DRN-3169068

The complaint

Mr W complains Clydesdale Bank Plc trading as Virgin Money acted unfairly when it said he would need a mobile phone in order to access his online banking. He's also unhappy with the way Virgin Money handled his complaint, and how that made him feel.

What happened

Mr W had a number of accounts with Virgin Money which he used to manage online, including several ISA products, a savings account and a credit card account. He's hearing impaired and doesn't own or use a mobile or a landline. Mr W is in his early seventies.

In July 2019 Virgin Money emailed Mr W to say that new regulations affecting the whole of the banking sector were going to be coming into effect on 14 September 2019. Virgin Money said that these regulations – known as strong customer authentication – were designed to prevent fraud and increase the security of online banking and payments.

In August 2019 Virgin Money emailed Mr W again to say that because of the new regulations that were coming in it needed an up- to- date mobile phone number for him as he wouldn't be able to access his accounts online if it didn't have one. Virgin Money said that it would be using his mobile number as an additional level of security. Virgin Money said that it would send a six-digit passcode to him when he attempted to sign in, and that it would be introducing this change – and others – shortly before the 14 September date. Virgin Money said that if Mr W tried to sign in online without giving them an up-to-date mobile number they'd ask him to call them before he could get into his account. Virgin Money said that if he didn't have a mobile – or can't use one – he'd be able to manage his account and get up-to-date account and product information over the phone.

Mr W emailed Virgin Money saying that solutions dependant on a mobile phone or talking on the phone weren't suitable for him as he was hearing impaired.

Virgin Money investigated the issues raised in Mr W's email and said that it needed to do additional security checks because of the new regulations, and that it needed mobile phone numbers from all of its customers who hold online accounts to enable it to send a secure one-time passcode ("OTP"). Virgin Money said that if this was something Mr W couldn't provide then it could service his account over the phone. Virgin Money said it appreciated this would not be a suitable way to communicate for Mr W – given that he was hearing impaired – but those were the currently the only two options available to him. Virgin Money said that it could help Mr W to switch to an account that wasn't online – such as a postal based account – or he could buy himself a mobile phone so he could receive OTPs or it could send OTPs to a trusted family member's mobile phone. Virgin Money said that it understood Mr W might not see any value in owning a mobile phone, but to be able to continue banking online it did feel that this was the best way forward.

Mr W said he appreciated Virgin Money was trying to be helpful, but that he felt its approach to strong customer authentication discriminated against impaired hearing customers as it seemed to be relying solely on the telephone for additional security checks. He said this seemed so wrong in this day and age that he spoke to the Financial Conduct Authority

(FCA) who he says told him the new regulations do not limit, or require that, mobile phones or phones are the only way in which the rules can or should be addressed. He asked for his concerns to be treated as a formal complaint.

Virgin Money investigated Mr W's complaint. Having done so, Virgin Money said Mr W could call its contact centre whenever he needed an OTP – and at the same time apologised if this wasn't satisfactory. Virgin Money said it was working on alternatives to a mobile phone number, but alternatives were likely to be implemented after the regulations had changed. Virgin Money also offered to help Mr W close his accounts if that's what he wanted or to help him find a more suitable account.

Mr W complained to us saying he was registered with Virgin Money as having impaired hearing and as someone who doesn't use the phone. Mr W told us that it's humiliating enough to have to admit shortcomings, and that it's unreasonable, and seemingly at odds with the regulations, that someone like him should have to ask a family member to act as an intermediary for their day to day banking activities. He was also unhappy that Virgin Money had given no timescale for when it would be coming up with alternatives. Virgin Money subsequently introduced the need for additional security checks for Mr W's credit card which he asked to be added to his complaint. Virgin Money subsequently emailed Mr W to say that he could use its mobile app to help with authentication.

One of our investigators looked into Mr W's complaint and agreed that Virgin Money hadn't acted fairly. Our investigator said that Virgin Money should have offered Mr W alternative ways of authenticating himself that didn't rely on using a phone and that the other alternatives it had offered were either alternatives to online banking rather than alternative ways of authenticating or were unfair. Our investigator also thought that Virgin Money had been insensitive when it suggested he might use telephone banking if he didn't own a mobile phone – given that Virgin Money knew he was hearing impaired – and when it repeatedly sent generic correspondence to him suggesting he call them if he wanted to, for example, discuss his complaint. So, they recommended that Virgin Money pay Mr W £500 in compensation and offer him alternative ways of authenticating himself. Mr W has told us that he's closed most of his accounts with Virgin Money because he's not been able to operate them online. His credit card account is, however, still open – although he says he barely uses it having opened another account elsewhere (albeit with a lower limit which is likely to be problematic once Mr W starts going away on holidays again).

Virgin Money didn't agree with our investigator's recommendations. It said it had offered alternatives for other customers to make reasonable adjustments, but unfortunately the alternatives it had offered weren't suitable to Mr W's particular circumstances. Virgin Money also said it was unable to remove the requirement for the additional security checks as this would leave Mr W's accounts at a higher risk of fraud. Virgin Money said that there was another alternative it could offer – namely to provide Mr W with a voucher so he could buy a basic mobile phone on which he could receive OTPs. Virgin Money said it thought this was reasonable as the only accounts he still held – by that point he'd closed most of them – weren't ones he was using to do regular banking. In other words, he wouldn't need to carry the mobile around with him. Finally Virgin Money thought the compensation recommended was too high given the impact on Mr W. Virgin Money said Mr W had been free to move his accounts to another provider in August 2019 when he realised what Virgin Money was offering was no longer suitable for his needs, and that between £250 to £300 was a very fair offer for the inconvenience of having to find another provider. As Virgin Money didn't agree to our investigator's recommendations, I was asked to consider this complaint. Mr W was happy with what our investigator had said.

I issued a provisional decision upholding Mr W's complaint. Both parties have replied to that provisional decision.

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.

Virgin Money told Mr W that it was making changes to the way its customers logged into online banking and later to how it authorised certain payments. Virgin Money told Mr W that these changes were as a result of new regulations that were going to come into effect in September 2019 that affected the whole banking sector.

As I said in my provisional decision, Virgin Money is right that new regulations (or to be more accurate, the parts that relate to authentication, amongst other things) came into effect in September 2019 – the Payment Services Regulations 2017 ("PSRs"). Virgin Money is also right that these regulations affected the whole banking sector. The regulations required payment service providers ("PSPs") to apply strong customer authentication in certain circumstances. Those circumstances are set out in in Article 100 of the regulations which says:

> "A payment service provider must apply strong customer authentication where a payment service user—
>
> (a) accesses its payment account online, whether directly or through an account information service provider;
>
> (b) initiates an electronic payment transaction; or
>
> (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses."

The FCA gave PSPs until March 2020 to implement strong customer authentication for online banking and has given the e-commerce industry until March 2022 to implement strong customer authentication for online payments. The e-commerce industry includes card issuers, payment firms and online retailers. There was, of course, nothing to stop firms bringing in strong customer authentication sooner than that, if they wanted to do so.

The Payment Services Regulations – which implemented an EU Directive from 2015 commonly known as the revised Payment Services Directive – define "strong customer authentication" as:

> "authentication based on the use of two or more elements that are independent, in that the breach of one element does not compromise the reliability of any other element, and designed in such a way as to protect the confidentiality of the authentication data, with the elements falling into two or more of the following categories—
>
> (a) something known only by the payment service user ("knowledge");
>
> (b) something held only by the payment service user ("possession");
>
> (c) something inherent to the payment service user ("inherence");"

In short, strong customer authentication involves, amongst other things, checking that the person accessing a payment account online or initiating an electronic payment is permitted to do so. PSPs have to "authenticate" the person in question using factors based on "knowledge", "inherence" or "possession" and must use at least two independent factors when doing so. They can't, for example, check using only "knowledge" based factors, but they can check using one or more “knowledge” based factors and one or more “possession” based factors. As I said in my provisional decision, the way Virgin Money has gone about those checks – and the reliance it has placed on mobile phones / phones generally to perform those checks – is at the heart of this complaint.

Virgin Money’s approach to implementing strong customer authentication

Virgin Money initially told Mr W it would be making changes to how he banked online as a result of the new regulations. Virgin Money told Mr W that if he logged into his online banking, he’d be asked for an OTP which it would send to his mobile phone. Virgin Money told Mr W that if he didn’t have a mobile phone he wouldn’t be able to access his account online. His only option would be to call Virgin Money to manage his account and get up-to-date account and product information over the phone.

Why did Mr W complain?

Mr W has told us that he has impaired hearing and so doesn’t own a mobile phone or use a landline. He does, however, find online banking very useful and uses it extensively. He told Virgin Money that any strong customer authentication solution that involves him having to use a mobile / phone wouldn’t be suitable for him.

As I said in my provisional decision, I accept that Mr W doesn’t own or want a mobile / phone as he has impaired hearing. So, I can understand why he was unhappy when Virgin Money said that he would need to give them a mobile phone number, or use a phone, in order to log into his accounts online. I can also understand why he complained about Virgin Money’s decision to rely on mobiles / phones in order to authenticate. He was worried it would mean he wouldn’t be able to use online banking – putting him at a disadvantage.

It’s important to note that Mr W isn’t complaining about Virgin Money’s decision to introduce strong customer authentication, which is an important measure designed to combat fraud, and one that PSPs are obliged to implement. And he’s not complaining about having to complete additional checks either. I don’t think Mr W would have complained had Virgin Money offered to send the OTP to his email address so he could pass the extra checks Virgin Money was introducing or an alternative that worked for him. In short, his complaint is about Virgin Money’s decision to rely on mobiles / phones for authentication.

What has the FCA said about strong customer authentication and its expectations?

The Financial Conduct Authority (the “FCA”) has published several papers about strong customer authentication and its expectations and it has written to firms about this too. In a paper published in June 2019 – “Payment Services and Electronic Money – Our Approach” – the FCA described its approach to the PSRs and payment services and e-money related rules in its Handbook. The FCA said the paper “provides guidance for a practical understanding of the requirements, our regulatory approach and how businesses will experience regulatory supervision”. The FCA added that its “guidance is intended to illustrate ways (but not the only ways) in which a person can comply with the relevant regulations and rules”.

In paragraph 20.21 of its paper the FCA said:

> “We encourage firms to consider the impact of strong customer authentication solutions on different groups of customers, in particular those with protected characteristics, as part of the design process. Additionally, it may be necessary for a PSP [Payment Service Provider] to provide different methods of authentication, to comply with their obligation to apply strong customer authentication in line with

regulation 100 of the PSRs 2017. For example, not all payment service users will possess a mobile phone or smart phone and payments may be made in areas without mobile phone reception. PSPs must provide a viable means to strongly authenticate customers in these situations."

The FCA has, in my opinion, made it clear in its paper and elsewhere that businesses shouldn't rely on mobile phones alone to authenticate their customers and should provide viable alternatives for different groups of customers. The FCA has, in my opinion, also made it clear in this paper and elsewhere that this includes people who don't possess a mobile phone or a smart phone and not just those who can't use one. The FCA has talked, for example, about managing the potentially negative impact of strong customer authentication on different groups of customers "particularly the vulnerable, the less digitally engaged or located in areas with limited digital access". And the FCA has also talked about the need for firms to develop strong customer authentication "solutions that work for all groups of consumers" and has said that this means they "may need to provide several different authentication methods for your customers".

Mr W says he emailed the FCA about Virgin Money's response to his complaint and that the FCA told him that the new regulations do not limit, or require that, mobile phones or phones are the only way in which the rules can or should be addressed. I've seen a copy of the FCA's email to Mr W and I can see the FCA said "within the rules themselves, there is no requirement for this to be by mobile/phone only" when talking about what the strong customer authentication rules mean. In that email, the FCA also referred Mr W to the paper I've just quoted.

Should Virgin Money have done more for Mr S when he originally complained?

Mr W has told us that he doesn't own a mobile or use phones as he's hearing impaired. I accept that he's hearing impaired. He's likely, as a result, to have a "disability" for the purposes of the Equality Act 2010. He might be considered a "vulnerable" person for the purposes of the FCA's guidance on treating vulnerable customers fairly too, although this is less clear. So I've taken the Equality Act 2010 into account – including the duty to make reasonable adjustments and the provisions relating to indirect discrimination – when deciding this complaint based on what's fair and reasonable in addition to the FCA's guidance on vulnerable customers. I've also taken the papers the FCA has published on strong customer authentication and its thoughts – particularly in relation to people who do not possess a mobile – into account when deciding whether or not Virgin Money should have done more when Mr W originally complained and whether or not its actions were fair and reasonable in all the circumstances. In addition, I've taken the Payment Services Regulations – in particular, Article 100 – into account as well as FCA Principle 6 – that firms must pay due regard to the interests of its customers and treat them fairly. Mr W could have argued that Virgin Money's approach is discriminatory on account of age as many elderly people don't have a mobile phone. Age is a "protected characteristic" for the purposes of the Equality Act 2010 – in the same way "disability" is – so I've taken this into account too. Virgin Money didn't disagree with any of this analysis, all of which I included in my provisional decision.

Having taken everything into account, I still don't think it was unfair or unreasonable of Virgin Money to implement strong customer authentication – it's an important measure to help combat fraud. Nor do I think it was unfair or unreasonable of Virgin Money to decide that it was going to use OTPs to help authenticate its customers. I do, however, still think it was unfair and unreasonable of Virgin Money not to offer Mr W alternative ways to authenticate himself that do not rely on phones or allow Mr W to remain independent. I'll explain why.

The FCA has said – and I think it's fair and reasonable – that in its view firms should be giving their customers several different ways to authenticate themselves, and not just rely on mobile phones, so that authentication works for all groups of consumers. In Mr W's case, given that he is hearing impaired, I think Virgin Money should have offered him an option that would have allowed him to authenticate himself that didn't rely on a phone (mobile or otherwise) or rely on him using telephone banking. It follows that I don't think it was fair or reasonable that Virgin Money didn't have an alternative way someone like Mr W could authenticate himself that didn't involve a phone (mobile or otherwise).

Mr W told Virgin Money in August 2019 that he would be happy to receive an OTP by email saying that he was aware other banks offered this option. Mr W is right – many other businesses, including competitors of Virgin Money, already had the systems in place in August 2019 that allowed them to send an OTP by email. Virgin Money, like the rest of the industry, had by then had several years to prepare for strong customer authentication. So I can understand why Mr W must have been disappointed by Virgin Money's response – that it couldn't send OTPs by email / didn't want to. It must be even more frustrating for Mr W to know that sending OTPs by email is an option UK Finance recommended in the paper it published in October 2020 – over sixteen months ago. Virgin Money has been involved in the work UK Finance has done on strong customer authentication – it chaired the business working group amongst other things. Given everything I've just said, I don't think it was unreasonable or unfair of Mr W to ask Virgin Money to consider this option.

Virgin Money has recently offered to exempt Mr W's credit card from strong customer authentication checks, and to move his existing Fixed ISAs into another ISA product (for which it is able to provide a card reader) as well as compensate him for any interest he'd otherwise lose and make sure that he's not charged any fees. I think this is a fair (albeit late) offer and it means this complaint can now be resolved as Mr W is happy with Virgin Money's strong customer authentication proposal. There is the matter of compensation too. Before I deal with that, and before I require Virgin Money to do what it has offered / what Mr W is willing to accept in full and final settlement, however, I do think it would be helpful to say more about Virgin Money's argument – at least until recently – that it had offered Mr W alternatives.

Virgin Money's argument that it's offered alternatives

Virgin Money was telling us – at least until recently – that it had offered other alternatives to Mr W that it said would allow him to access his account and make payments. Virgin Money was telling us, for example, that Mr W could use its telephone banking service. But even Virgin Money accepted – at the time it originally made this suggestion – that this option wouldn't work for Mr W as he's hearing impaired. It's difficult to understand why Virgin Money thought it would be helpful or sensible to suggest telephone banking to Mr W given that he had been very clear that he is hearing impaired and options involving telephones aren't suitable. The suggestion was at best going to be unhelpful, and more than likely going to come across as insensitive if not cause considerable offence and distress. And I also think Virgin Money missed the point here. The FCA has been clear that businesses should be offering customers alternative ways to authenticate themselves. But what Virgin Money was offering Mr W – when it suggested he could use its telephone banking services – were alternatives to online banking rather than alternative ways to authenticate himself. For someone like Mr W, who relies heavily on online banking and wants to take advantage of its convenience, I don't think that was fair and reasonable.

The same is true of another of Virgin Money's suggestions, namely that he should change over to a postal based account. I don't think that was fair and reasonable in the circumstances either. One of Virgin Money's other suggestions, namely that an OTP could be sent to a trusted family member's mobile phone was, in my opinion, equally unhelpful and arguably inappropriate given that Mr W has made it clear throughout that he wishes to be responsible for his own banking and does not want to rely on a third party. The suggestion seems at odds with the intention behind strong customer authentication too. I can understand why Mr W felt it was wrong in this day and age that Virgin Money couldn't offer him a solution that would allow him to bank independently and didn't involve mobiles or phones. Virgin Money's failure to do so is, in my opinion, an example of a failure to design a service in an inclusive way.

Virgin Money originally suggested that Mr W could buy a mobile phone so that he could receive OTPs, along with the other suggestions I've discussed above. Virgin Money suggested a number of options to our investigator after Mr W had complained to us and whilst they were investigating Mr W's complaint. One of those options included buying Mr W a mobile phone "if that is necessary and usually as a last resort". After our investigator had issued their view and after I'd got involved Virgin Money offered Mr W a voucher so he could purchase a basic mobile phone. The final option might have worked on had it been offered when Mr W originally complained, although it's an option I had second thoughts about putting to him as he's made it clear throughout this complaint that he wants an alternative that doesn't involve phones at all – and understandably so. But it was an offer that was made late on and now that the complaint has been resolved in another way – see next – it's not something I feel I need to consider further.

More recently Virgin Money has made suggestions that, in my view, are more helpful. For example, Virgin Money told our investigator that some of its products come with the option of option of authenticating using a token. I explored that option with both parties – it would have solved Mr W's complaint about his credit card had it been an option there. Unfortunately, it's not an option at least as far as Mr W's credit card is concerned. Fortunately, Virgin Money's most recent suggestion – that it exempts Mr W's credit card from strong customer authentication checks – does solve Mr W's complaint about his credit card. That's an option that Virgin Money says is now available – in line with the recommendations that UK Finance has made for vulnerable customers for whom few if any viable options may be available. It's an option I've put to Mr W – and it's one that he's happy to accept.

Putting things right

Mr W has closed most of his accounts with Virgin Money because of the problems he's had. He now only has a credit card and three fixed ISAs. Virgin Money offered to transfer Mr W's ISAs into a different type of ISA for which a security token can be used for authentication purposes – it offered to compensate Mr W so he wouldn't lose out as a result too. The offer is, in my view, a fair one, but it's one that Mr W has decided not to take up – it looks like he'll wait till his ISAs mature and then transfer them elsewhere. So all I'm going to do is require Virgin Money to exempt Mr W's credit card from strong customer authentication checks – as offered by Virgin Money – and to pay him the £500 in compensation our investigator recommended, to which Virgin Money has also now agreed.

My final decision

My final decision is that I require Clydesdale Bank Plc to exempt Mr W's credit card from strong customer authentication checks – as it has offered to do – and to pay him £500 in compensation in full and final settlement of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 March 2022.

Nicolas Atkinson
Ombudsman