

## **The complaint**

Mr D complains Clydesdale Bank Plc trading as Virgin Money incorrectly charged him a cash advance fee on his credit card account.

## **What happened**

On 16 January 2023 Mr D made a payment from his credit card account to a company I'll refer to as P. Mr D found Virgin treated this as a cash advance and charged him £425. Mr D says he's done this kind of payment on several occasions previously, and never been charged – including in July 2022. Mr D also didn't think his payment qualified under any of the items listed when Virgin would apply a cash advance payment. He contacted Virgin on the phone, and when they couldn't help him, he complained.

Virgin said Mr D made a payment of £8,500 on 16 January 2023, and they applied a 5% cash advance fee to this transaction. Virgin said they recognised Mr D had done this kind of payment as recently as July 2022, but their terms and conditions had changed.

They said they wrote to their customers in August 2021 about changes being made, and then wrote again on 28 July 2022 to say they were now implementing changes they hadn't made in August 2021. They said because of this contact, they couldn't agree Mr D wasn't aware of the changes. They also said the cash advance fee and interest information is contained on each statement under 'Key facts about your card' and 'Other charges'. Virgin were sorry Mr D didn't feel reassured by their colleague, but were pleased they'd raised a complaint for Mr D. Overall, Virgin didn't uphold Mr D's complaint.

Unhappy with this, Mr D asked us to look into things. One of our Investigators did so, but overall didn't uphold Mr D's complaint.

Across several responses Mr D replied. I've listed out what I consider to be key to his complaint:

- Virgin didn't tell customers they weren't making the changes in August 2021, as they said they were, and he made a similar transaction July / August 2022 – so it was reasonable to assume the changes were in place at the time, and he wasn't charged then
- Other credit card providers don't charge a fee for this kind of usage
- It's clear he assumed no fee would be applied as he repaid the balance immediately
- He wasn't making any payment that fell into the terms Virgin were quoting
- He said the Consumer Rights Act, and parts regarding Unfair Terms and Lack of Clarity applied to his complaint
- He carried out a transaction on 29 August 2023 which was a top up of a digital wallet and wasn't charged a cash advance fee – Mr D said this is further evidence of the lack of clarity

As Mr D didn't accept our Investigator's outcome, the complaint's been passed to me to decide.

### **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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr D's complaint in considerably less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

Given Mr D's reference to the Consumer Rights Act I think it's helpful to make it clear I'm required to take into account the law, rules and regulations, relevant guidance and good practice at the time. But overall, I'm required to decide things on a fair and reasonable basis. The starting point for this case is the terms and conditions of what is defined as a *cash advance*.

These terms say:

*"We wanted to remind you about some of the changes to the definition of a Cash Advance, which, as well as using your credit card to withdraw cash or buy foreign currency or travellers cheques, now includes the following:*

- *gambling transactions and spread betting*
- *international money transfers*
- *paying off other borrowing (like making a payment towards a loan or mortgage or using your card to pay another credit card instead of doing a Balance Transfer)*
- *adding money to a prepaid card, virtual card or e-money account*
- *investment activity – this includes binary trading, share trading and adding money to an investment account"*

The most relevant in Mr D's complaint, is *"adding money to a prepaid card, virtual card or e-money account"*.

This means the core question is whether Mr D made a payment that fits in with that definition. And I think he did.

P are a well-known online payment services provider. Mr D's transaction was to a friend or family member. And my understanding is for anyone to receive the money sent this way, they have to have an account with P. Mr D has said he's used this method in the past many times, so I'm satisfied he'd be quite familiar with how things work. Taking all of that into account I'm satisfied Mr D made a transaction that meets the criteria of sending money to an e-money account. As a result I'm satisfied it was appropriate for him to be charged a *cash advance* fee.

I have noted Mr D's reference to the Consumer Rights Act, and parts regarding Unfair Terms and Lack of Clarity – but, I'm satisfied Mr D knew he was making a payment to an e-money account. And I'm satisfied the terms in Mr D's case clearly say a cash advance fee would be applied for making a payment to an e-money account. So on a fair and reasonable basis, which is how I'm required to decide matters, I don't think Virgin have done anything wrong applying the fee.

I've noted Mr D's comments that other providers don't charge this kind of fee – but each business operates differently, so I can't say that automatically means Virgin should refund it.

Likewise, I've seen he repaid the balance immediately, but he still carried out a transaction that met the terms of a cash advance – so I can't reasonably say Virgin should refund this fee, when I can't see they've done anything wrong in applying it.

Mr D has also said he didn't get the message Virgin say they sent in July 2022 to remind customers of the change in the terms. We asked Virgin for evidence of this email being sent to Mr D – but in the response they provided, it doesn't show an email was sent.

So, I believe Mr D when he says he didn't get the reminder. What I next need to consider, is whether it makes any difference to the outcome of this case – and I don't think it does. The reason I say that is because Mr D has confirmed receiving the first notification – and indeed I can see that was sent to him. This means he was aware of the changes due to be coming in. But, in addition, he didn't think these changes would make any difference to the payments he was making. So, I can only reasonably conclude Mr D would have still made this payment anyway – on the basis he didn't think, and still doesn't think, the type of payment would be classed as a cash advance under the new terms. Had Virgin sent him the reminder, I think it's more likely than not Mr D would have made the payment anyway.

Mr D said he made a payment in August 2023 to a digital wallet and wasn't charged a fee. We asked Virgin about that – and they said they couldn't find a payment. Ultimately though, I don't think it makes a difference, as I'm satisfied Virgin acted fairly in applying the fee for all the reasons I've mentioned above.

Finally I've also noted Mr D had concerns over how long his complaint took to be resolved. The regulator the Financial Conduct Authority allows eight weeks for financial businesses to resolve complaints – so, as long as Virgin replied within that time, then they didn't do anything wrong.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2024.

Jon Pearce  
**Ombudsman**