

## **The complaint**

Mr S complains Vanquis Bank Limited has failed to respond fairly to a claim he brought under section 75 of the Consumer Credit Act 1974 (“CCA”).

## **What happened**

I won’t go into great detail about the background to this complaint as it is well-known by now to all parties. However in summary:

- Mr S had a timeshare. He entered a contract with a company I’ll call “CM” to release him from that timeshare, on 31 January 2020. Mr S was expected to pay a total of £5,000 for this service. Mr S says CM also told him they would claim compensation for him in relation to the mis-sale of the timeshare.
- The contract with CM contained a provision which said Mr S was entitled to all his money back if he was not released from his timeshare within 12 months of him having paid CM.
- Mr S had fully paid CM by 11 March 2020. He ended up paying a total of £4,936.98 due to currency conversions because he was charged in euros. His initial deposit payment was made on his Vanquis credit card.
- On 17 May 2021 Mr S was advised by a company I’ll call “FT” that he had been released from his timeshare. He was sent a certificate to confirm this. Mr S says he later discovered this was “not worth the paper it was written on”.
- On 5 August 2022 Mr S approached Vanquis to make a claim under section 75 of the CCA for the full amount he had paid. Vanquis rejected his claim, prompting him to complain. Vanquis rejected the complaint on 9 May 2023, standing by its decision to decline Mr S’s claim.

Dissatisfied with this response, Mr S referred his complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the complaint. Initially, he thought Vanquis hadn’t been unreasonable in declining the section 75 claim. I could summarise his reasoning as follows:

- CM probably had released Mr S from his timeshare. There was no evidence confirming that he was still liable for it.
- CM had not completed the process of releasing Mr S from his timeshare within the 12 months promised in the contract. However, the work was completed only slightly late so it wasn’t fair and reasonable to ask Vanquis to refund Mr S.
- There was insufficient evidence that CM had made misrepresentations to Mr S about a prospective compensation claim, or that if false representations *had* been made about such a claim that this was the reason Mr S had gone ahead and signed up with CM.

Mr S disagreed and, more recently, our investigator's analysis of the case changed. He wrote to both parties on 12 January 2024 to explain that he now thought the complaint should be upheld for the following reasons:

- The contract with CM said that Mr S would be released from his timeshare within 12 months of the receipt of his balance payment or when he last took a holiday under the timeshare in question.
- There was no evidence Mr S had taken any holidays under his timeshare at the relevant time, and he had made his balance payment on 11 March 2020. This meant he had to be released from the timeshare by 10 March 2021. This hadn't happened until 17 May 2021.
- The wording of the contract with CM was clear in guaranteeing that Mr S would receive a full refund if the process of releasing him from his timeshare was not completed within 12 months. He had not received this full refund, and this was a breach of contract by CM for which Mr S could find Vanquis liable under section 75 of the CCA.

Our investigator recommended that Vanquis should refund the amounts Mr S had paid to CM along with compensatory interest, and remove any adverse credit information which may have resulted from the payment on his Vanquis credit card.

Mr S accepted this revised outcome. Vanquis has not responded to our investigator, and so the case has now been passed to me to decide.

### **What I've decided – and why**

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

When a person pays for goods or services on a credit card, then so long as certain technical conditions are met, they may be able to make a claim under section 75 of the CCA against their credit card issuer in respect of any breach of contract or misrepresentation on the part of the supplier of the goods or services.

It's not been disputed that the technical conditions have been met for Mr S to bring a section 75 claim against Vanquis, so I will not go into detail on this point. I will say only that, having considered the facts and circumstances, I'm satisfied Mr S's claim meets the relevant technical conditions. I've gone on to consider whether there's been a breach of contract or misrepresentation by the supplier, CM.

A breach of contract occurs when one party to a contract fails to honour the express or implied terms of that contract.

Mr S's contract with CM contained a guarantee that he would receive all of his money back if CM had failed to perform the service it had been contracted to perform, within a certain period of time. The evidence from FT shows that the service was *not* completed within the guarantee period, although FT *claimed* it had been completed as of 17 May 2021.

Due to this late completion, Mr S was entitled to receive a full refund under the guarantee

provisions in the contract.<sup>1</sup> There's nothing to suggest that Mr S needed to apply for this refund for it to be paid, and I think CM's failure to provide the refund is a breach of contract. Due to its connected lender liability under section 75 of the CCA, Mr S is able to hold Vanquis liable for CM's breach of contract. Vanquis therefore unfairly failed to honour Mr S's section 75 claim.

The appropriate remedy would be for Vanquis to put Mr S in the position he'd have been in, had the contract not been breached, which in this case would mean paying to him the amounts he originally paid to CM and was entitled contractually to receive a refund of.

Mr S has referred to misrepresentations being made by CM as well, but I don't need to make any findings on these because I've concluded he should have received all his money back for a different reason.

### **My final decision**

For the reasons explained above, I uphold Mr S's complaint and direct Vanquis Bank Limited to take the following actions:

- A) Pay Mr S the amounts of £3,950 and £986.98, these being the amounts he paid to CM by bank transfer and credit card respectively.
- B) Pay 8% simple interest per year\* on the refunds in "A)", calculated from the date Mr S's section 75 claim was initially declined, or eight weeks from when he first wrote to Vanquis Bank Limited with his claim (whichever is earlier), to the date he receives the refunds.
- C) If any negative credit file data reported by Vanquis to the credit reference agencies in respect of Mr S's credit card account can be attributed to him not yet having received a refund of the £986.98, Vanquis Bank Limited must remove this negative data.

\*If Vanquis Bank Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 March 2024.

Will Culley  
**Ombudsman**

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<sup>1</sup> While I appreciate this guarantee could be argued to operate somewhat harshly against CM, it appears CM drafted the contract and it is reasonable that it should be held to any guarantees it provided.