

complaint

Mr A complains that Vanquis Bank Limited has debited his credit card account with £164.28. He says he didn't agree to or otherwise authorise the payment.

background

Some years ago, Mr A had a selling account with Amazon. As part of the agreement between them, Mr A would pay fees to Amazon, based on the sales he made through its website. Not having used the selling account for many years, Mr A believed he owed nothing on it.

In October 2017, Mr A bought a personal item, unconnected with his earlier selling activity, through Amazon. He paid using his Vanquis credit card. Shortly afterwards, Amazon sought payment from Vanquis of fees that it said were outstanding on Mr A's seller account. Vanquis paid Amazon and added the £164.28 Amazon had claimed to Mr A's account. Mr A said he hadn't authorised the payment to Amazon. He hadn't agreed to Amazon taking any payment (other than for his purchase), and didn't even have a Vanquis card when he stopped using the Amazon selling account.

Amazon was able to persuade Vanquis that Mr A had had a selling account and pointed to its terms and conditions – and specifically to terms that any amounts it determined were due from Mr A could be charged to his credit card or any other payment instrument he might provide. Vanquis took this to mean that Mr A had provided Amazon with a form of continuous payment that meant it could take payment from the credit card. Since Mr A had willingly provided Amazon with his credit card details, Amazon was entitled to use it to take payment.

Mr A didn't agree and referred the matter to this service, where one of our investigators looked at it. He concluded, in summary, that Mr A hadn't agreed to the payment, since he wasn't aware that Amazon was claiming anything was due from him or that – if it was – his Vanquis card would be used to take payment. He acknowledged that there was a dispute between Mr A and Amazon, but didn't consider that it was for Vanquis or the ombudsman service to decide whether the agreement was valid or enforceable. For these reasons, he said, Vanquis should refund the payment.

Vanquis didn't agree with the investigator's assessment and asked that an ombudsman review the case. I did that and issued a provisional decision. I said that requiring Vanquis to refund the payment would produce an unfair outcome, since Vanquis had no means of recovery from Amazon. Mr A's dispute was really with Amazon, and so they ought to resolve that between themselves.

Mr A didn't accept my provisional decision. He said, in summary:

- He couldn't realistically recover any money from Amazon, since that company wasn't responding to him.
- Amazon had had his card details for some time, so he didn't understand why it had taken so long to take the payment.
- He had received a refund from a different card provider.
- Amazon hasn't provided evidence of a debt.

- Vanquis does have a means of recovery, through chargeback or under section 75 of the Consumer Credit Act 1974.

Mr A also asked whether I thought he owed any money to Amazon.

my findings

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

As I said in my provisional decision, it's not for me to decide whether or not Mr A owed the money that Amazon took from his Vanquis card. He had a selling account and the terms of his agreement with Amazon said that he would pay fees from time to time. But I'm not in a position to know what fees, if any, he might have owed when Amazon took the payment. That's primarily a matter between Mr A and Amazon.

When Mr A raised this issue with Vanquis, it, in turn, contacted Amazon. Amazon was able to show to the satisfaction of Vanquis that Mr A had, in fact, agreed that it could take payments from his credit card. Vanquis took the view therefore that there was no basis on which it could pursue a refund from Amazon.

Mr A says that Vanquis should have pursued things further through chargeback – the process run through the card scheme (in this case Visa) for resolving some disputes between payers and payees. I don't agree, however. Vanquis had provided evidence that Mr A had provided his card details and agreed that Amazon could use them to take money owing. In the circumstances, it's unlikely that Vanquis could have successfully taken the matter any further. It was, I think, entitled to take the view that a refund wouldn't have been made.

Mr A has suggested too that Vanquis could have made a recovery under section 75 of the Consumer Credit Act 1974. That might be relevant if Mr A had a claim for breach of contract against Amazon in respect of a transaction financed by his Vanquis card. That's not, however, what's alleged here. Rather, Mr A says that Amazon has taken money from his credit card that he doesn't owe at all.

I indicated in my provisional decision that I thought it arguable here that the payment was authorised by Mr A. He may not have been aware that Amazon believed a payment was due, but the terms of his agreement with Amazon indicate that he wouldn't necessarily have known exactly what fees were due from time to time. Those terms referred to "... *amounts that we [Amazon] determine you owe us...*" So it was for Amazon – within the terms it had agreed – to say what it thought was owing, rather than that sum being the subject of negotiation and agreement.

The terms also allowed Amazon to take payment from Mr A's "... *Credit Card or any other payment instrument you provide us...*" That was, I think, wide enough to include the Vanquis card.

Much of what Mr A has said in response to my provisional decision concerns the question of whether he owed any money to Amazon and the difficulty he might have in obtaining the payment back if he didn't. But, as I've said, it's not for me to decide if he owed any money; that's an issue that ought to be resolved between him and Amazon.

The present position is that Vanquis has paid Amazon and in turn sought payment from Mr A. But if in fact Mr A didn't owe any money, the effect of requiring Vanquis to reimburse

him is that Amazon has been paid, even though it wasn't owed anything, and Vanquis has paid that money with no possibility of reimbursement. I've explained above why Vanquis cannot recover money from Amazon.

If, on the other hand, Mr A were to pursue Amazon successfully, he would obtain a refund, Amazon wouldn't be able to keep a payment it wasn't entitled to and Vanquis would not be out of pocket either. I appreciate what Mr A has said about the difficulties he's faced in pursuing Amazon, but it does appear to me that this is the only way to achieve a fair resolution – whether Amazon was in fact owed money or not.

my final decision

For these reasons, my final decision is that I don't require Vanquis Bank Limited to do anything further to resolve Mr A's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 December 2019.

Michael Ingram
ombudsman