

## **complaint**

Mr F complains that Vanquis Bank Limited ("Vanquis") are refusing to uphold a claim he has made under section 75 of the Consumer Credit Act 1974 (s75).

## **background**

On 15 December 2017 Mr F took a group of clients out for dinner and bowling at a bowling alley. He made some of the payments using his Vanquis credit card and arrived, as planned, at 10pm. The venue had explained they would open until 1am. But when they closed earlier, at 12 midnight, Mr F raised a s75 complaint to get his money back from Vanquis as he said the Act, held the credit provider jointly responsible.

But Vanquis didn't accept his claim as they said there wasn't proof the venue had agreed to stay open later than usual and he hadn't provided a copy of the bill. So Mr F referred his complaint to this service and our investigator reviewed the evidence.

She contacted the venue and gained assurances that it was scheduled to close at 1am on the night in question but had to shut earlier because of a "*critical maintenance issue*". She noted that Mr F had paid the initial deposit using his credit card and a further payment of £130 but it was unclear what the total bill was as Mr F no longer had the invoice. She thought Mr F's night had clearly been disrupted but she noted that he had been able to benefit from some of the experience and she suggested Vanquis refund £70, roughly a third of what Mr F paid and the same proportion of the night that he'd missed out on.

But Mr F disagreed. He didn't think the service had been received as it was cut short before the end and he couldn't finish his food because everything was so rushed. So he asked for a final decision by an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know it will disappoint Mr F but I agree with the view of the investigator. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act 1974 says that in certain circumstances, a finance provider can be responsible for a breach of contract or a misrepresentation made by the supplier.

As Mr F paid for at least some of his evening using his credit card a s75 claim is possible if he can demonstrate there was a breach of contract. And here I think that has been

demonstrated as the venue has explained there was a critical maintenance issue and that it had to close early.

This must have been very frustrating for Mr F who was trying to ensure his clients enjoyed themselves. I can imagine that the evening was disrupted and he's explained that food couldn't be finished and they only managed to complete a few games. But it's clear that although he wasn't able to complete the full match, some games were completed and it's also clear some food was provided and consumed. So I don't think it would be fair to refund everything that Mr F has outlaid and I think the investigator's suggestion that £70 is repaid seems reasonable in the circumstances.

### **my final decision**

For the reasons I've given above I uphold this complaint in part and ask Vanquis Bank Limited to refund £70 to Mr F in recognition of his claim under section 75 of the Consumer credit Act 1974.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 April 2019.

Phil McMahon  
**ombudsman**