

## **The complaint**

Mr D complains that Clydesdale Bank Plc trading as Virgin Money won't refund a disputed payment amount of £3,400 on his credit card account.

## **What happened**

Mr D says he lost his wallet containing his Virgin Money and other cards. He didn't realise as he had a debit card linked to his phone. He had written the PINs for his cards in his wallet as he says he is forgetful. His card here had been used without his authority.

Virgin Money said it wouldn't be refunding this money. It has asked Mr D for a police crime reference number, and he hadn't provided this. As a result, it said that it couldn't investigate his claim as fraud.

Our investigator recommended that the complaint be upheld, and the money refunded together with any interest and charges that have resulted. And that any negative information on his credit record should be removed. She said that the terms and conditions of the account required Mr D to keep his card and security details safe. But also, that as the agreement was regulated by the Consumer Credit Act 1974 he wouldn't be responsible for any loss arising from unauthorised use of the credit facility. She said that Mr D not providing a police crime reference number was a reason not to investigate the claim. Mr D had contacted Virgin Money when he realised the card had been lost and reported this to Action Fraud. She wasn't persuaded he'd consented to someone else having and using his card.

Virgin Money didn't agree and wanted the complaint to be reviewed. A report to the police would show that a crime had been committed. Without this it was opening itself up to risk. Having this reference number would allow a full fraud investigation and may assist it in accepting a consumer's testimony.

## **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.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These say a payment can only be authorised if it was consented to. So, it's not enough for it just to be authenticated, say with a card and PIN. Where credit is involved, as is the case here on credit cards, the Consumer Credit Act 1974 applies, and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

It isn't in dispute that this payment was authenticated with Mr D's card details and the PIN. The issue is whether he consented to the payment and authorised it. And if he didn't as I've referred to above he wouldn't be liable for it. The issue of whether he acted with gross negligence in not protecting his security information wouldn't apply to a payment resulting in a credit card debt.

It's generally up to a consumer whether to report the matter to police and this doesn't have any impact on Virgin Money's obligations under the Payment Services Regulations and Consumer Credit Act. Mr D has plausibly said here that he was directed by police to report this at the time to Action Fraud and has provided a reference number. It is for Virgin Money to show that he did authorise the payment.

Virgin Money has had the opportunity to argue whether the payment was authorised or unauthorised and has effectively declined to do so. And this service generally wouldn't be keen on it placing barriers like this before carrying out an investigation. I note its regulatory concerns, but I don't find its reasoning for declining to refund the payment and rework the account to be reasonable. And so, on that basis I will be finding in Mr D's favour on this complaint.

### **My final decision**

My decision is that I uphold this complaint and I require Clydesdale Bank Plc trading as Virgin Money to:

- 1) Refund the disputed payment amount and rework the account to refund all related interest and charges applied.
- 2) Remove any adverse information reported to credit reference agencies as a result of this disputed payment amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 October 2023.

Michael Crewe  
**Ombudsman**