

## **The complaint**

Ms B complains Clydesdale Bank Plc trading as Virgin Money didn't do enough to protect her when a third party took advantage of her.

## **What happened**

Ms B has a credit card with Virgin Money that she normally only ever uses for small transactions. Her card has a £7,000 credit limit. Ms B also has bipolar disorder and has had the help of a representative throughout this complaint.

Between October and December 2020 Ms B says she was having a manic episode, was feeling particularly isolated and had impaired judgment. She says she had met someone who she had come to trust and that she agreed to lend him her credit card – and give him her PIN – when he told her that he'd lost his wallet and couldn't access his account. Ms B says her friend spent approximately £7,000 on her credit card and got her into approximately £60,000's worth of debt elsewhere. In other words, he took advantage of her.

In November 2020 Ms B contacted Virgin Money to say that there were some transactions on her account that she didn't recognise. Virgin Money looked into transactions relating to vehicle hire and says that it asked Ms B for additional information. In March 2021 Virgin Money declined Ms B's claim saying that it hadn't received the information it had requested.

Ms B complained about Virgin Money's response saying she hadn't received any correspondence or calls asking her for additional information. Ms B also said that she was disputing all of the transactions on her October 2021 statement – except one that she said was hers – and that these hadn't been investigated, only the ones relating to vehicle hire. Finally, Ms B said that Virgin Money should have stopped the transactions and carried out security checks as they were unusual compared to her normal account usage. She said that Virgin Money hadn't done enough to protect her.

Virgin Money looked into Ms B's claim and said that it hadn't handled her case as well as it should have done – it hadn't investigated all of the transactions she'd disputed. So, it offered her £200 in compensation for the distress and inconvenience it had caused. Virgin Money didn't, however, agree that the transactions should have triggered a warning or that it had done anything wrong. Ms B remained unhappy with Virgin Money's response.

In July 2021, given Ms B's vulnerabilities, Virgin Money "charged off" Ms B's outstanding balance meaning it decided not to pursue her for the outstanding debt. That balance had been reduced by £3,000 at that point, from the proceeds of a loan that the person in question took out in Ms B's name elsewhere. That loan has been written off by the business in question.

Ms B was unhappy with Virgin Money's response saying that it hadn't taken her bipolar disorder into account when investigating her claim and had instead taken a very binary approach. Ms B says that this was unfair on her. In addition, Ms B was unhappy that Virgin Money hadn't done more to protect her given that the payments were unusual. So, she complained to us. Ms B said she'd like Virgin Money to improve its systems so that it spots

future cases like this to protect its customers.

One of our investigators looked into Ms B's complaint and said that as she had given her card and PIN to a third party, they had apparent authority to use it. And that meant in this case the Virgin Money had done nothing wrong when it had held her liable for the transactions, even if the amounts were much higher than Ms B had been expecting. Our investigator also said that there were cases where we might expect banks to do more – for example, where transactions appeared to be unusual. But as most of the transactions Ms B had questioned were done with her actual card and using her PIN and spread over a period of several days, they didn't think they were unusual enough to say Virgin Money should have stopped them and made additional checks. In any event, our investigator thought that Virgin Money had acted fairly and reasonably as it had "charged off" the balance on the account. So, they didn't recommend that this complaint be upheld.

Ms B wasn't happy with our investigator's recommendations and didn't think, in particular, that they'd given enough consideration to the Equality Act 2010. They said that other businesses involved had "written off" the debts that had been created in her name, and that Virgin Money should do the same too as the adverse information on her credit file was causing her problems. Ms B asked for her complaint to be referred to an ombudsman. So, it was passed on to me.

### **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.

Last month I issued a provisional decision upholding Ms B's complaint in part. In that provisional decision I said the following:

*"Ms B has told us that she gave the person who took advantage of her both her credit card and her PIN. She's also told us that Virgin Money didn't know she had bipolar disorder before these particular transactions took place. Virgin Money does now and, with Ms B's consent, has made a note of this on her account so that it can monitor her account in the future. I'm grateful to Ms B for letting us know what she has.*

*As our investigator has explained, in this case Ms B has given her card and PIN to a third party and, in doing so, has given them apparent authority. I accept that Ms B was having a manic episode at the time, but as she'd not told Virgin Money that she had bipolar disorder and, given that the transactions she's disputed weren't sufficiently unusual in themselves for Virgin Money to intervene, I agree with our investigator that Virgin Money was entitled to hold Ms B liable for them at the time. I'm not saying that there was nothing out of the ordinary as far as these transactions were concerned. They are aspects to these transactions that make them stand out. For example, they involved multiple cash withdrawals which is normally a sign – when done on a credit card – of financial difficulties.*

*And historically Ms B used her card very little, and normally for small amounts. But I don't think – given that they were authorised using Ms B's genuine card and PIN – that they were sufficiently unusual to warrant Virgin Money intervening.*

*Virgin Money has already accepted that it didn't look into all of the transactions that Ms B was disputing straightaway. It looked at payments to vehicle hire only. And it's offered to pay £200 in compensation for this. Once it realised it hadn't looked at all of the transactions it was disputing and realised the circumstances in which the transactions had occurred, Virgin Money agreed to "charge off" the amount Ms B still*

owed – which was £3,000 less than had been spent as part of the proceeds of a loan (that another business has written off) were used to pay part of the outstanding balance off.

Our investigator thought that this was a reasonable outcome as Virgin Money could – under the Payments Services Regulations – hold Ms B liable for the transactions. I don't entirely agree. In this case, Virgin Money has, in effect, accepted that Ms B has been taken advantage of when she was in a manic period. It has, therefore, "charged off" the amount she owes meaning she won't be pursued for the debt, nor will the debt be sold to a third party. But it appears that the debt will still show up on her credit file, and so potentially will some adverse credit information. Ms B has told us that she's, for example, been defaulted.

I can see that Virgin Money stopped asking Ms B to make any payments towards her outstanding balance in July 2021. And once she'd reported the disputed transactions I can't see that Ms B used her card again. That means that from November 2020 onwards the balance on the card consisted only of the disputed transactions. Had Virgin Money investigated all of the transactions Ms B has disputed when she reported them – it's acknowledged that to begin with it didn't – I wouldn't necessarily have expected Virgin Money to carry on demanding payment. So, when both parties reply to this provisional decision, I'd like to know what information has been sent to the credit agencies – and is on Ms B's credit file – for the period November 2020 to July 2021 and the same for the period July 2021 onwards.

At this stage, based on the information I've seen, I don't think it would be fair for Virgin Money to have reported adverse information on Ms B's credit file if it wouldn't have done so had it investigated all of the disputed transactions when Ms B originally reported them. Or, to put it another way, I don't think it's fair if Virgin Money has reported adverse information on Ms B's credit file between November 2020 and July 2021 because Ms B didn't pay a balance that consisted solely of disputed transactions. If Virgin Money charged off the outstanding balance in July 2021, I don't think it would be fair to record that as a default or to report Ms B in subsequent months as being behind on payments. In short, depending on what has been reported to Ms B's credit file, I might require Virgin Money to make arrangements to remove some of the information it has reported to the credit agencies.

Ms B hasn't, as far as I can see, accepted the compensation that Virgin Money offered. I think £200 is fair in this case – given that most of the distress in this case is as a result of the actions of Ms B's "friend". So, I'm going to require Virgin Money to pay Ms B £200 and, depending on the responses to this provisional decision, might also require it to remove some adverse information.

In coming to this provisional decision, I've taken into account what Ms B has said about her bipolar disorder and I've also taken into account the Equality Act 2010 as I'm satisfied that it's relevant law in this case. Ultimately, however, I have to make a decision based on what's fair and reasonable taking relevant law, amongst other things, into account. The question of whether or not there's been a breach of the Equality Act 2010 in a case is ultimately a matter for the Courts."

I invited both parties to respond to my provisional decision and asked both of them to let me know what information has been sent to the credit agencies – and is on Ms B's credit file – for the period November 2020 to July 2021 and the same for the period July 2021 onwards. Ms B replied to my provisional decision and sent me details of what's recorded on her credit file. Ms B also sent detailed comments on what we've said whilst we've been dealing with her complaint, most of which relate to what Virgin Money and our investigator said.

Disappointingly Virgin Money didn't reply.

One of the points Ms B made in her response to my provisional decision is that she can't see how she could have consented to the transactions she disputed given that she was having a manic episode at the time. She makes a similar point about how she could have given the person who carried out the transactions apparent authority when she says she didn't even have agency over herself. I can understand why Ms B has made these points – and they're good ones. But I'm satisfied that this analysis is right – these concepts are technical concepts and don't necessarily mean what you might naturally expect them too. I agree with Ms B that at times Virgin Money took a "binary" approach to her case and disability. I'm satisfied that I didn't do this in my provisional decision, and that I focussed on what's fair and reasonable in this case which allows me to take lots of factors into account.

It's clear that Ms B feels it's unfair that adverse information might be recorded on her credit file as a result of what's happened – and I agree with her that this would be unfair. That's in part why I asked for what information has been recorded on her credit file. Ms B has sent me an extract from her credit file showing that her Virgin Money credit card is showing as having a balance of £3,949 and a delinquent balance of £3,949 but no default date. It also looks like her credit file entry for this card hasn't been updated since 1 July 2021.

### **Putting things right**

I'm satisfied that from November 2020 onwards the outstanding balance on Ms B's credit card was made up of disputed transactions only. In this case I'm also satisfied that Virgin Money shouldn't have been demanding repayment of this balance whilst it investigated what had happened. In July 2021 I'm satisfied that Virgin Money agreed to "charge off" the outstanding balance on Ms B's card which at that point was £3,000 lower. In this case I'm satisfied that Virgin Money shouldn't be recording the remaining balance as outstanding from July 2021 onwards and should instead have recorded the remaining balance as settled as at that date.

Given what I've just said, I'm going to require Virgin Money to make arrangements to ensure Ms B's credit file:

- a) doesn't record any adverse information in relation to her credit card balance between November 2020 and July 2021;
- b) shows that the balance on her credit card was settled as of July 2021; and
- c) shows that the balance isn't delinquent.

I remain of the view that £200 compensation is fair for the reasons I gave in my provisional decision. So, I'm going to require Virgin Money to pay that too as Ms B hasn't, as far as I can see, accepted that offer.

### **My final decision**

My final decision is that I'm upholding this complaint and require Clydesdale Bank Plc trading as Virgin Money to pay Ms B £200 in compensation. In addition, I require Clydesdale Bank Plc trading as Virgin Money to make arrangements to ensure Ms B's credit file:

- a) doesn't record any adverse information in relation to her credit card balance between November 2020 and July 2021;
- b) shows that the balance on her credit card was settled as of July 2021; and
- c) shows that the balance isn't delinquent.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 21 March 2024.

Nicolas Atkinson  
**Ombudsman**