

Complaint

Ms M 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 M with a credit card, which had a limit of £500, in July 2012. Vanquis subsequently offered limit increases to £1,000.00 in November 2012; and then £2,000.00 in April 2013.

In October 2023, Ms M 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 didn’t uphold Ms M’s complaint as it believed that she had complained too late. Ms M remained dissatisfied after Vanquis’ response and referred her complaint to our service.

One of our investigators reviewed what Ms M and Vanquis had told us. She thought that she hadn’t seen enough to be persuaded that Vanquis failed to act fairly and reasonably either when initially providing Ms M with her credit card or the credit limit increases it did. This meant that the investigator didn’t recommend that Ms M’s complaint be upheld.

Ms M 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 M’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and 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 M's complaint. Given the reasons for this, I'm satisfied that whether Ms M'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 M's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Ms M 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 M'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 M'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 M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms M'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 M), 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 M's complaint, I therefore need to think about whether Vanquis' decision to lend to Ms M and increase her credit limits, or its later actions resulted in the lending relationship between Ms M and Vanquis being unfair to Ms M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Ms M's relationship with Vanquis is therefore likely to be unfair if it didn't carry out reasonable enquiries into Ms M'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 M's complaint.

Bearing in mind Ms M'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 M with a credit card which had a credit limit of £500 in July 2012

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

On the other hand, Ms M 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 M was provided with a revolving credit facility rather than a loan. This means that to start with Vanquis was required to understand whether Ms M could repay £500 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 £500, within a reasonable period of time.

I've seen records of the information Vanquis obtained from Ms M about his income and what was on the credit search carried out. The credit search showed that Ms M didn't have any

significant adverse information – such as defaulted accounts or county court judgments recorded against her – at this time.

The credit search also showed that Ms M had a low amount of active credit at this stage. And these commitments were also being relatively well maintained. Vanquis says that Ms M declared a salary of £8,000.00 a year and that she was working part time. Ms M has disputed this saying that she was a full-time student at this time. However, it is not unusual for a full-time student to also work part-time. So I don't think that Ms M demonstrating that she was a student means that she had no income at this time. Indeed, I'd have to question why she was applying for a credit card if she was in receipt of no income at all.

Vanquis argues that the information that Ms M declared on her income combined with the credit file information meant that it was reasonable to conclude that Ms M could afford this credit card. Having reviewed the information obtained, I'm in agreement with this conclusion.

As this is the case, I'm satisfied that it wasn't unfair for Vanquis to offer Ms M a credit card with a limit of £500, in July 2012, and therefore there was no unfairness created at this stage.

Did Vanquis carry out reasonable and proportionate checks before deciding to offer the credit limit increases to Ms M?

As I've explained in the background section of this decision, Vanquis increased Ms M's credit limit on two occasions. It firstly increased Ms M's credit limit to £1,000.00 in November 2012 and then increased it to £2,000.00 in April 2013.

Vanquis' records suggest that it wasn't aware of Ms M having any defaults accounts or CCJs recorded against her at the respective times of these limit increases. I've not been provided with anything else to indicate that Ms M had any significant adverse information recorded against her at this time either.

However, as Ms M was being provided with limits of £1,000.00 and then £2,000.00, I would have expected Vanquis to have found out more about Ms M'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 M's credit limit in November 2012 or April 2013, 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 M 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 income at the time and 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 M.

I appreciate that Ms M may feel that it is unreasonable and unfair to expect her to provide information which she doesn't 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 M that chose to make her complaint in October 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 M 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 M's finances were worsening in the way she has said either.

For the sake of completeness, I've also considered what Ms M has said about the card and then the limit increases being offered over a period of nine months. However, it's fair to say that for seven of the nine months, Ms M was making payments consistent with clearing a balance of £2,000.00 within a reasonable period of time.

Therefore, this isn't a case where I can reasonably say that the limit increases and Ms M's account usage ought reasonably to have shown Vanquis that Ms M'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 M either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Ms M, I've not been persuaded that proportionate checks would have shown Vanquis that it shouldn't have provided Ms M with her credit limit increases. Furthermore, I don't think that Ms M'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 the credit limit increases was unfair, or that it resulted in unfairness going forward either.

In reaching my conclusions, I've also noted that Ms M did have a large number of overlimit fees applied to her account. I do think that this should have concerned Vanquis. Nonetheless, as this period was from around ten years ago what I do have now is limited.

Indeed, it should be noted that while Ms M has referred to being in her overdraft in the account statements she's provided from 2015, which are from around the time the late fees were at their most severe, it is clear that her account was receiving significant credits.

It's also worth noting that the reason the account went overdrawn looks to be because of payments to a holiday booking and payments while on holiday. In these circumstances, I simply cannot reasonably conclude that the information provided does show that Ms M was in financial difficulty at that point, or that Vanquis doing more at this stage would have shown it this either.

Overall, and based on the available evidence I don't find that Ms M's relationship with Vanquis was unfair. I've not been persuaded that Vanquis created unfairness in its relationship with Ms M by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the limit increases. I don't find Vanquis treated Ms M unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Ms M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms M. 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 M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 17 March 2025.

Jeshen Narayanan
Ombudsman