

complaint

Mr R complains about a default that Vanquis Bank Limited placed on his credit file.

background

Mr R told us that he'd taken out a credit card account with Vanquis in or around 2014. He said that he'd been subject to a bankruptcy order in February 2015. After that, Vanquis had registered a default on his credit file. But he said that was wrong, and Vanquis shouldn't be allowed to do that once a bankruptcy order was in place.

Mr R said that when the bankruptcy order was made, his debt to Vanquis was included with all his other debts at the time. So he said that Vanquis couldn't single itself out and continue to enforce this debt separately after that. He also said that Vanquis hadn't issued any letters about this default in 2015.

Vanquis wrote to Mr R and said it had sent him a notice of default in September 2014. That said he had to pay just over £100 or the account would be defaulted, and the default noted on his credit file. No payment was made then, so the default was registered. Vanquis didn't think it had made a mistake, and it said that it wouldn't take this default off Mr R's credit file.

At first our adjudicator didn't uphold this complaint. He said that the default on Mr R's credit file had been applied well before his bankruptcy. He'd been told in late September 2014 that he needed to make a payment before 11 October if he wanted to avoid a default. He hadn't paid anything until 19 November. So the default was applied correctly.

But Mr R wrote back, to say that although the default date on his credit record did now say October 2014, that had been amended. And the status history of this account still showed that it didn't default until May 2015, which was after his bankruptcy. Our adjudicator checked with the credit reference agency, and it said that the date had been changed by Vanquis.

Our adjudicator then upheld this complaint in part. He said that the default date on Mr R's credit file was in October 2014, but the default had originally been recorded as May 2015. That date had been supplied by Vanquis. But a bankruptcy order was issued before that, so our adjudicator thought that the impact of this mistake on Mr R would've been minimal. Our adjudicator said that Vanquis had now corrected the date of default to October 2014, which was the right date. He said that Vanquis should pay £100 for its mistake.

Mr R said that wasn't right. He said that Vanquis shouldn't change the date, it should remove it completely. It wasn't allowed to register a default after the date of the bankruptcy order.

Vanquis said it would usually register a default when someone is bankrupt. But it said that in view of Mr R's bankruptcy, it would be willing to amend the default to show as settled. Mr R has since told us that he doesn't want to take up this offer.

Mr R said that, in his view, Vanquis was prevented by law from registering a default once he had been declared bankrupt. He sent us guidance from the Information Commissioner's Office, an extract from a legal textbook, and caselaw, which he said supported his argument.

Mr R wanted an ombudsman to consider his complaint, so it was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. This is what I said then:

- Before reaching my decision, I asked for some information in this case. Vanquis sent us a copy of Mr R's bankruptcy order. The order is dated February 2015, but the covering letter that Vanquis received from Mr R's trustee in bankruptcy was dated November 2015. That letter says Mr R *"has recently informed me that he holds or held"* a credit card with Vanquis. So it doesn't look as if Vanquis knew about Mr R's bankruptcy until very late in 2015.
- Mr R has run a legal argument that a default should not be registered by a creditor after someone is declared bankrupt. I'm afraid I just don't think that these arguments are relevant to this complaint. That's because I think that all that has happened in this case is that Vanquis just made a mistake with the default date. I'll explain why I think that.
- Vanquis says that the default happened in October 2014. That was well before Mr R's bankruptcy. Vanquis has shown us its internal notes, and Mr R's account usage from the time. I think both of these are consistent with what Vanquis has said about when the default happened. Mr R's last payment onto his card, before the default, was made in June 2014.
- I think that it's most likely that Mr R's credit card account with Vanquis was defaulted in October 2014, as Vanquis has said. I think it's more likely than not that the required letters were issued before then, and I can see that Mr R failed to make the required payment to avoid a default at that time.
- But Mr R's credit file initially showed a default date after February 2015. I think that the default date was just recorded wrong. I think this was probably a mistake by Vanquis.
- Whilst lenders don't routinely make mistakes about default dates, it's not unheard of for this to happen from time to time. When a default date is wrongly recorded, our service would usually expect a lender to amend it, so the right date shows on Mr R's credit record. That's what Vanquis has done in this case.
- Unfortunately, Mr R's credit file hasn't been fully corrected. His file shows a default date in October 2014. But the status history on Mr R's credit file isn't consistent with this. I think that Vanquis should complete the amendments to Mr R's credit file, so that it's fully consistent with a default date of 11 October 2014.
- Mr R doesn't want Vanquis to amend his default date. He wants it to be removed, because he thinks it's wrong for Vanquis to register a default after his bankruptcy. But Mr R hasn't suggested that it would be wrong for a default to be registered before he was made bankrupt. And I'm not aware of any reason why it would be. So I don't think that Vanquis has to remove the amended default, which shows as registered on 11 October 2014.
- I've thought about what went wrong here, and whether Vanquis might've been trying to avoid the effect of the bankruptcy order, as Mr R suggested. And I don't think that is what Vanquis has done. I think this is a simple mistake. I note that the date that Vanquis, wrongly, initially registered as the date of default was about six months before Vanquis

was actually notified of Mr R's bankruptcy. I don't think Vanquis has sought to avoid the effect of the order.

- Vanquis has told us that it will now mark Mr R's account as settled, because it knows that he has been made bankrupt. It also agreed to pay Mr R £100 in compensation.
- I've thought hard about whether compensation is required in this case. On one hand, I think that Vanquis made a simple mistake, which it has taken some steps to put right. I don't think that mistake is likely to be linked in any way to Mr R's bankruptcy. I wouldn't necessarily say that Vanquis should pay compensation, just because it had made a mistake, if it had already apologised and put that mistake right.
- But in this case, it doesn't seem as if this mistake has been put completely right. The amendments to Mr R's credit file mean this entry doesn't make sense. The default date is registered as 11 October 2014, but on the status history, his default doesn't show until May 2015. I've said I think Vanquis should make sure the status history is also amended.
- I also note that Vanquis hasn't explained to Mr R what went wrong either. It did make a mistake, but it doesn't seem to have told him that. I don't think that Mr R should've had to complain to our service, just to get this explanation. So I also think that Vanquis should pay Mr R £100 to make up for the trouble and upset its mistake, and then its failure to fully correct that and explain it to Mr R, has caused to him.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Vanquis said it had nothing to add to my provisional decision. Mr R sent further detailed submissions.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr R's argues that Vanquis didn't actually default his account in October 2014. Mr R further argues that, having failed to default his account then, Vanquis is prevented from changing this date now, so that Mr R's credit file shows a default date in October 2014.

Mr R has set out very detailed legal arguments as to why he believes that Vanquis shouldn't be permitted to retrospectively change his default date to October 2014, if it didn't actually take action to default his account then. I have read these carefully, but I won't attempt to set them out in full here.

Broadly speaking, I would agree with Mr R that it wouldn't be fair to allow Vanquis to change the default date retrospectively to October 2014, if I thought that Vanquis hadn't taken any steps to default Mr R's account at that time.

But I wouldn't agree with Mr R that it would be wrong for Vanquis to change the default date now to October 2014, if I thought that it had taken steps to default his account then.

I know that Mr R says Vanquis told him that the default date was more recent than this. He says that, having told him that, Vanquis can't change its mind now. But I've explained I think that Vanquis just made a mistake about this. I don't think that means that Vanquis can't correct that mistake. Our service wouldn't usually prevent a business from correcting a

mistake like that. And I haven't seen anything in this case to make me think that I should depart from our service's usual approach.

So the key issue is whether I think that Vanquis did take steps to default Mr R's account in October 2014. I explained in my provisional decision that I thought it had. Mr R asserts that it didn't, and has sent us some further documentation that he says supports that view. I've considered that carefully. But I still think that it's more likely than not that Vanquis did take steps to default his account in October 2014. I'll explain why I think that.

Mr R said that a letter issued to him in September 2014 wasn't a Default Notice under section 87 of the Consumer Credit Act, because it doesn't have the wording of that section of the Act. I've looked at the letter Mr R received, and I don't think that this default notice fails to meet the requirements of the Act, or that it's unfair or unreasonable for Vanquis to rely on this as a default notice.

Mr R says that this can't be a default notice, partly because it only says that his account is temporarily restricted. But a default notice warns of an upcoming default. The account doesn't have to be closed at the time the default notice is sent out. Rather, the default notice is generally there to warn account holders that their accounts will be closed, if they don't make the payment required in the notice, within the deadline set out in the notice.

Mr R didn't make the required payment within the deadline. He paid a bit less, a bit later. That's not enough to avoid the default.

We don't have the letter that Vanquis sent Mr R when his account then defaulted. But I said in my provisional decision that I thought it was more likely than not that the appropriate correspondence was sent. I still think that.

Mr R has told us that he received a statement dated 16 November 2014, and he says that this must mean that his account hadn't been defaulted by then. I disagree. I think that the information shown on that statement suggests very strongly that his account had been defaulted by then. The statement shows no transactions, and no interest accruing. It makes a demand for immediate payment which is larger than the amount requested in the default notice. The statement also says that "*Your details have been passed to [a debt recovery company] to recover the outstanding debt.*"

All of this suggests to me that the account had been defaulted by this point. I think that it's likely that this statement was issued as part of the process of notifying Mr R of that.

For the above reasons, I still don't think that it's unfair or unreasonable for Vanquis to amend Mr R's credit record to show a default in October 2014. And I still think that Vanquis should complete the amendments to Mr R's credit record, so it's consistent with this default date.

Mr R said that he also thought I should ask Vanquis to pay more compensation, because of the continued efforts and trouble that he'd gone through, asserting Vanquis' mistakes and researching the law. But I've not agreed with the points that Mr R has now made. I still think that an amendment to Mr R's credit file as set out below, and £100 in compensation, provides a fair and reasonable outcome to this complaint.

my final decision

My final decision is that Vanquis Bank Limited must amend the entry on Mr R's credit file, so that it is fully consistent with his default date of 11 October 2014. It must note this debt as settled, as a result of Mr R's bankruptcy. And Vanquis Bank Limited must pay Mr R £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 June 2019.

Esther Absalom-Gough
ombudsman