

## **complaint**

Mr P is unhappy that Vanquis Bank Limited hasn't given him his money back through a chargeback or section 75 claim for incomplete services.

## **background**

I issued my provisional decision in March 2018, which is attached and forms part of my final decision.

In my provisional decision, I gave both parties an opportunity to reply before I reached a final decision. I've now heard back from both parties. Mr P said that Vanquis hadn't raised the lack of 'debtor-creditor-supplier' ("d-c-s") chain as a reason for denying the Section 75 claim under the Consumer Credit Act 1974 so doesn't see its relevance in this complaint. But he told us he will accept the gesture of goodwill of £297.56 plus interest. Vanquis hasn't provided us with any new information.

## **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 note Mr P's comments around the d-c-s chain. But the complaint against Vanquis was brought to us as a Section 75 complaint. For me to uphold this complaint and deem Vanquis liable for all of the amounts paid by Mr P under Section 75, I would need to first be satisfied that this section of the law applies to all of the amounts referenced, regardless of whether Vanquis has made this point or not. And I remain of the opinion that it doesn't because of the additional entity I referred to in my provisional decision which isn't covered by the Act.

Vanquis only becomes jointly and severally liable with the supplier for any breaches or misrepresentations because of Section 75. So it wouldn't be fair or reasonable of me to ignore the Section 75 requirements for a valid d-c-s chain.

Based on what both parties have told me, I've seen no reason to change my decision.

## **my final decision**

For the reasons set out in my provisional decision and above, I don't uphold Mr P's complaint against Vanquis Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 April 2018.

Melanie Roberts  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr P is unhappy that Vanquis Bank Limited hasn't given him his money back through a chargeback or section 75 claim for incomplete services.

### **background**

Mr P used a website to find a legal services provider. He used his credit card twice to pay money to the website which was then passed on to the legal services provider. Mr P was unhappy with the work done by the provider and asked the website for a refund. Around the same time Mr P asked Vanquis to chargeback the payments he'd made.

The website credited Mr P's online account with some of the money involved in the dispute - £300. But the website closed Mr P's online account and he couldn't access the money. Because of this, Vanquis offered to pay Mr P the amount he'd paid for this part of the transaction - £297.56 – as a gesture of goodwill. But Mr P isn't happy with this offer as he said it doesn't cover the amount he would've been charged in interest by Vanquis if he hadn't paid it off. He also said Vanquis is required to pay this amount under the Consumer Credit Act 1974 and that it isn't a gesture of goodwill.

Vanquis hasn't offered to refund the initial payment Mr P made to the website because the 'debtor-creditor-supplier' chain, which must exist in order to make a section 75 claim, was broken. It also said it didn't uphold the chargeback dispute having considered all the information provided by both parties. But Mr P said that Vanquis failed to read information he'd sent to it about his dispute and that it's been negligent when dealing with the chargeback. He told us there were customer service failings by Vanquis.

Mr P would like a refund of the full amount he paid for the legal work; compensation for his time spent dealing with this; the additional legal fees incurred as a result of the work not being completed; and the interest he was or would've been charged by Vanquis for these transactions. He also mentioned that he's been suffering from stress and anxiety.

Our investigator considered this case. He didn't think Vanquis should do more than it has already offered to. But Mr P disagreed so the case has been passed to me.

### **my provisional findings**

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

While I know it will come as a disappointment, I've provisionally decided not to uphold Mr P's complaint – and I'll explain why.

### **section 75**

Mr P paid a total of £390.32 by credit card to the website. I first need to decide whether these payments are covered by section 75 of the Consumer Credit Act 1974 and, if so, whether there's been a breach of contract or a misrepresentation.

Under section 75, a creditor is jointly and severally liable with the supplier to the debtor; a 'debtor-creditor-supplier' ("d-c-s") chain. But where an *additional* entity is involved, the chain is often invalidated. Payment for the legal services was made directly to the website, not to the legal services provider. In this case, the only valid chain is between Vanquis (the creditor), the website (the supplier), and Mr P (the debtor). The work of the legal services provider (the additional entity) isn't covered by section 75.

The website said that some of the work that should've been provided wasn't done, so it returned some of the money to Mr P's online account with it. But because the website account was closed, Mr P couldn't access his money so Vanquis offered to refund this along with 8% simple interest. But Vanquis wasn't required to offer this – it was a goodwill gesture. The contract for legal services was with the legal services provider (the additional entity), not with the website (the supplier). The website decided to refund the money for some of the work done, but this wasn't contractually agreed. So, while Mr P didn't actually receive the payment from the website, a contract wasn't breached or misrepresented. Vanquis didn't have responsibility under section 75 to refund Mr P, but it offered to anyway.

In terms of the additional amount paid to the legal services provider that Mr P thinks should be refunded – the £92.76 – this also falls outside of the valid d-c-s chain. So Vanquis therefore isn't jointly and severally liable for this. There's also a question around whether we'd have been able to consider this amount even with a valid d-c-s chain as section 75 only applies where the cash price of the goods or service is over £100. Mr P thinks the payments he made formed part of one single contract to deliver legal services. I'm currently minded to disagree. When Mr P enlisted in the services of the legal services provider, he contracted into a payment of around £90. There wasn't any requirement for him to pay any more if he didn't want to, nor was there a requirement for the provider to continue to work with Mr P. So I think it's arguable there were two separate payments for two separate services (or items). So, whether because of the chain or because of the amount involved, I don't currently think this is a payment that can be considered under section 75.

### **chargeback**

I've thought carefully about whether Vanquis acted as it should in relation to the chargeback. Banks don't have to raise chargebacks, and will often refuse to do so if it looks clear that a cardholder will lose. But Vanquis did raise the chargeback in this case.

The supplier disputed the chargeback because it said Mr P breached its terms and conditions and gave positive feedback about the service provided. Where a supplier disputes the chargeback, a bank will only take it further if it thinks there's a reasonable chance of success.. Mr P has given detailed information about why he's unhappy with the legal services he paid for. But chargebacks are decided on the card scheme's rules, not the relative merits of the dispute between the cardholder and merchant. Vanquis has followed the correct chargeback process by considering information for both sides. And I don't think it should be expected to do more in this case.

I note that Mr P complained about the service Vanquis provided when dealing with his request for a refund. From what I've seen, Vanquis has made some errors here, particularly in relation to looking at the information Mr P sent it. But I don't think that any errors made by Vanquis have ultimately caused Mr P a financial loss. And while I appreciate Mr P told us he was feeling stressed and anxious, I don't think it's fair to hold Vanquis responsible for this. Instead I think this is likely to be linked to Mr P's wider circumstances. I don't think Vanquis has done enough to warrant compensation for any trouble or upset caused. So I won't be asking Vanquis to do anything to reflect the service it provided.

#### **offer**

As I've mentioned above, Vanquis made an offer to refund £297.56 plus interest. As the amounts can't be considered under section 75 and the chargeback wasn't successful, I think this is a generous offer. So I don't expect Vanquis to pay any more. I also don't expect Vanquis to take any action with regards to the legal services provider still being able to trade on the website, as this falls out of the scope of what it can reasonably be expected to do.

#### **my provisional decision**

For the reasons set out above, I don't plan to uphold Mr P's complaint.

Both parties should now send me any comments or information they'd like me to consider by 28 March 2018 before I make my final decision.

Melanie Roberts  
**ombudsman**