say that the use of the card's payment details for online payment purchases conclusively proves that the payments were authorised.

Unless Vanquis can show that consent has been given, it has no authority to make the payment or to debit Mr H's account and any such transaction must be regarded as unauthorised. I haven't seen the bank's technical evidence for the disputed transactions because Vanquis have so far failed to provide it.

The PSRs state:

75.—(1) Where a payment service user—

(a) denies having authorised an executed payment transaction; or

(b) claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider.

So, without that evidence, Vanquis can't make a case that Mr H was responsible for the transactions he's disputed and they're liable to refund him.

I've also considered S 83 of the CCA which says:

83 (1) The debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent

It's Mr H's case that he lost his card which resulted in its use by third parties without his permission. Given the lack of evidence received from Vanquis, they're currently unable to make an argument about whether he authorised the payments or not, nor can they demonstrate whether he contacted them or not at the time of the loss of his card.

So, my current intention is to uphold Mr H's complaint and require Vanquis to remove those transactions from his account and rework it to remove any charges or interest accrued as a result of the transactions and update any reporting to the credit reference agencies. I also intend to make an award based on the unnecessary delay which has impacted the conclusion of this complaint. I consider Vanquis's delay to, at the very least, be unhelpful to Mr H, as he has been left wondering what will happen to the outstanding debt. I currently intend to recommend they pay £150 to Mr H for their unfair treatment of him.

But, this position may change if I receive further evidence. So, I'm providing notice to both Vanquis and Mr H that depending on what I receive in the next two weeks, I may have to reassess my current position. That's because I haven't yet been able to consider the appropriate evidence relating to whether the transactions were disputed, or not.

I noted Mr H said he'd reported the matter to the police, can I please ask him to provide evidence of when that was. He's given our service a reporting reference, so this should enable him to access his original report.

My provisional decision

I'm currently intending to uphold this complaint to require Vanquis to rework the credit account to remove the disputed transactions and any charges or interest accrued as a result of them. Also, to update the credit reference agencies and pay Mr H £150.

I invited Mr H and Vanquis to give me any more evidence and information they wanted me to consider before issuing my final decision. Mr H accepted my provisional decision and Vanquis asked for an extension to provide the evidence that had been requested.

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'm upholding this complaint against Vanquis. They've failed to provide all the necessary evidence to support their case which I first asked for in September 2024.

Whilst I'm sympathetic to the needs of both parties to have time to provide the evidence to support their respective cases, I don't think that Vanquis's continued requests for extensions to provide evidence is reasonable. I don't consider any of the evidence I called for to be particularly unique and Vanquis are aware they have to show they correctly authenticated the disputed transactions. They've had a number of months to send their evidence and for whatever reason have not done so.

To further extend the complaint would be, in my opinion, increasingly unfair on Mr H who has, in good faith, told Vanquis that he wasn't responsible for the transactions. So, based on the evidence I do have, I'm not satisfied that Vanquis have been able to show Mr H authorised the transactions he's disputed and for the purposes of this complaint I consider them to be unauthorised.

My final decision

My final decision is that I uphold this complaint against Vanquis Bank Limited and in order to settle it they're now required to:

- Rework Mr H's account to put it back in the place it would have been if the disputed transactions hadn't occurred by either removing or refunding them.
- Remove any interest or charges accrued as a result of the disputed transactions.
- Update the credit reference agencies concerning these changes.
- Pay Mr H £150 for their handling of his complaint and the stress and inconvenience caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 February 2025.

David Perry
Ombudsman