DRN-5561008

The complaint

Mr P complains that Vanquis Bank Limited lent to him irresponsibly.

What happened

On 4 January 2012, Mr P applied for a credit card with Vanquis. The card was approved with an initial credit limit of £500, which was subsequently increased as follows:

Date	Credit limit increase (CLI)	New limit
1 May 2012	CLI1	£1,000
1 November 2012	CLI2	£2,500
1 June 2013	CLI3	£3,000

Mr P fell into difficulty with the account and, on 8 March 2018, Vanquis issued a final default notice. The final interest charge on the account was dated 2 April 2018.

On 3 October 2024, Mr P complained to Vanquis. He said the bank was irresponsible to lend to him and increase his limit. It should have seen that he was using the card for cash withdrawals and gambling transactions, and he feels it *"could have done more to help rather than take advantage of"* him.

Vanquis looked into Mr P's complaint and issued its final response letter. It said that under the complaint handling rules of the Financial Conduct Authority (FCA) he had complained too late for his complaint to be considered.

Mr P didn't agree with Vanquis' response, so he referred his complaint to our service. Our investigator disagreed with Vanquis that the complaint had been brought too late. He said it was reasonable to consider Mr P's complaint to be about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140). But he went on to say that even if he were to uphold the complaint, he couldn't award interest and charges as none had been levied in the six years prior to Mr P raising his complaint.

Mr P didn't accept what our investigator said. As there was no agreement, the complaint has been passed to me for a 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 Santander thinks part of this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions as they took place more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Mr P has disagreed with out investigator in that he thinks we should be able to consider the initial lending decisions too. I've considered the further information he's provided to support his view. He has argued (in summary):

- He was unaware of his cause for complaint due to:
    - a lack of awareness of irresponsible lending
    - The impact of his gambling addiction
- The final demand letter in May 2014 didn't trigger his awareness.
- There were missed opportunities by Vanquis to register earlier complaints:
    - he requested a limit reduction in October 2014
    - he disclosed a gambling addiction in April 2018

He also provided some further information regarding the merits of the lending decisions taken by Vanquis.

I've thought carefully about what Mr P has said with regards to our jurisdiction over the initial lending decisions. It's important to note that the rules say it's not just about when the complainant became aware of their cause for complaint, but when they *ought reasonably* to have become aware.

Our investigator explained in detail why he felt Mr P *ought reasonably* to have become aware of his cause for complaint sooner. He concluded that the final demand letter sent in May 2014 ought to have tiggered Mr P to think that something may have gone wrong. I agree with our investigator on that. But even if I didn't, I think there are later triggers which I think ought to have triggered his awareness too.

For instance, he says he asked for his credit limit to be reduced in October 2014. This tells me he was aware that the limit was unaffordable and if Vanquis refused to reduce it, he could only have blamed Vanquis for refusing to make the limit more affordable for him.

For the avoidance of doubt, I agree with our investigator that I have the power to look at this complaint on the basis that it is about an unfair credit relationship. I acknowledge that neither party agrees with my decision and I'm sorry for that. I have however gone on to decide the merits of Mr P's complaint bearing in mind what I have said I can consider under our jurisdiction.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr P'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.

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 P), 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. This means that I

have the power under our rules to consider the whole 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 P has complained about, I need to consider whether Vanquis' decision to lend to him, or its later actions, created unfairness in the relationship between him and the bank such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

In order to uphold Mr P's complaint, I would need persuasive evidence of unfairness in the relationship. But due to the time elapsed since the account was opened and the increases agreed, quite reasonably, neither Vanquis nor Mr P have any useful information such as bank statements or a credit report from the time. In the absence of such evidence, I'm not able to make a finding on the bank's lending decisions.

The law around s.140 has been clarified in a recent court case - Smith v Royal Bank of Scotland Plc [2023] UKSC 34. In its judgement of that case, the Supreme Court said that remedies for unfair relationships are in the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making the claim.

So when deciding a fair and reasonable outcome to Mr P's complaint and fair redress, it's important for me to take this into account as relevant law. The Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

In other words, if the complainant knew – or ought to have known – that there was unfairness but didn't complain for more than six years, then it's unlikely that the court would make an award. So where a complaint is raised outside that timeframe and we think the complainant was (or ought to have been) aware of the relevant facts of the case some time ago, we would limit any redress to charges and interest incurred for the six-year period prior to the complaint being raised.

In Mr P's case, it is evident that he knew about the issues which led to any potential unfairness in the credit relationship some time ago. He was clearly aware he was in difficulties with the card and the charges and interest were making the situation worse. While he may not have known the full detail or law around the subject, I think it's likely he would felt at the time that the situation was unfair as he wasn't able to do anything about the charges he was incurring. Mr P says he asked the bank to reduce his credit limit in October 2014, so it's clear he knew he could talk to it if he was struggling.

Bearing in mind what the Supreme Court said in the Smith judgement, even if we were to uphold Mr P's complaint, we would limit any redress to the six-year period prior to the complaint being raised in October 2024 – so from October 2018 onwards. But Vanquis hasn't levied any interest or charges since 2 April 2018. Therefore, if I were to find in favour of Mr P, there is no prospect of him benefiting from any award I could make.

So I'm sorry to disappoint Mr P but, while I think we can look at his complaint about his relationship with Vanquis, I can't reasonably uphold it or make an award in his favour.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 July 2025.

Richard Hale
Ombudsman