

## **complaint**

Mr J complains that he was overcharged when he parked without authority on a piece of land and was subsequently wheel-clamped by the supplier. He complains in any event the supplier acted illegally and he only paid the money under duress.

Mr J brings his complaint against Vanquis Bank Limited under section 75 of the Consumer Credit Act 1974 ("section 75").

## **our initial conclusions**

Our adjudicator recommended that the complaint should be upheld in part. She considered that there had been a contract between Mr J and the supplier. She concluded the terms of the contract were as set out in the notice on the land where Mr J parked. She was satisfied that under the terms of the contract the supplier should have charged Mr J £240 for parking without authority on the land. But instead it charged him £420 i.e. the parking charge together with a further unexplained charge (£240 + £180 = £420).

She did not accept that Mr J had been charged the £180 for the removal and impounding of his car. She said this because the charge for removing and impounding the car was £280 not £180. In any event she was persuaded that the car had never been removed or impounded so there was no proper basis for the £180 charge and this had been a breach of contract. On this basis she asked Vanquis to refund £180 together with 8% interest simple per year on this sum from the date the money was paid until the date of settlement.

Mr J did not indicate whether he accepted this recommendation or not. Vanquis rejected it. It said, in summary, it was not clear if the car had been towed away or not so it was possible that it had been. If the car had been towed away then this would explain why Mr J was charged £420. In any event it considered if Mr J did not agree with paying the charge he should have disputed it then and there with the supplier who had clamped his car.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities - in other words, on what I consider is most likely to have happened in the light of the evidence.

*there was a breach of contract for which Vanquis is liable under section 75*

There is no dispute that Mr J parked his car on the land without authority. Based on the information I have seen I consider that the terms of the contract between the parties was as set out in the notice displayed on the land. I realise that Mr J does not consider he accepted these terms. But I conclude in the circumstances that given that it appears that the notice was clearly displayed at the time he parked and given that he did park on the land he was bound by the terms and conditions of the notice.

I consider that the terms of the contract were very clear- there was a charge of £100 for parking, £140 if the car was clamped and a further charge for £280 if the car was removed and impounded.

There is no dispute that Mr J did park on the land and the car was clamped. On this basis I am satisfied that under the relevant terms and conditions he should have been charged £240. But Mr J has been consistent in his recollections. He tells us that his car was never towed away or impounded. He says he parked on the land for no more than 20 minutes and when he got back to his car it was clamped and the supplier refused to remove the clamp unless he paid it £420 then and there.

In the circumstances – it is somewhat unrealistic to have expected Mr J to have refused to have paid the charge – from what Mr J tells us the supplier insisted on the payment even though it was not line with the terms and conditions.

I also take on board that even if the car had been towed and impounded this would not account for the £420 he was charged. According to the terms and conditions in the notice if the car had been towed away this would have led to a charge of £520 (£100 + £140 + £280 = £520). On balance I consider that the parking charge was not calculated in accordance with the contract and Mr J was overcharged by £180. I am satisfied that this was a breach of contract for which Vanquis is liable under section 75.

#### *distress and or inconvenience*

The information I have seen suggests that Vanquis did not provide the level of customer service that Mr J was entitled to expect. On balance it appears he had to keep on chasing it for responses and it did not initially clearly explain why it was declining his claim under section 75.

I consider that Mr J should be compensated for this. I consider that £75 is fair compensation in the circumstances for the inconvenience Mr J is likely to have experienced as a result of Vanquis' actions.

I realise that Mr J says that the supplier acted illegally but I make no finding on this I consider this is a matter that only a court could decide. I recognise that Mr J says he only paid the supplier under duress even if I considered that he had paid under duress this would not assist his claim under section 75 as this would not be a breach of contract or a misrepresentation so it appears that Vanquis would have no liability for this.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr J not accept my final decision, then any rights he may have to take action in the courts against Vanquis are unaffected and he will be free to pursue his arguments – including those about duress and whether the supplier acted illegally - in any court action that may arise, if he so wishes.

#### **my final decision**

My final decision is that Vanquis Bank Plc should:

- Pay Mr J £180 together with interest on the £180 at the rate of 8% simple per year from the date that Mr J paid the supplier to the date of settlement. If Vanquis Bank Plc is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so Mr J can reclaim the tax if he is able to.

- Pay Mr J £75 for the inconvenience that its actions are likely to have caused him to experience

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Joyce Gordon  
**ombudsman**