

## The complaint

Mr J complains that he wasn't allowed to close his fixed deposit by Clydesdale Bank Plc trading as Virgin Money (Virgin).

## What happened

On 22 September 2022, Mr J opened a one-year fixed term deposit online with Virgin - it was Issue 495, interest rate 3.32%. He paid in £10,000 on the same day. He then asked to close it and have the money returned, but Virgin said he couldn't.

Mr J complained. He said he was aware that all financial firms have a 14-day cooling off period on product applications. So Virgin should've allowed him to cancel the deposit. He said the terms and conditions, added to the Key Product Information was confusing, and didn't say that a 14-day cooling off period did not apply. He said that was the case in the printed and online versions of the documents, and in the online application process.

Mr J also said the terms and conditions didn't refer to 'E-Bond' – which is what he opened. He said that even though Virgin told him that he was emailed the terms and conditions – that wasn't the case, so Virgin misled him in that respect. Mr J said that Virgin took too long to deal with his complaint.

Virgin wrote a final response on 4 January 2023 – but it wasn't sent to Mr J until 16 February 2023 – which he said he received on 22 February 2023. The response said the terms and conditions for the fixed rate bond were available online and so Mr J could've made an informed decision. If Mr J wasn't clear – he could've called Virgin or visited a branch to discuss his concerns. Virgin apologised for the length of time it had taken to deal with Mr J's complaint and offered compensation of £75.

Mr J declined Virgin's offer and brought his complaint to us. Our investigator said she was satisfied there was enough information given to Mr J to show he wouldn't be able to cancel the fixed deposit within a 14-day cooling off period - she reviewed the information available to Mr J when he went through the online application process. Mr J had ticked to confirm he had read the terms when completing the application. She said the terms said, "*You can't change your mind if our account is a Fixed Rate Bond*". She thought the compensation of £75 was a fair offer.

Mr J didn't agree and asked that an ombudsman look at his complaint. So – it has come to me to do that.

### I reached a provisional decision which said:

There are several aspects to Mr J's complaint:

- He says it wasn't made clear to him when he applied for the fixed rate deposit that a 14-day cooling off period didn't apply. Nor was it clear he couldn't withdraw the

money if he changed his mind in that period. He referred to the relationship between the terms and conditions and the Key Product Information (KPIs) and said that it wasn't fair to expect a 'lay person' to understand the effect of them together.

- He says that there wasn't sufficiently clear information given to him at the point of application on the website.
- The terms and conditions didn't refer to an 'E-Bond' but only to a fixed rate bond.
- He says Virgin told him they emailed the terms and conditions to him – but they didn't.
- He says Virgin admitted to him that they didn't send him their final response on 4 January 2023 as they'd told us they had. Because of that, he couldn't put his complaint to our service as fully as he would've been able to if he'd had it.

*Terms and Conditions:* I've reviewed these and I think they are sufficiently clear and not misleading. They say, "*When you can close your account... If you change your mind, you can close your account without charge within the first 14 days of opening it....*" That's the point Mr J raises in his complaint – as he says that means he could close the fixed deposit within 14 days of the application.

But they go on to say at the end of the same paragraph: "*You can't change your mind if your account is a Fixed Rate Bond...*" This is the crux of Mr J's complaint - and I think it's reasonable to say that this is clear enough – that a fixed deposit can't be closed in the 14-day period.

The terms and conditions then go on to say: *After the first 14 days, you can close your account at any time unless your KPIs says otherwise.*" So – I looked at the Key Product Information and it says, "*Early closure or withdrawals are not permitted until after the fixed rate period as detailed.*" And the fixed rate bond is shown as a fixed term for one year with a maturity date of 20 September 2023.

So the terms and conditions and KPIs combine to say that a fixed deposit cannot be closed for the one-year period. Therefore – I think it's reasonable for me to say that the terms and conditions, and the KPIs are sufficiently clear and not misleading.

*Application process and communications:* I looked at what Mr J would've seen at the time of the online application. This included in the summary box: "*Early closure or withdrawals are not permitted until after the fixed rate period as detailed.*" And: "*You are unable to cancel this account once it has been opened*". I think that's clear – the fixed deposit could not be cancelled.

I could also see that Mr J would've ticked to say he had read and accepted the summary box information, Key Facts and Terms and Conditions – the documents which I've referred to here.

So – I think it's reasonable for me to say that there wasn't anything that wasn't sufficiently clear in Virgin's communications about the fixed deposit when Mr J opened it. And – Mr J confirmed he had read the information.

*The terms and conditions were for a fixed rate bond, not an E-Bond:* I considered Mr J's point here. I can see that the KPIs were headed "Fixed Rate E-Bond Issue 495". And the online application was headed "1 year Fixed Rate E-Bond". So – I think that it was sufficiently clear that the terms applied to the E-Bond.

*Emailed Terms and Conditions:* Virgin told Mr J they emailed the documents to him. But it came to light during our investigation that they hadn't. Virgin apologised for that error in what they told Mr J – it wasn't part of their process to do that. So – I can accept this was a mistake by Virgin. And – this led to Mr J questioning what he'd been told by Virgin and having to dispute that point. So - I think it's fair and reasonable for Virgin to pay an increased amount of compensation for this error.

*Final Response not sent:* Virgin have admitted they didn't send Mr J their final response on 4 January 2023 as they told us they had. Virgin said Mr J had got in touch and the final response letter was sent on 16 February 2023. He argues that had he had it before, he could've put his complaint to us in a more comprehensive fashion. I've considered this point. But – he complained to us in December 2022 – so he wouldn't have had Virgin's response at that time anyway. So – I'm not persuaded it made a difference to what he told us.

But in any case, it is important that a firm sends their final response to a customer in a timely and effective way – and clearly it was an error not to have sent the response at all. We asked Virgin for more information about this and they showed that Mr J called or messaged three times to chase it – between 27 January 2023 and 10 February 2023.

I can see this was frustrating and time consuming for Mr J and so I think it is fair to ask Virgin to pay increased compensation for that error; and for misleading Mr J in saying the terms and conditions had been emailed to him. A further award of £50 is appropriate, in addition to the £75 already offered by Virgin.

#### Responses to the provisional decision:

Virgin agreed to increase the compensation to £125. Mr J made some substantive comments which said (in summary):

- A 'lay' person cannot be expected to go through and understand all the terms and conditions, especially the 'finer' points.
- A summary box should be provided with key points to obviate this need.
- Virgin should have said clearly that the 14-day cooling off period doesn't apply to fixed rate bonds.
- He (and other customers) tick 'read terms and conditions' without doing so.

I now need to consider these points and make a final decision.(continued)

#### **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.

While I'm grateful for the time Mr J has put into making his further points – in all honesty, they were points he made at the time of the complaint, and ones that I had considered in making the provisional decision. But to address his points:

Terms and conditions: while I hear what Mr J says, it remains the case that terms and conditions do form the basis of a financial contract, and our service cannot discount them in the way Mr J suggests. And – as the provisional decision says, I’m satisfied that as far as the fixed rate bond goes, they are sufficiently clear.

I noted in the provisional decision that a summary box is provide online at the point of application – and these say that a fixed rate bond cannot be closed once it has been opened.

Turning to Mr J’s points that Virgin should point out that a 14-day cooling off period is not applicable to fixed rate bonds – I don’t think it’s reasonable to expect a firm to state what terms *do not* apply to any contract – rather that firms must set out what terms *do* apply.

Mr J raises the wider point that consumers tick ‘read terms and conditions’ without actually doing so. And that’s what he did. While that may be the case – I’m afraid that doesn’t mean here that I can make a decision in Mr J’s favour – the point is that he did tick to say he had read them.

Therefore, having considered Mr J’s points, my final decision is unchanged from the provisional decision.

### **My final decision**

I uphold this complaint. Clydesdale Bank Plc trading as Virgin Money must:

Pay compensation of £125 for distress and inconvenience. This includes the £75 offered by Virgin.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J to accept or reject my decision before 18 July 2023.

Martin Lord  
**Ombudsman**