

## **The complaint**

Miss M, who is represented by a third party, complains that Vanquis Bank Limited ('Vanquis') irresponsibly granted her a credit card she couldn't afford to repay.

## **What happened**

In April 2016 Miss M entered into an agreement with Vanquis to have access to credit by way of a credit card account. She was given an initial credit limit of £250. In September 2016 her credit limit was increased to £500.

Miss M says Vanquis didn't complete adequate affordability checks and therefore failed to ensure she'd be able to use her card sustainably and so worsened her financial situation.

Vanquis said that Miss M's complaint had been made too late under our time limit rules. This was because the account had been opened and the credit limit granted more than six years before Miss M started her complaint. Vanquis also said Miss M ought to have been aware that something had gone wrong when she was sent letters about her arrears in April and May 2019. This was followed by a notice of default letter in June 2019.

Our investigator agreed the complaint had been brought too late under our time limit rules. As regards the three-year part of the rule, she said that Miss M's credit limit being reduced in January 2019 was enough to make her aware that Vanquis might be to blame for the difficulties she was having with her card. But she also thought Miss M's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140). And that meant the complaint would have been made in time. Having looked at the complaint on this basis, however, our investigator found that there wasn't enough evidence or information to suggest that Vanquis had acted unfairly or unreasonably in agreeing to grant the card and credit limit increase that followed. And she said that Vanquis had done enough to help and support Miss M.

As Miss M didn't agree, her 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 the decision to lend took place more than six years ago and Miss M ought to have been aware that Vanquis may have done something wrong more than three years before she started her complaint. 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 Miss M's complaint and given the reasons for this (which I'll go on to explain), whether Miss M referred her complaint about the specific lending

decisions that happened more than six years after the lending decisions has no impact on that outcome. And nor does the fact that I agree she ought reasonably to have known that she might have reason to make a complaint at least three years before she did so. That's because, like our investigator, I think Miss M's complaint should be considered more broadly than just the decisions to grant her the credit, seeing as she has complained not just about the decision to lend and then increase her credit limit but also the impact those decisions had on her over the course of her relationship with Vanquis. Miss M's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Vanquis. I acknowledge Vanquis may still not agree we can look at the 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 Miss M's complaint can be reasonably interpreted as being about the fairness of her 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 (Miss 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 their 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 Miss M has complained about, I therefore need to think about whether Vanquis's decision to provide Miss M with credit on her or any of its later actions created unfairness in the relationship between her 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.

Miss M'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. I will approach the complaint on that basis, looking first the card opening and then the credit limit increase.

### *Card opening*

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

Before opening the account I think Vanquis gathered a reasonable amount of evidence and information from Miss M about her ability to repay. I say this because it completed a credit

check which appears to have showed no adverse information no other credit commitments at the time. Vanquis also used to statistical data to help it to verify the income Ms M had stated on her application. However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

On her application, Ms M had stated her household income to be around £27,000. Based on its checks, Vanquis relied on a lower figure of £18,300 for household income and it then used that figure to work out what her monthly committed spending was likely to be.

Having reviewed the evidence and information provided, I'm satisfied that the checks that were completed showed the agreement was likely to be affordable to Ms M. I say this especially given that £250 was a relatively modest opening credit limit and which was therefore appropriate for the beginning of Ms M's credit relationship with Vanquis. For these reasons, I don't think Vanquis acted unfairly when approving the finance application.

#### *Credit limit increase*

Before granting the credit limit increase on the card in September 2016, Vanquis again looked into Miss M's financial situation.

The credit check Vanquis completed this time showed that she owed around £1,800 in existing credit. It also showed she had defaulted on credit around 14 months earlier. This default raises the possibility that Miss M might have been experiencing payment difficulties at that time. I think that's relevant given that Miss M had immediately gone over her credit limit when she took out the card, and she had made three cash withdrawals in the first month. It therefore would have been proportionate for Vanquis to have got a more thorough understanding of Miss M's financial circumstances before increasing the limit.

That then raises the question of what Vanquis would have found has it carried out better checks.

We've asked Ms M for some further details and evidence about her financial circumstances at the relevant time. Providing us with bank statement usually helps with this, and it means we can better appreciate what, if anything, Vanquis might have found out if it completed reasonable and proportionate checks. Unfortunately, Miss M hasn't been able to provide bank statements. And nor has she been able to give us sufficient evidence or information in another form that might have helped us to determine whether or not Vanquis made a fair lending decision.

It follows that, as I'm not persuaded that Vanquis acted unfairly, I don't think they need to do anything to put things right.

Finally, I've thought about whether Vanquis may have acted unfairly or unreasonably in some other way.

Vanquis wrote to Miss M in April and May 2019, first to let her know that her payment was overdue and then to suggest she contact Vanquis to make a payment or discuss her account. This happened after she'd spoken to them by phone to explain the reasons why she missed a number of payments. And in early 2021 Vanquis agreed to move the monthly payment dates to help her with meeting the repayments.

Taking this into consideration alongside the wider history of her communications with Vanquis, I don't consider that Vanquis acted unfairly or unreasonably when providing support to Miss M.

I've also considered the points and observations made by those representing Miss M in response to our investigator's view, but they don't cause me to change my opinion and I think I've already addressed them sufficiently in my findings. I think I should clarify here that to make a finding that Vanquis had acted unfairly or unreasonably, I need to also establish what it would have been likely to have seen had it carried out better checks. Saying that the lending checks weren't proportionate doesn't necessarily mean that the credit itself was unaffordable.

It follows that I won't be making a finding that Vanquis acted unfairly or unreasonably. I don't find that Miss M's relationship with Vanquis is currently unfair. It's not clear enough to me that Vanquis created unfairness in its relationship with Miss M by lending to her irresponsibly. And I don't find Vanquis treated Miss M unfairly in any other way either based on what I've seen.

I'm sorry to have to disappoint Miss M on this occasion.

### **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 Miss M to accept or reject my decision before 15 May 2025.

Michael Goldberg  
**Ombudsman**