

complaint

Mrs T complains that Vanquis Bank Limited has sought to recover payment from her for spending on a credit card which she says she has no knowledge of and was likely to have been taken out in her name by her former husband.

background

The account was opened in February 2006 in Mrs T's name and with the address she was living at, at the time, registered. Payments were made to the account until November 2007, when it fell into arrears. In March 2008, a letter was received by Vanquis advising that Mrs T had separated from her husband, there were financial difficulties and Vanquis would be contacted regarding repayments.

Mrs T says she did not become aware of the account until January 2011 when she was contacted by a debt recovery agency. But our adjudicator considered that the signature on the original application form for the credit card bore a similarity to the signature on the complaint form submitted here and those on letters sent to Vanquis.

She also noted that statements for the account were sent to the address Mrs T was residing at and also reviewed a letter, sent to Vanquis, in September 2008 asking for information regarding all late payments and subsequent default charges applied to the account over the previous six years. She was of the view that this letter was written in a similar style to the letters Mrs T later wrote to Vanquis in September and November 2011.

The adjudicator considered it more likely than not that the credit card was not taken out without Mrs T's knowledge. She considered it unlikely a third party using the account would contact Vanquis requesting information about charges; and the pattern of spending on the credit card was consistent with general household spending and as Mrs T was occupying the address with her husband she found it likely that she derived benefit from the spending.

And she found it unlikely that Mrs T's former husband would have been able to pass security to alter addresses and phone numbers associated to the account. She therefore said that she could not reasonably say that Vanquis should not be entitled to seek to recover payment of the spending on the card from Mrs T.

Mrs T has asked that her complaint be reviewed by an ombudsman.

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 evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances. Having taken into account all that has been submitted by the parties, I have come to the same findings and conclusions as the adjudicator and for the same reasons.

Mrs T has said that:

- the letter sent to Vanquis about charges is likely to be similar in style to more recent complaint letters from her, not because she wrote them all but, because they are based on 'template complaint letters' available from the internet;

- household spending may have been undertaken by her former husband without her knowing about it;
- she would not have written, and did not write, about charges on the account;
- Vanquis never replied to all of her complaint letters;
- the working patterns of her and her former husband were such that he would have been able to intercept post, on week days; and it should look suspicious that Vanquis had recorded that it tried to call 'the client' and 'the client' terminated the call;
- her former husband had been refused a credit card and he would have maintained payments so as to avoid suspicion from Vanquis; and the payments stopped when Mrs T and her former husband separated;
- her former husband may well have sought to claim a refund of charges and interest against any debt accumulated on the account;
- her former husband would have been able to pass security for her accounts as she would for his; and
- she had no knowledge of the card and was not responsible for the transactions.

Mrs T has also raised that Vanquis was able to provide a copy of the signed application form to this organisation whereas it did not to her. I recognise that this is unsatisfactory but I do not consider that there are any grounds for me to conclude that the bank has fabricated the signed version and I cannot ignore its existence in coming to my conclusions.

As I have said, I cannot be certain, now, as to how this account came to be in existence. Mrs T presents a persuasive explanation of how her former husband may have been responsible for opening the credit card account – and her not knowing about it – and in response to certain points of the adjudicator. But I have to weigh up all the evidence. And in this case I have to decide whether, on balance, I can safely conclude that Mrs T did not open the account.

And it remains that the signature on the account's application form is not obviously forged; the account was taken out using genuine details – which led to Vanquis writing to Mrs T's home, undoubtedly risky if it was Mrs T's former husband who opened the account without her knowledge; and, again, assuming that it was Mr T who used the credit card, Mrs T is likely to have derived at least some benefit from the spending.

Mrs T has also said that her former husband was refused a credit card and I cannot rule out – although I am not saying that this certainly happened – that Mrs T agreed to open a credit card for her husband to use and repay but that usage and repayments stopped when Mrs T separated from her husband.

Of course, I don't rule out that Mrs T has been a victim of fraud and knew nothing of the account's existence or the card's usage. But I am not adequately persuaded that it would be safe to draw the conclusion that she was a victim of fraud and I therefore can see no basis on which I might fairly and reasonably require Vanquis to cease its attempts to recover payment of the debt on the credit card account from Mrs T.

my final decision

In light of all I have said, I do not uphold this complaint and make no direction to, or award against, Vanquis Bank Limited.

Ray Neighbour
ombudsman