

The complaint

Miss E complains Clydesdale Bank PLC, trading as Virgin Money, (“Virgin”) refuses to refund her for transactions on her credit card which she says she didn’t authorise.

What happened

The details of this complaint are well known to both parties, and I am mindful that it must be difficult for Miss E to talk about what she’s been through. So, I have just provided a summary of what happened below.

Miss E says she had a Virgin credit card which she never used by in May 2022 she got a letter from Virgin saying her account was over her agreed credit limit and that she needed to make her repayments. Miss E says she had been the victim of domestic and economic abuse and explains that her abuser, who I will refer to as B, had used the card without her knowledge or consent. Miss E says she doesn’t have the physical credit card, nor does she know the PIN.

Virgin says that as Miss E has told it that she gave B permission to use her card for one transaction, she is liable for all the transactions in dispute under the principle of ‘apparent authority’. Virgin says it had been sending statements and other correspondence to Miss E’s email address, so it thinks she would’ve seen these transactions at the time. It also believes that Miss E benefited from some of the transactions, and so it is not clear which transactions were genuinely spent with her consent and which were not.

Our investigator considered this complaint and decided that it wouldn’t be fair to hold Virgin liable for the transactions in dispute. She also explained the principle of apparent authority, making Miss E liable for the transactions after giving access to B to her account information and allowing him to make a payment.

Miss E wasn’t happy with this outcome, so the complaint has been passed to me for a decision on the matter.

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 considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the relevant time.

Having done so, there is no doubt in my mind that Miss E has been taken advantage of financially. But my role isn’t to determine whether Miss E has been the victim of a crime. My role is to determine whether it is fair and reasonable to require Virgin to refund the transactions Miss E disputes.

Generally speaking, Virgin is required to refund any unauthorised payments made from

Miss E's account. That's what is set out in the rules and regulations that apply. However, as our investigator explained the rules also include the principle of apparent authority. Which I think is relevant in this case.

Miss E has told us that she gave B permission to use this credit card for a payment. She says this was the first payment on the account. So, this gave B the authority to use her card. Section 83 and section 84 of the Consumer Credit Act 1974 specifically talks about the account holder being held liable for payments from credit facility if they, or someone they gave consent to, used the credit facility. So, Miss E is liable for the first transaction on her account which was made with her explicit consent.

I've then looked at all the transactions that followed, which Miss E says she wasn't even aware of. Miss E told us and Virgin that she allowed B to make the first payment on the account. So, I think Miss E either gave B her credit card and the details of the card; or at least knew that B had access to this to make the first payment. This gave B apparent authority to use this information.

Under these principles, apparent authority to use these details would remain in place until Miss E did something to annul this authority. Miss E says she didn't give permission for B to make any further payments, but even if she had verbally withdrawn her consent, that wouldn't be enough to remove the apparent authority.

I appreciate that Miss E was living under difficult circumstances at the time. We've been told that she suffered domestic and economic abuse. And I have considered this in my decision. But what Miss E is asking for here is for Virgin to refund money that was spent on her card from its own pocket. So, I have to consider what is fair for both parties.

I haven't seen evidence that Miss E took any steps to end the apparent authority, such as cancelling the credit card or informing Virgin of what was happening. Miss E says the first she learned of B's use of the card was in May 2022. But Virgin says it has been sending statements to Miss E, as well as other communication in relation to this credit card, to her email address. Miss E admits she got an email from Virgin to say a direct debit had been set up on this account, but the direct debit details were different to her own, so she ignored the email.

Had Miss E informed Virgin of the situation at the time or told it that she needed a new card by cancelling the old one, the third-party's apparent authority would've ended. I can't see that any such steps were taken

As outlined by the investigator there are transactions throughout the history of the account which seemed likely to have benefited Miss E as well. As she was in a relationship with B it is unclear which transactions would've likely been made with her knowledge and consent, and which were not. So, I don't think it is fair to ask Virgin to refund all of these.

I've seen from that Virgin has provided some compensation to Miss E for their complaint handling. I can also see it removed some of the interest from this account where it felt it should've provided Miss E with more support. Our investigator outlined why she felt this was fair in her outcome, and Miss E didn't raise any specific disputes about this for me to consider. So I agree with the investigators points on and I think the compensation already offered seems fair.

I am sorry to have to deliver this news to Miss E. I know this wasn't the answer she was hoping for. I can't even begin to imagine how difficult the last few years have been for her, and she has my sympathy. However, from what I have seen, I don't think it is fair to ask Virgin to refund these disputed transactions.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 12 August 2024.

Sienna Mahboobani
Ombudsman