

complaint

Miss S complains about Vanquis Bank Limited's refusal to give her a refund.

background

Miss S wanted to help her partner improve his employment prospects. To this end, she paid for his course with a supplier I will call "J". According to Miss S, one of the reasons, her partner wanted to do the course is because he was told in a phone call with J that the qualification he'd get was recognised within the industry in which he wanted to work. However, after he completed the course he found out this wasn't so. Rather, Miss S says that J told her partner the course was actually an in-house course for a particular client company and the qualification it gives him is not recognised in the wider industry. Miss S wants her money back. Miss S relies on the rights she believes she has under Section 75 of the Consumer Credit Act 1974 ("Section 75").

Vanquis looked at Miss S's complaint. Its position is that Miss S told it that her partner was given false information about the course over the phone. But without the recording of the call it does not agree it has enough to back up her version of events. On that basis it has declined to give her a refund.

Dissatisfied Miss S came to this service.

One of our investigators took a look at Miss S's complaint. He concluded he couldn't fairly and reasonably uphold Miss S's complaint. He came to this decision because he pointed out that to have a claim under Section 75 there needs to be a particular type of relationship in place called a debtor-creditor-supplier relationship. However, there can be no such relationship if the debtor does not have a contractual relationship with the supplier. He said by its very nature the contract for the course had to be made between the student (here, Miss S's partner) and the supplier (meaning J). This in turn means that Miss S had no contractual relationship with J.

Vanquis accepted our investigator's conclusion, Miss S did not. In short, she was seemingly frustrated that Vanquis was able to avoid helping her based on what she saw as a "technicality". She also expressed dismay that using her credit card to pay for the course had not provided the protection she had thought it would.

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've looked at Miss S's complaint, I don't think I have any proper basis to tell Vanquis it must do anything more. I realise this is likely to disappoint Miss S please let me explain why I've come to this conclusion.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored

it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

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.

Miss S is relying on the rights she tells us she has under Section 75. 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 Miss S'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 Miss S pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

Miss S expresses consternation about how Section 75 actually works. I think she is not alone in thinking if a customer pays for something by credit card then there is always going to be a level of protection for the customer under Section 75. However, it is not quite as straightforward as that. Section 75 says, amongst other things, that in certain circumstances if the debtor has, in relation to a transaction financed by a credit agreement, any claim against the supplier in respect of a misrepresentation or a breach of contract, then she has a like claim against the credit provider.

In other words, the right to make a claim is conditional of the right circumstances being in place. One of those circumstances is that there must be a valid debtor-creditor-supplier relationship. Here there is no such relationship. This is because unless the debtor is a party to the contract (here meaning the contract with J), then there can be no debtor-creditor-supplier relationship.

But it is clear both from the contractual documentation I have seen and from the type of service that was being delivered that the only contracting party was Miss S's partner. That being so, I have no fair and reasonable grounds for saying that Vanquis must take responsibility for J's actions. I can see why Miss S might see this as a technicality, but I don't agree. It may be a technical point, but the law is specific about when it expects a supplier of credit to step in. I don't find I've got any grounds for going beyond that the law says about this.

That said, it is always open to Vanquis as a goodwill gesture, to make a refund to Miss S. But I can't require it to do this. This is something Vanquis would have to choose to do. I'd point out that Vanquis asks Miss S to provide the telephone conversation her partner had with J. That is just not realistic. And it is something I would have expected Vanquis to have asked J for anyway. Plus, Vanquis can look at the wider circumstances of the complaint for instance does it make sense to it that Miss S's partner would have contracted to buy a course that has no value to him? Especially when from what Miss S tells us about her circumstances and his they have to and do watch every penny. I leave it to Vanquis if it wants to take this route for its hard-pressed customer, that's its choice to make.

my final decision

My final decision is that I don't uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 January 2021.

Joyce Gordon
ombudsman