

## **complaint**

Mrs O complains that Vanquis Bank Limited has refused her a refund.

## **background**

Mrs O told us that her daughter, who is a child, was shortlisted for a modelling competition. It is not entirely clear how Mrs O was initially contacted about this, although Mrs O had been looking online for information about how her daughter could become a model. The prize for the modelling competition was a contract with a well-known fashion designer. Mrs O's daughter was invited to a photo shoot as part of the competition and Mrs O went with her.

On the day of the shoot, her daughter was photographed and interviewed. Further, Mrs O was told that the photos that had just been taken, were needed for the viewing panel who were judging the competition. Mrs O was made aware that there was one other candidate who had also made it this far. This candidate and Mrs O's daughter were both in the running to win the competition.

Much later that same day, the company that was running the competition and taking the photos a limited company who I will call "T", congratulated Mrs O and her daughter because she had won the competition. However, there was a snag, in order to secure the contract, Mrs O had to buy the copyright in the photos and the way she was to do this was by buying the photos from T. It appears that this was the first time T had mentioned anything about this requirement.

However, Mrs O suggested despite this unexpected turn of events T put her at ease. This was because T reassured Mrs O that the fee for the contract with the famous fashion designer, which was guaranteed, would cover this outlay. T explained that really all she was doing was investing in her daughter's career and that investment would be paid back very shortly. This was because the photo shoot with the fashion designer would be taking place in the next few weeks and the fee for that would offset most of the fee for the photos. Moreover, it indicated Mrs O's daughter had a bright future in modelling ahead of her.

Feeling somewhat under pressure it seems and not wanting her daughter to lose out on this contract, Mrs O agreed to pay T £5,500 for the photos. Also, it appears that Mrs O had in the back of her mind, that there was another potential model who had also been shortlisted, but her daughter had pipped that other candidate to the post on the basis, at least in part, of the photos T had taken.

According to Mrs O, T gave her the date of the modelling session with the famous fashion designer. This was about three weeks away. It also said Mrs O and her daughter needed to keep their passports ready and wait for T's email and call about the upcoming photo shoot with the famous designer. Further it told her the all the relevant remaining paper work would follow shortly when T's administrative office opened again, (the photo shoot had taken place on a Sunday). Mrs O's daughter was also promised a mentor.

The email and the call never came. Instead, Mrs O emailed T but her emails went unanswered. Mrs O rang T only to find the phone line went dead. She began to suspect all was not what it seemed.

Mrs O had used her credit card supplied by Vanquis to pay £4,000 of the £5,550. In addition to this, Mrs O had paid a £50 deposit before the photo shoot, to secure her daughter's place. The balance of the money, £1,500 had come from her current account.

Mrs O contacted both Vanquis and her current account provider a third-party bank I will call "L". She told them she had been scammed by T and asked them both to help her get her money back.

L refunded the £1,500. But Vanquis took a different approach. Mrs O suggested that Vanquis initially told her she need not pay anything towards the £4,000 while her complaint was being investigated. But then subsequently she found Vanquis had reported negative information to the credit reference agencies about her lack of repayments in relation to the £4,000. Mrs O was unhappy with this. To try to salvage her credit record, Mrs O offered to pay £50 per month towards her account as a goodwill gesture until the complaint was resolved. It appears that she has continued to pay £50 per month up until now.

Vanquis explained that it might, in principle, be possible to get Mrs O's money back via a process known as chargeback. But it suggested it was not going to go down this route because there was no point. In order to raise a chargeback claim on her behalf, it would need to rely on a valid chargeback reason. It suggested there was no such reason here.

Further, it seems Vanquis thought about whether to refund Mrs O on the basis of Section 75 of the Consumer Credit Act 1974 ("Section 75"). This provision gives an account holder who has a breach of contract or misrepresentation claim against the supplier of goods and/or services paid for using a credit card the right to pursue a like claim against the lender in certain circumstances. However, it appears Vanquis declined to refund Mrs O under this provision because it didn't accept there had been a misrepresentation or a breach of contract.

In addition, Vanquis didn't agree that it had told Mrs O that she need not make any repayments until the complaint was resolved.

Dissatisfied Mrs O came to our service.

Our investigator looked into Mrs O's complaint. He was persuaded that it was fair and reasonable that Vanquis should refund Mrs O. He said this because he was satisfied that Mrs O entered into the contract with T, based on misrepresentation and that there had been a breach of contract. He also thought that Vanquis should have carried out the chargeback as there was a valid chargeback reason.

Mrs O accepted our investigator's recommendation, Vanquis did not. In summary, it suggested where a consumer makes a claim based on verbal misrepresentation, as is the case in this complaint, this is not enough for it to uphold a claim under Section 75. In addition, it pointed out Mrs O said she'd been scammed by T, however, the victims of scams typically receive nothing. Whereas here Mrs O got a photoshoot, and the photos, and the photos had been loaded to a website, moreover, she signed an invoice saying as much. For these reasons it didn't think what we were dealing with here looked like a scam to it. Rather it thought Mrs O had a contract with T for it to take photos of her daughter and give her copies of those photos and that is what it, T, had done. Vanquis suggested there was nothing to back up her story about the rest of it. Further, Vanquis also told us, again, that it believed it had no valid basis for attempting a chargeback.

We'd reached an impasse and could go no further at this stage, so I was asked to take a fresh look at Mrs O's 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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs O brings her complaint to us relying, in part, on the rights she has under Section 75. She has these rights because of the type of finance that she used to pay for the contract with T. That is, she used her credit card. And we can look at a complaint by her about this agreement because Vanquis is a regulated lender and the agreement is a regulated agreement.

As I have already mentioned the general effect of Section 75 is that if Mrs O has a claim for misrepresentation or breach of contract against the supplier, here T, she can also bring that claim against Vanquis provided certain conditions are met.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Mrs O's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs O pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

One of things that is required for a successful claim under Section 75 is a valid debtor-creditor-supplier relationship. Here that means that Mrs O had to be the debtor, Vanquis the creditor and T the supplier. I'm satisfied that there is such a valid relationship here. Mrs O was the contracting party, she signed the agreement and carried out the negotiations with T as I would expect given the age of her daughter. Vanquis provided the credit and T was to provide the services. I see that the actual payment was taken by a third party, but it is clear from the written agreement that the third party merely acted as a payment processor, so it was not a party to the underlying contract. It follows that the involvement of that third party had no impact on the existence of the debtor-creditor-supplier relationship.

As I have mentioned above Section 75 gives Mrs O a remedy if she has a claim for misrepresentation against T. Here misrepresentation means a false statement of fact that Mrs O relied on to her detriment. Mrs O tells us the only reason she bought the photos was because of what she was told about the competition and the contract with the fashion designer. Vanquis says she has nothing to show any of this was said. It suggests, even if it was said then this was a verbal misrepresentation and that's not enough to invoke the protection of Section 75. Vanquis is mistaken about this point. Verbal misrepresentation is still misrepresentation.

That said I do accept that by their very nature such alleged verbal representations are hard to substantiate. After all there is generally nothing in writing, which of course is the whole point. I therefore have to assess this aspect on the basis of the balance of probabilities.

When I am doing this, I look at all of the wider relevant circumstances to help me come to a conclusion about what was most likely said by T.

It seems Mrs O and T set up the competition photoshoot by email. So, there is some, very limited written information about the nature of the agreement between Mrs O and T. The email from T says, *"your application has been successful so a massive congratulations"*, It also says *"in order to secure your assessment please contact us within 24 hours of receiving this email"*. This does not suggest that the only thing that T had promised Mrs O was a photo shoot and photos.

We have asked Mrs O why she didn't ask for all the paperwork on the day. She signed the paperwork relating to the photos after all there and then why did she not ask for the rest of it? I think this may be what Vanquis is getting at, in part, when it suggests it doubts her version of events. But Mrs O explains the photo shoot took place on a Sunday. The whole process lasted hours with the photos being taken first, then an interview and then waiting for the competition result. It was late in the day it seems when the result came through, T explained the administrative staff did not work on Sundays, but the paperwork would follow soon. I can understand why Mrs O found this a plausible position in the circumstances.

Then there is Mrs O's behaviour once she didn't hear further from T. She chased T. Which I think shows she had been promised something from it that she had not got. I'm persuaded what she was promised is what she told us about. Then once she found T was uncontactable she tried to get her money back. All of these actions on Mrs O's part fit with what she tells us about the competition and her expectations about the modelling contract.

Further, if I am to accept Vanquis's version of events, I'd need to accept that Mrs O spent £5,550 on a purely speculative basis. Which given how large an amount of money we are talking about here, I don't find persuasive. I'd also have to accept that Mrs O paid for photos to put on a website which she has no access to edit. Because it seems the photos are on a website, but Mrs O can't remove them which is what she wants to do.

I'm also satisfied that what T said about the confirmed contract for the campaign with the famous fashion designer was so specific and central to the contractual negotiations that it became a term of the contract. It follows because that work never materialised there was a breach of the contract too.

I take Vanquis's point about the scam. Typically, the victim of a scam receives nothing. However, that is not always the case. In other words, getting nothing for your money is not an absolute prerequisite for a scam. In any event, I'm not making a finding about scams as that is a criminal matter and I have no power to do that. Rather, as I say above I'm looking at whether I think Mrs O entered into the contract based on misrepresentation and whether the contract was breached I have already made findings about that above.

I don't agree the contract was part performed i.e. because photos were taken by T. I'm satisfied that Mrs O only purchased the photos because she was told this was the only way to secure the contract with the designer. The photos were not of any value by themselves in the circumstances.

For all of these reasons, I find it is fair and reasonable that Vanquis should refund the remainder of the money, £4,050 to Mrs O.

I've already found that Vanquis has to refund Mrs O so I don't need to look at the chargeback point, as the remedy for this would be the more or less the same as I have already given. Apart from that Mrs O would not have got the £50 deposit back via a chargeback initiated by Vanquis. That said we contacted L. It seems L refunded Mrs O having got back her money under the chargeback rules. That being so, this does rather call into question what Vanquis said about there being no valid chargeback reason and that the chargeback would have failed.

I'm not persuaded that Vanquis gave Mrs O inaccurate information about the need to make repayments to her account. I've seen Vanquis's notes, I don't see why these would be inaccurate. The notes mention nothing about Vanquis agreeing to freeze payments. Rather the notes say the opposite. And I can understand why, as this was its policy. I don't think it is likely that Vanquis would have departed from its policy in this instance. It follows that I don't uphold this part of the complaint.

### **my final decision**

My final decision is that Vanquis Bank Limited must:

- Refund the £4,000 by reworking Mrs O's account as if she never paid the £4,000 including refunding any repayments she made towards the £4,000 and the interest or charges accrued in relation to the payment.
- If reworking the account results in a credit balance pay 8% simple yearly interest on any credit balance from the date that the credit balance arose to the date of settlement. \*
- Contact the credit reference agencies and ask them to remove any adverse information it has asked them to register in relation to the £4,000.
- Pay Mrs O the £50 she paid for the deposit as it appears she did not use her credit card to pay this. Pay 8% simple yearly interest on the £50 the interest to run from the date the £50 was paid until the date of settlement. \*

\*If Vanquis considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs O how much it's taken off. It should also give Mrs O a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 28 November 2020.

Joyce Gordon  
**ombudsman**