

Complaint

Mr S complains Vanquis Bank Limited is unfairly holding him liable for a debt he is not responsible for. He wants the debt cleared and not to be pursued for repayment.

Background

Mr S is a customer of Vanquis. He opened a Vanquis card account in 2014. Between December 2017 and June 2018 payments were made on his account which he says he didn't make. This left the account with a balance of approximately £3,200 on which interest has continued to accrue.

Mr S says he requested a new card in November 2017. He was going abroad in December 2017 and wanted to use his account. He says the card never arrived before he left. On his return, he discovered a card had arrived in the post. The letter containing the card was unopened.

Mr S says he didn't see the spending on his account until a paper statement arrived in July 2018. He says he reported his card – the one which arrived while he was abroad - as lost to the police at the beginning of June 2018.

Mr S contacted Vanquis. He wanted to make sure he wasn't held liable for the outstanding balance. Vanquis asked Mr S to sign a form giving it permission to investigate fraud. Mr S didn't return the form. He says he wasn't happy with the terms of the declaration form and thought they were unreasonable, so he didn't sign it.

Vanquis said there was no record of Mr S ringing to request a new card in 2017 or to report his card as lost in June 2018. Instead there was a record of him requesting a PIN reminder in November 2017. And in the absence of him not completing the declaration to investigate further it was holding him liable.

Mr S brought his complaint to us. An investigator at our service decided not to uphold the complaint. Mr S via his representative disagreed with the outcome they reached and provided further points to consider. The investigator considered those points but continued not to uphold the complaint. In summary, they found:

- When Mr S opened his account, he was issued with a card. In 2015 he reported the card was not working, so a new card was issued. The first card, however, wasn't cancelled, so when it was due to expire, a card was sent in September 2017 to Mr S's address. Around that time Mr S' account automatically upgraded. Once payments on the account were made in December 2017, a new card was sent because of the upgrade.
- There wasn't a persuasive explanation as to how someone obtained the card that was sent in September 2017 or how they knew Mr S' PIN, which had never changed since the account was opened. That person would've needed an opportunity to get hold of the card and to have remembered or kept a record of the PIN, being as Mr S says the PIN was safely stored away.
- The evidence indicated Mr S hadn't contacted Vanquis in November 2017 to request a new card. Instead it showed a call was made from his mobile number in order to request a PIN reminder in November 2017.

- The evidence indicated neither the police, nor Mr S contacted Vanquis to report a lost card in June 2018. Instead, it showed Mr S contacted Vanquis at the end of July 2018 after receiving the paper statement for June 2018.
- Vanquis sent multiple text messages to Mr S's mobile during the time the transactions took place. The messages state there was an outstanding balance and reminded Mr S to make payment. If Mr S was unaware of the payments on his account up until that point, he would've reported his concerns much sooner.
- Mr S's credit limit increased on three separate occasions, and on each occasion either an email was sent to Mr S's email address or a letter was sent to his address. Vanquis' records showed the right postal address for Mr S at the time the notifications were sent. All the increases were automatic, so they weren't triggered by a request.
- Mr S says he never set his account to receive online statements. But Vanquis' records indicate his statements were set to online in 2015, meaning they were emailed to Mr S at the time he was actively using his account. Mr S received a paper statement for June 2018 because the account had fallen into arrears and not because someone had made changes to his account.
- The Payment Services Regulations 2009 were relevant in determining Vanquis' liability. In summary and subject to some exceptions the regulations mean Vanquis are liable for payments Mr S didn't consent to.
- Mr S's recollections of what happened are not supported by Vanquis' records of his contact. The spend was on the card sent to his address in September 2017 – a card he denied receiving - although his representative suggests he may have received it and it was stolen from his car when it was being fixed. But whoever used the card needed to know Mr S' PIN, which according to him wasn't readily accessible to anyone who entered his home.
- On balance, the evidence pointed more to Mr S allowing someone to use his card. That person may have spent funds Mr S wouldn't have agreed to. But under the Payment Services Regulations this still meant Mr S consented to the payments. So, Vanquis didn't need to refund the payments and it can hold Mr S liable for the debt.
- The spend of the card didn't trigger Vanquis into identifying it as unusual behaviour. And on balance, the behaviour wasn't such that Vanquis ought to have attempted to contact Mr S to ensure the spend was genuine.

Mr S has asked for a final decision from an ombudsman, so the complaint has been given to me to decide.

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 decided not to uphold Mr S' complaint.

I acknowledge Mr S' version of events may be true. After all it's not possible to know for certain what happened. So, I must base my findings on what I think is more likely than not to have happened based on all the evidence I've available. And that is what I have done.

- Mr S says he rang Vanquis in November 2017 to request a replacement card. He says this was in readiness for his holiday in December 2017. But I don't think he did ring Vanquis to request a new card.

Vanquis' records indicate Mr S rang in November 2017 to request a PIN reminder. Vanquis explained the code recorded for the call is for a PIN reminder and not anything else. It has explained there are separate codes for a new card being requested or for when someone speaks to an advisor. The codes are generated according to which options a customer selects on the call. If Mr S requested a new card or spoke to an advisor, I'm satisfied a different code would've been recorded.

- Vanquis' records don't indicate the police contacted Vanquis or Mr S. Instead they record Mr S phoning Vanquis towards the end of July 2018 to report the payments. They also record a call from 2016 in which Mr S changed his address to where he currently lives. If Mr S rang when he says he did it's more likely that call would've been automatically recorded, in the same way his other calls were.
- Mr S says he didn't read the texts Vanquis sent to him between January to June 2018. The texts reveal a large outstanding balance on his account and a reminder to make repayments on time. His representative says the title of each text reads as "latest statement available", so without opening each text Mr S wasn't alerted to the spend on his account.

But I find it's more likely Mr S would've been curious to see what the texts were about, considering he hadn't received anything from Vanquis for over a year and according to him he was unaware of any account activity. It's possible he thought the texts commenced due to the card sent in December 2017, but I'm not persuaded this is the most likely explanation.

- Mr S says he never received the card sent in September 2017. His representative also says just because the card was sent doesn't prove it was received. His representative also suggests Mr S could've received the card in September and then left it in his car, where it was intercepted.

I'm persuaded Mr S did receive the card. And I'm satisfied Mr S made a PIN request in November 2017 probably because he wanted to remind himself of the PIN. If Mr S had lost the card sent in September, I'd have expected Vanquis to have a record of a new card request, but no record exists to support this scenario.

- Neither the card sent in September 2017, nor the card sent in December 2017 were because of contact from Mr S or anyone else. The card sent in September was sent because the original card issued in 2014 was due to expire. And the card in December was sent following an automatic upgrade. It was only sent after spending commenced on the account in December 2017.

- The credit limit increases were not triggered by requests. The increase to £1250 happened in January 2016, the increase to £2250 happened in September 2017, and the increase to £3000 happened in March 2018. Mr S says he was unaware of the increases. But records indicate either a letter or email was sent to him about the increases, which he could opt out from. He may not have read the letters or emails, but this doesn't mean Vanquis should be liable for spending above the original £500 credit limit.
- Mr S's representative suggests certain members of Mr S' family could've obtained and used his card. They say Mr S kept his card in his car, and on one occasion the son of a former partner fixed the car. That person may have found the card and passed it to the former partner of Mr S or one of her children. The account was opened when Mr S lived with the former partner. So, they could've retained correspondence revealing the PIN.

But the card used to make the transactions was the card Mr S says he never received. So, I doubt it was taken from his car – that would require Mr S to acknowledge he received the card in September 2017. And that would conflict with what he's said about requesting a new card in November 2017 in readiness for his holiday in December. I'd expect him to have remembered losing the card sent in September 2017 and to have mentioned it when he first raised the complaint.

- The card sent in September 2017 could've been intercepted once it had been posted through Mr S's mailbox. But whoever took the card would've needed access to Mr S's post. They wouldn't have known a card was expected, and again they would've needed to know Mr S' PIN.

The evidence indicates Mr S rang Vanquis for a PIN reminder. And I doubt he would've requested a PIN reminder if he didn't have a card in his possession which he intended to use. He was prompted to contact Vanquis – and I think receiving the card in September 2017 was the prompt.

- Mr S' card from another provider was used abroad during the time some of the transactions took place. So, he was likely abroad when the spending first started on the account in December 2017. But being abroad doesn't mean he didn't allow someone to use his card, such as a friend or family member. Indeed, I find this is a more likely explanation to account for what happened.

The spend on the card was for everyday purchases and services over seven months. And it seems someone did intend to pay for the purchases in view of the repayments that were made. This would be a risky enterprise to undertake if the person using the card didn't have Mr S's permission, given Mr S could've easily noticed the spend at any time and reported the fraud to the police, who could then trace the account used to make repayments.

I find the more likely explanation based on what I've seen is that Mr S allowed someone to use his card. I'm not satisfied he ordered a new card to use abroad – the records don't indicate this. Instead I'm satisfied he received the card in September and requested a PIN reminder so that the card could be used.

The person using the card may have spent more than Mr S had agreed and may have taken advantage of his generosity. But under the Payment Services Regulations 2009 Vanquis aren't liable for payments made when Mr S allowed his card to be used by someone else.

- Mr S' representative has drawn attention to Mr S not having accounts with many of the service providers payments were made to. And this may be the case, but again if Mr S had allowed someone to use his card, which I think is more likely than not, Vanquis are not liable for those payments.
- Mr S' representative also says the spend on the account ought to have triggered Vanquis into questioning whether it was legitimate. But I disagree. A PIN reminder was requested in November 2017, which would indicate that a customer wanted to use the card. And the spend began at a time when customers often do make more frequent transactions. As I find Mr S likely gave someone permission to use the card, it's not evident that he would've said he didn't recognise the payments if he was contacted.

Mr S' representative revealed Mr S suffers from a health condition affecting his well-being, which I was very sorry to hear about. I understand he's been concerned about contact from Vanquis in relation to the debt on his account, which has worsened how he has been feeling.

There is no exemption that a firm cannot pursue repayment just because a complaint is with our service. And we have no power to direct a firm not to seek repayment unless it is a direction in a final decision. But as I find Mr S is liable for the spend on the account, this isn't something I am doing.

Vanquis does, however, have obligations to act with appropriate forbearance and consider its customer's circumstances when communicating and arranging how a debt will be repaid. Mr S may wish to complain about Vanquis' actions in communicating with him about the debt, and whether it has engaged with him appropriately about arranging a way forward to repay his debt, but I have not considered this as part of this decision.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 March 2021.

Liam King
Ombudsman