

The complaint

Mrs C complains that Clydesdale Bank plc trading as Virgin Money ('Virgin') acted unfairly and disproportionately when they reported a default on her credit card to Credit Reference Agencies ('CRAs') for a debt of £11.04.

Mrs C would like her credit rating to be restored and for her account with Virgin to be closed.

What happened

Mrs C had a credit card account with Virgin. There was a nil balance on the account in April 2022 and this continued until a subscription renewal payment of £10 was automatically charged to her account in August 2022.

Between August 2022 and February 2023 Virgin sent statements of account to Mrs C at the address they held for her, but Mrs C did not make the required payments. Virgin then sent out letters in February 2023 which included formal notices under the Consumer Credit Act 1974 about her arrears. Mrs C did not respond to these letters and a default was registered on Mrs C's credit file on 28 March 2023 for £11.04. The credit agreement was terminated, and the debt was sold to a debt collection company.

Mrs C became aware of the debt and paid it in full on 23 May 2023. She contacted Virgin that day to say she had not received any post because she had moved house, and she provided her new address. Mrs C wrote to Virgin on 20 June 2023 to ask that the default be removed from her credit file, but Virgin refused. She complained to Virgin on 12 December 2023 that it was unfair to register a default on her credit file when it was a small sum, and she had paid it off as soon as she was aware of it. Virgin issued a final response to Mrs C's complaint on 14 December 2023 refusing to remove the default as they had been required to register it.

Mrs C contacted our service, and our investigator concluded Virgin had done nothing wrong. They said that Mrs C had not notified Virgin of her change of address and had not actively checked her account. They noted Virgin had tried to contact Mrs C by text and email and had registered the default on her credit file between three and six months of when the account first fell into arrears, which is accepted as normal practice.

Mrs C was unhappy with this outcome and thought the actions taken by Virgin were disproportionate given the small amount of the debt. She felt that six years was a long time to be punished for a small mistake and she had been made to feel like a criminal. She felt strongly that the default on her credit file was not a true reflection of her creditworthiness and her character had been defamed. So, she asked for an ombudsman to make a final decision.

My provisional findings

In June 2024 I issued a provisional decision for this complaint explaining why I thought Mrs C's complaint should be upheld, as follows:

“I’ve considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of Mrs C’s complaint.

I’ve first considered if it was reasonable for Virgin to register the default when they did. It’s not in doubt that Mrs C breached the terms and conditions of her agreement with Virgin because she failed to make minimum payments for more than three months, and it was her responsibility to give Virgin her new address details when she moved.

Virgin were entitled to issue a notice of sums in arrears and a default notice under the Consumer Credit Act 1974.

Virgin also had a responsibility to report certain information to the CRAs, which is something that is monitored by the Information Commissioner’s Office (‘ICO’).

The ICO requires information reported on a credit file to be fair, accurate, consistent, complete and up to date. And its guidance sets out that the purpose of reporting arrears is to reflect financial difficulty or difficulty in managing financial affairs, and to record that the relationship between lender and customer has broken down. The ICO provides a general guide that a default “may” be reported if a customer is three months in arrears and would “normally” be reported by the time they are six months in arrears.

Lenders like Virgin have procedures in place to notify customers as soon as possible that they are in arrears, so that by the time three to six months of arrears have accrued a customer has had a fair opportunity to pay and avoid a default being registered.

I am minded to decide that this hasn’t happened in Mrs C’s case, and I am minded to say that the information recorded on Mrs C’s credit file, while accurate, was not a fair reflection of her ability to pay or manage her affairs.

So while I think it was reasonable for Virgin to register the default when they did, I’ve considered whether it was, in the circumstances, fair for them to do so.

Virgin had regulatory responsibilities which are designed to ensure customers are treated fairly when handling their accounts. The Financial Conduct Authority (FCA) expects Virgin to comply with its handbook of rules and guidance. Principle 6 (found in PRIN Principles for Business in the handbook) says “a firm must pay due regard to the interest of its customers and treat them fairly.”

The handbook also contains specialist sourcebooks for firms to follow. Relevant to this matter is the Consumer Credit Sourcebook (CONC), which contains the following:

“CONC 7.3.2(G): When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers’ interests) to treat its customers fairly.

CONC 7.3.3(G): Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6, allow for such unmade payments to be made within the original term of the agreement unless: (1) The firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties or (2) The firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer.

CONC 7.3.6 G: Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.”

Virgin is also voluntarily subscribed to The Standards of Lending Practice, which sets a benchmark for good lending practices in the UK. The ‘Standard of Lending Practice for Personal Customers’ code states:

“Financial Difficulty: customers in financial difficulty, or in the early stages of the collections process, will receive appropriate support and fair treatment, across the different communication channels offered, in order to help them deal with their debts in the most suitable way.”

That Code also directs that “lenders should take into account the borrower’s circumstances and consider whether it would amount to a fair outcome to pursue, or to continue to pursue, the amount owed.”

Taking the above into account, and given what they knew about Mrs C’s circumstances, I think it would’ve been reasonable for Virgin to consider whether registering a default was the fair thing to do here.

From looking at Virgin’s complaint investigation I can see that, at least at the complaint stage, they have considered the small size of the debt and Mrs C’s previous good payment record. And I can see their investigator thought this situation was likely to be the result of a mistake rather than financial difficulty or mismanagement, given the transaction was a subscription renewal and the card had not been used for several months. I think these were factors that could reasonably have been considered by Virgin’s account handlers at the time they were dealing with Mrs C.

I can see from Virgin’s computer system that they had received returned post in November 2022, at which point Virgin were on notice that Mrs C might not know about the arrears. Virgin acted on this, as they performed a light (unsuccessful) trace on Mrs C’s whereabouts and tried to contact her by other methods.

I can see from Virgin’s computer system that a text message and email were sent to Mrs C on 13 March 2023. However, this was two weeks after a default notice was sent and two weeks before the default was registered on Mrs C’s credit file, which did not give her much time to respond. I can see no record of any effort being made to contact Mrs C by text, email or telephone call between November 2022 and March 2023. It also appears that Mrs C’s electronic statements were turned off in October 2022, in which case she was not receiving these.

In the circumstances I am not persuaded that Virgin did enough here to treat Mrs C fairly. I am of the view that it would have been fair for Virgin to have tried to contact Mrs C by email or phone much earlier than is shown on Virgin’s records, and on more than one date – particularly given the significant impact a default would have for her.

I can also see that Virgin sent Mrs C a notice of sums in arrears letter only one day before they sent her the default notice. The purpose of a notice of sums in arrears is to let a customer know there are at least two missed payments and to allow a customer a chance bring their account up to date, seek debt advice and/or make an arrangement to pay before more serious action (like issuing a default notice) can be taken. I realise Mrs C would not have received the letters in any event, but had she received them I don’t think she’d have had a fair opportunity to respond to the notice of sums in arrears.

There are some cases where reporting a default is inevitable because a customer would not have done anything differently, no matter what the amount of the outstanding debt is. But looking at the information available to me I think it likely Mrs C would have responded if she had known about the arrears on her account, and would have been able to pay off the debt in full.

Although Mrs C was going through a difficult time in her personal life at the time of her house move, I don't think this indicates she was incapable of dealing with her affairs. She said she had sent over 100 emails regarding the move.

Mrs C accepts she received both the email and the text message Virgin sent, and I think she has a reasonable explanation for not acting on either of these. I have not seen the content of the text or email sent to Mrs C but Virgin's system says these asked Mrs C to contact them. Mrs C says Virgin's email went to her junk folder and so went unseen. Mrs C says she had checked her account for three months after April 2022 and as there was a nil balance and she was not using the card, she did not think she had anything to pay. With that in mind, when she received the text message she thought it was advertising.

I can understand why she might have thought this if the message was not explicit, was a one off, or looked in any way like a scam. And I think it likely Mrs C held a genuine belief there was nothing to pay to Virgin, given that she had transferred a positive balance of £100 back to herself in April 2022 and she was not actively using the card. Also, I note that when Mrs C later found out about this debt she paid it in full.

On balance, I find what Mrs C has said about the text and email persuasive. And given Mrs C's strong feelings about her credit file, her previous account conduct, and the fact that the outstanding sum was only £11.04, I think it is likely that Mrs C would have paid the outstanding debt had she been made aware of it.

In these circumstances I intend to decide that Virgin have not done enough to give Mrs C a fair opportunity to address her arrears before the default was reported on her credit file, or that Virgin did not give proper consideration to Mrs C's circumstances after she became aware of the outstanding sum and repaid it. Continuing to record the default has exposed her to adverse financial standing. In the circumstances I think it would've been fair for Virgin to stop reporting the default once Mrs C got in touch and cleared the £11.04 debt. My provisional decision is that the default on Mrs C's credit file should be removed.

In her submissions to us Mrs C has talked about the impact to her financial standing and how she has been made to feel in terms of not being creditworthy. I recognise that a default registered against an individual can cause a lot of stress and upset, and I've carefully considered what Mrs C has said about how this matter has affected her. While I've decided it's fair in this case for Virgin to remove the default, I'm minded to say it would not be fair to award Mrs C any financial compensation to recognise the stress this has caused given I'm also mindful that Mrs C had responsibilities to update Virgin with her new address and to monitor her account."

Responses to my provisional decision

In my provisional decision, I asked both Virgin and Mrs C if they had any further comments or evidence that they would like me to consider before I made a final decision.

Virgin have confirmed they accept my provisional decision, and that Mrs C's account is now closed. Mrs C has confirmed there is nothing further she wants me to consider.

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.

Because neither party has provided me with anything further to consider, in all the circumstances I conclude that the basis of my provisional decision provides a fair and reasonable outcome to Mrs C's complaint. I therefore see no reason to depart from my provisional findings.

Putting things right

In response to my provisional findings Virgin have confirmed that Mrs C's account is already closed, so what's left to put things is right is for Clydesdale Bank plc trading as Virgin Money to remove the default from Mrs C's credit file.

My final decision

For the reasons given, my final decision is that I uphold Mrs C's complaint and Clydesdale Bank plc trading as Virgin Money should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 13 August 2024.

Clare Burgess-Cade
Ombudsman