

complaint

Miss R complains that Vanquis Bank Limited has ignored rules and regulations set down by the Financial Conduct Authority. She wants Vanquis to remove the default that it applied and stop asking her for repayment.

background

Miss R took out a credit card with Vanquis in 2010. In May 2015, Miss R asked Vanquis to stop pursuing the outstanding balance as she said it had failed to reply to earlier correspondence. Miss R told Vanquis that it was in default of the Consumer Credit Act 1974 (CCA) as it hadn't sent her an executed credit agreement.

Our adjudicator didn't recommend that Miss R's complaint be upheld. He agreed that Vanquis took too long to reply to Miss R. But he felt Vanquis's offer to refund interest and charges during the period it failed to reply was fair. As Miss R hadn't made any payments towards her credit card since May 2015, he didn't consider it had done anything wrong when it recorded the default on her credit file.

Our adjudicator explained that we can't declare Miss R's agreement to be unenforceable. This would be for a court to decide. He was satisfied Miss R borrowed the money so it would be unfair to say she didn't have to repay it. But if Miss R wanted Vanquis to agree not to pursue the debt due to her medical situation, he agreed it was reasonable of the bank to ask for further evidence.

Miss R isn't happy with our adjudicator's recommendation. She says that in the absence of a signed and executed credit agreement, Vanquis can't default her account. She says she didn't apply for the card online. Miss R says Vanquis continued to add interest to her account after she told it about her financial difficulties. Miss R says Vanquis shouldn't leave the default on her credit file if it agrees to write off the outstanding balance.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the conclusions of our adjudicator.

As our adjudicator has already said, this service can't declare a credit agreement to be unenforceable – that argument is better suited for the courts to decide if Vanquis tries to enforce the agreement in court.

My role is to consider the individual complaint and decide whether something has gone wrong. I need to reach a decision that's fair and reasonable in all the circumstances, taking in to account – but not necessarily being bound by – any relevant law (amongst other things).

Whether or not the debt is unenforceable, it doesn't make it *void*. In other words, the debt isn't wiped out. Miss R still owes the money. So Vanquis didn't do anything wrong when it asked for repayment. And it was still allowed to record the default after Miss R failed to make payments.

Vanquis told Miss R that it didn't receive any correspondence in February and March 2015. In May 2015, Miss R asked Vanquis to reduce her interest rate on medical grounds and send her a certified copy of her original agreement. Vanquis agrees it failed to reply to this email.

Vanquis apologised for the delay in September 2015 and refunded over £500 of interest and charges. This meant it put Miss R back in the same position she would've been had Vanquis replied earlier. I agree this is fair and reasonable.

Miss R has made submissions to us about a recent legal case. Miss R says the decision in that case means that in the absence of a properly signed and executed document the agreement is unenforceable so there can't be any default.

I've considered what she's said. In the case she refers to, the Court decided that as the credit agreement was irredeemably unenforceable, it was wrong under data protection principles to describe the debtor as a defaulter – unless the credit report made it clear the agreement was unenforceable. This isn't the same as Miss R's situation. A Court hasn't declared her agreement with Vanquis to be irredeemably unenforceable. Until such time as it does, I can't require Vanquis to amend Miss R's credit file.

Vanquis gave Miss R a copy of the terms in force at the time she applied for the credit card online. Miss R says she didn't apply for the credit card online and doesn't recognise the agreement. But I've seen evidence that Miss R applied for the card online. Miss R has acknowledged her debt several times through her dealings with Vanquis. So I don't require Vanquis to do more than it has.

Vanquis has offered to look at reducing or clearing the debt if Miss R gives it some evidence of her medical condition. Miss R isn't willing to do this as she wants the bank to remove the default. I don't consider Vanquis is acting unreasonably by asking for further details of Miss R's medical condition. And even if Vanquis was to clear the debt, I wouldn't require it to remove the default as this is a fair reflection of the way Miss R has managed the account.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 February 2017.

Gemma Bowen
ombudsman