

The complaint

Miss N complains that Clydesdale Bank Plc trading as Virgin Money (Virgin) will not backdate a default they registered with the Credit Reference Agencies (CRA).

What happened

Miss N had a credit card with Virgin. She got into financial difficulties and was unable to make her contractual monthly payments to her credit card, so she says she stopped paying towards the card. Miss N then contacted a debt management charity and she made payments to the account of £73.90 a month.

As the arrears continued to accrue on the account, Virgin sent Miss N a notice of default on 17 July 2017, which explained that if they did not receive a payment of £759.82 by 14 August 2017, then they would report a default on her credit file. The account defaulted on 16 August 2017.

Miss N made a complaint to Virgin, who did not uphold her complaint. They said that as she was making payments to her account, the amount of arrears showing took longer to accrue. They told Miss N that they had reported to the CRA's that the date of the default should be recorded on her credit file as 16 August 2017.

Miss N replied to Virgin, challenging the date they recorded the default on her credit file. Virgin apologised that the date of the default was showing as 31 October 2017. They said they had sent the CRA's the necessary amendment forms and the default would be backdated to have this rectified. They also sent Miss N a £75 cheque to apologise for the error.

Miss N brought her complaint to our service. Our investigator did not uphold the complaint. She said that Virgin had amended her credit file to show the debt defaulted in September 2017. She said she didn't find it unreasonable that Virgin didn't wish to backdate the default as they acted fairly and reasonably in following the arrears process when applying the default, as Virgin applied the default at seven full cycles in arrears, or 180 days – as per industry practice.

Miss N asked for an Ombudsman to review her complaint. She made a number of points, but in summary, she said there was an option for Virgin to have been reasonable and fair. Miss N said that while they may have been within guidelines, considering the fact she has now paid everything in full, a shred of goodwill towards her could have been considered. She said she was in financial difficulty due to catastrophic personal events which she hadn't disclosed. Miss N added that other financial companies had agreed to backdate the adverse credit information for her, but Virgin were the only company who wouldn't.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Miss N has made a number of points to this service and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of her complaint in deciding what's fair and reasonable here. For ease of reading I'll detail my decision in two parts – registering the default itself and not backdating it to when Miss N originally stopped making her repayments and the actual date the default was registered.

Registering the default and not backdating it to when Miss N originally stopped making Repayments

I've considered whether Virgin were fair to register a default with the CRA's when they did do this and whether it was fair the date this default should be registered as 16 August 2017, as opposed to backdating it earlier, when Miss N originally stopped making payments to the account. There is further information about the specific date Virgin registered the date of the default in the section below, so I won't comment too much on this date here, but this is when Virgin terminated the account and said they registered this date as the default date with the CRA's.

In order to uphold this part of the complaint. I would need to see that Virgin should not have registered a default around this time. I can't consider what other companies have or haven't done in registering or backdating a complaint here, as this complaint is about Virgin's actions. So I can only consider whether they treated Miss N reasonably.

I also can't uphold this part of the complaint based on goodwill alone – even if Miss N has fully repaid the outstanding balance now. I can't ask Virgin to backdate a default to an earlier point than they should have done if they had followed their process and acted in line with what they should have done here. As an impartial body, we do not act in favour of one party over another, but we do need to see that the business has treated Miss N fairly and reasonably with their actions. Although Miss N will be disappointed, I'm satisfied that Virgin did nothing wrong by registering a default on her credit file when they did (apart from the date itself, which I'll expand on more in the following section) and I'll explain why.

As our investigator has already explained, the Information Commissioner's Office (ICO) says they would expect a default to be registered by the time the consumer is six months behind with their payments, so by the point where they reach month seven. Generally speaking, we're likely to take a similar view as the ICO whilst considering what was fair in the individual circumstances of the complaint.

I've looked at Virgin's process for applying a default. As our investigator has already shared with Miss N, the process shows that "accounts will automatically contractually charge off at cycle point when 180 days past due, subject to being sent the appropriate notice of default with the appropriate notice period. For accounts that are defaulted, a letter of termination confirming the account is in default will be sent automatically at point of charge off which will coincide with the point the account defaults in compliance with the Consumer Credit Act."

Virgin have explained that as Miss N was making some payments to her account during this period, the arrears would continue to accrue on the account. They say the more a customer is able to afford against the required minimum payment, the longer the account takes to default. I'm satisfied that this is fair. I say this because if Virgin were to apply a default as soon as a customer showed signs of suffering financial difficulties, then these customers would be negatively impacted by having defaults applied unnecessarily if they were able to clear their arrears within a suitable timeframe.

I'm persuaded that Virgin were fair to Miss N by applying breathing space to the account for

her, to give her a chance to get back on her feet without the pressures of having to make her contractual payments at what was clearly a difficult time for her. But they also had to balance this with their regulatory duties of sending her a notice of default when she was in arrears for a prolonged period of time and giving her 28 days to pay the arrears or else they would need to register a default to her credit file. And this is what they did here.

Virgin are not required to backdate a default to when somebody first showed financial difficulties. And therefore they have made no error by sending her a termination notice on 16 August 2017. I'm sorry to disappoint Miss N, but I'm unable to ask them to backdate the default to an earlier date, despite what other companies have done as a gesture of goodwill.

Date the default has been registered

During my investigation, I noticed that Virgin had referred to the default being backdated from October 2017 to September 2017. But the termination notice which Virgin sent to Miss N's registered address at the time was dated 16 August 2017. As this is the date that Virgin terminated the account and they said they notified the CRA's of "the default of 16 August 2017 (which) should be recorded on (her) credit report", then I was concerned that Virgin had still registered an incorrect date of when the account should have been registered as defaulted with the CRA's.

So I asked Virgin to look into this. They agreed that the account defaulted on 16 August 2017, but they couldn't explain why they amended Miss N's credit file to September 2017 from October 2017. Virgin said they had sent a request to have the default date recorded as 16 August 2017 and asked for this to be actioned as a matter of urgency.

While I appreciate Virgin being proactive to rectify this issue when I've brought it to their attention, I think they should recognise the impact that this will have on Miss N. She has highlighted to them previously that the default date was incorrect and she was assured that this was rectified in July 2021, when Virgin sent an amendment to the CRA's. But they still did not backdate the date of the default to 16 August 2017.

Given what Miss N has said about the impact the date of the default has had on her, I'm persuaded that this will likely cause Miss N further distress as Virgin had not followed their own process to register the date of the default accurately. This isn't to say that they shouldn't have recorded a default on her credit file, just that they recorded the incorrect date of the default – and this was to Miss N's detriment.

So I'm persuaded that Virgin should pay Miss N further compensation as a result of this. When this last happened, Virgin paid Miss N £75. But here, I'm persuaded that an extra £100 should be paid to Miss N for this error and I'll explain why I think this amount is fair and reasonable.

I say this as Virgin should have recorded the correct default date originally. But they registered it for 31 October 2017, as Miss N's credit file showed, which she provided us. Then, their response to Miss N in July 2021, states the necessary forms would be sent to the CRA's to amend her credit file. And while Virgin did indeed send the amendment, they displayed the wrong date again. So I think with this happening a second time, this would have a bigger impact on Miss N than when this happened the first time. So it follows, I intend to ask Virgin to put things right by paying Miss N an extra £100 for distress and to ensure they backdate the date of the default to 16 August 2017."

I invited both parties to let me have any further submissions before I reached a final decision. Miss N said she had no further information for me to consider. Virgin accepted the 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.

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision I said I intend to ask Virgin to pay Miss N an extra £100 compensation for distress and to ensure the date of the default is backdated to 16 August 2017. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint in part. Clydesdale Bank Plc trading as Virgin Money should pay Miss N an extra £100 compensation for distress and to ensure the date of the default is backdated to 16 August 2017.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 5 July 2022.

Gregory Sloanes
Ombudsman