

Complaint

Mr E has complained about the overdraft charges Clydesdale Bank Plc (trading as “Virgin Money”) applied to his current account.

Mr E is being represented, by the (“representative”), in his complaint.

The representative says the charges applied to Mr E’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In its view, there was no proper consideration of the longer-term impact of the borrowing on Mr E.

Background

As I understand it, Virgin Money initially provided Mr E with an overdraft for £500 in December 2006, the limit was increased to £1,200.00 in April 2007 and then £1,400.00 in December 2008.

Mr E’s complaint was looked at by one of our investigators. He thought that Virgin Money hadn’t acted unfairly or unreasonably and so didn’t recommend that the complaint be upheld. The representative, on Mr E’s behalf, disagreed and asked for an ombudsman’s decision.

My findings

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

Having carefully considered everything provided, I’m not upholding Mr E’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr E was unfairly charged as a result of being allowed to continue using his overdraft, I want to be clear in saying that I haven’t considered whether the various amounts Virgin Money charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately, how much a bank charges for its services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at Virgin Money’s charging structure per se, it won’t have acted fairly and reasonably towards Mr E if it applied any charges to Mr E’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr E was experiencing financial difficulty. So I’ve considered whether there was an instance, or there were instances, where Virgin Money didn’t treat Mr E fairly and reasonably.

In other words, I’ve considered whether there were periods where Virgin Money continued charging Mr E even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

Having looked through Mr E's account statements throughout the period concerned, I can't see that Virgin Money ought reasonably to have unilaterally taken corrective measures in relation to Mr E's overdraft. I accept that Mr E used his overdraft.

The representative's arguments appear to suggest that this in itself means that Mr E was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr E's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this.

I think that if Mr E was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case. The first thing for me to say is that Mr E was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

Furthermore, I'm satisfied that Mr E's case isn't one where the borrower was permanently in their overdraft. There were periods where Mr E was in credit. Although I do accept that there were plenty of times where Mr E would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Virgin Money didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Mr E lost out as a result of any potential failing. I've also therefore considered whether Mr E's use of his overdraft (and Virgin Money continuing to allow him to use it) was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr E expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr E's account. Given the repeat usage letters Mr E is likely to have been sent by Virgin Money, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr E was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative says.

Indeed, it's fair to say that the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so. Equally, I can't see that he was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially.

Mr E did have other credit commitments but this does not mean that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr E was borrowing from unsustainable sources – such as payday type lenders either. Finally, I can't

see that this was a case where Mr E was always towards the top end of his limit and maxing out the funds available to him either.

I accept neither of these things in themselves (or when taken together) mean that Mr E wasn't experiencing difficulty. But I don't agree that Mr E was reliant on credit. He was quite comfortably able to make any essential commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Overall and having considered everything, I don't think that it was unreasonable for Virgin Money to have proceeded adding the charges that it did. This is particularly bearing in mind the disproportionate consequences of Virgin Money taking corrective action here, in the way that it would have done had it acted in way that the representative is suggesting it should have. I say this because I don't think that it would have been proportionate for Virgin Money to demand that Mr E immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr E clearing what he owed in a reasonable period of time.

In reaching my conclusion, I've noted that the representative's letter of complaint indicates that Virgin Money breached the duties it owed to Mr E under s140A of the Consumer Credit Act 1974 ("CCA").

S140A is concerned with a court's ability to make an order under s140B should it determine that the relationship between a creditor and a debtor is unfair to the debtor, rather than any specific duties owed by a creditor to a debtor. So it's unclear exactly what duties the representative believes Virgin Money breached. In any event, for the reasons I've already explained, I'm satisfied Virgin Money did not lend irresponsibly or act unfairly in allowing Mr E to use his overdraft in the way that he did. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mr E's complaint. I appreciate that this will be very disappointing for Mr E. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 October 2024.

Jeshen Narayanan
Ombudsman