

Complaint

Mr B is unhappy that Clydesdale Bank Plc (trading as “Virgin Money”) recorded a fraud prevention marker against him.

Background

In March 2021, Mr B applied for a Virgin Money current account. Virgin Money was concerned that inconsistencies in the information Mr B provided. So it declined Mr B’s application and also recorded a fraud prevention marker against him - in particular, Virgin Money was concerned that Mr B failed to disclose a previous address which had adverse information recorded against him. Mr B complained after learning that Virgin Money had recorded a fraud prevention marker against him. Virgin Money looked at Mr B’s complaint and didn’t uphold it. As Mr B remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr B’s concerns. She thought that Virgin Money had unfairly recorded the fraud prevention marker against Mr B. Virgin Money disagreed with our adjudicator. So the complaint was passed to an ombudsman for a final 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.

The marker that Virgin Money has filed is intended to record that there was ‘application fraud’ – relating to Mr B using his real name but providing other false information in an application for a financial product. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Mr B is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern.

The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain their version of events in order to understand their level of knowledge and intention.

In order to determine Mr B’s complaint, I need to decide whether I think Virgin Money had enough evidence to show that Mr B did provide materially false information. Secondly, Virgin Money also needs to have strong evidence to show that Mr B was deliberately dishonest when doing so and that any discrepancies weren’t simply down to a mistake or

misunderstanding. It's also important to note Virgin Money had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, I don't think that Virgin Money did have enough to record a fraud marker. I firstly say this because Virgin Money hasn't provided me with anything to indicate that it obtained Mr B's version of events before recording the marker. I accept it believed the information it obtained from credit reference agencies indicated that Mr B had provided false information. But at best this, on its own, is only really enough to trigger suspicion or concern and it doesn't clearly demonstrate that Mr B was deliberately dishonest. Indeed, I have to question how Virgin Money could possibly have assessed Mr B's knowledge and intention before it recorded the fraud marker against him when it looks like it didn't speak to him before doing so - arguably this in itself is unfair.

In any event, I'm not persuaded that the information Virgin Money has provided clearly demonstrates that Mr B provided false information when making his application. Virgin Money has said it considers Mr B provided false information because he said that he lived at the address he provided on his application, which I'll refer to as address A, since August 2020. It says this is false because the credit checks it carried out show that Mr B only went on the voters roll at this address in February 2021.

Furthermore, Mr B only disclosed one other previous address (which I'll refer to as address B), which he said he lived at from February 2017, but he only went on the voters roll there in May 2018. Virgin Money doesn't believe Mr B moved to address B in February 2017 as his credit file shows he had a default registered against him at a different address (which I'll refer to as address C) in September 2017. Virgin Money says Mr B deliberately omitted this address from his application because he had 4 defaults registered against him there.

I've looked at the information provided. And I agree that a default may well have been recorded against Mr B on an account registered to address C, in September 2017. So it's clear that the adverse information was recorded on an account registered to address C, after Mr B said he'd already moved to address B. However, I don't think that it automatically follows that Mr B knowingly and dishonestly provided Virgin Money with false information. And having considered everything, I don't think that Mr B was dishonest in his application. I say this for a number of reasons.

Firstly, having listened to the call where Mr B made his account application, it's clear that Mr B was equivocal in his declaration that he moved to address B in February 2017. Indeed, Mr B was asked where he lived prior to address A and declared address B. When Mr B was asked when he moved to address B he initially said 2017. It's clear he was about to say he didn't remember when in 2017 he moved to this address but then said he moved there in February of that year. But given how the conversation went, I think that Virgin Money ought to have known that this was an approximation, rather than a definitive statement.

Mr B was not asked where he lived prior to moving to address B. So I don't think that it's fair and reasonable for Virgin Money to say that Mr B failed to disclose an address he was asked about. And given the length of time that had passed, I don't think that Virgin Money would have asked this question even if Mr B had said that he moved to address B at the latest possible date in 2017 anyway.

Equally, I'm not necessarily persuaded that the evidence and information Virgin Money is relying on conclusively demonstrates that Mr B didn't move to address B in February 2017 either. To explain, it can take a period of time for someone to update a change of address on the voters roll. Furthermore, the account Virgin Money has referred to (to show that Mr B was attempting to conceal adverse credit information) only defaulted in September 2017. It would have been opened sometime before this and the account defaulting at this time, at

best, demonstrates that Mr B may have failed to keep a creditor up to date with a change of address, rather than him having definitively moved to address B after September 2017.

Finally, and perhaps most importantly, I'd also question why Mr B would have dishonestly omitted address C from his application. The information for relied upon for Mr B's account application was mainly provided during an earlier phone call. And Mr B clearly began this phone call by asking if he could apply for a Basic M account because he had poor credit and was in an Individual Voluntary Arrangement. It was Virgin Money's representative that decided to try and apply for a full current account instead. In these circumstances, it is difficult for me to see what benefit Mr B would've seen by withholding an address where adverse information had been recorded, given what he'd already declared to Virgin Money.

Of course, I accept it is possible that Mr B intentionally tried to deceive Virgin Money in the way it says he did. And that was enough for it to be suspicious or concerned. But the important thing here is that is Virgin Money's responsibility to demonstrate that Mr B knowingly and dishonestly provided false information. And I think that it has failed to do that here.

Virgin Money needed to have relevant and rigorous evidence such that it could report the matter to the police. Simply pointing out that adverse information was recorded against Mr B, at an address, at a time he says he was living somewhere else – especially where it didn't obtain Mr B's version of events - just isn't enough to meet what is a high bar. This is especially the case seeing as the facts and circumstances of this case appear to support that Mr B didn't knowingly act dishonestly here.

Overall and having considered everything, I don't think that Virgin Money had sufficient evidence to meet the test for recording a fraud marker against Mr B. As this is the case, I think that it was unfair for Virgin Money to record a fraud prevention marker in the circumstances that it did. So I'm upholding Mr B's complaint and Virgin Money needs to remove any and all fraud markers it has recorded.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Clydesdale Bank Plc trading as Virgin Money should remove any and all fraud markers it has recorded against Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2022.

Jeshen Narayanan
Ombudsman