

## **The complaint**

Mr L complains that Clydesdale Bank Plc trading as Virgin Money (“Virgin”) failed to refund transactions he didn’t recognise.

## **What happened**

Mr L explained that he wanted a way to allow a close family member to use online games whilst staying in control of the spending. Mr L used a merchant to purchase gaming vouchers which he could pass on to the family member without registering his credit card with the gaming platform. I’ll refer to that merchant as D.

Mr L said he made a few purchases from D using his Virgin credit card and around that time he’d also paid off the majority of his outstanding balance. He said he was mainly using this account for smallish purchases and wasn’t paying much attention to the outstanding balance.

A few months later, Mr L said he looked at his statement with the intention of clearing his balance after receiving his annual bonus. It was at this point he noticed multiple transactions (in excess of 70) had been made with the merchant D, totalling over £5,000.

Mr L contacted Virgin about them and reported that he wasn’t responsible for these transactions. He confirmed he’d made a couple at the start of the year and a few more after a couple of months, but not the rest of them. Mr L also contacted D to try and sort out these transactions.

Mr L raised a dispute with Virgin about the payments and was asked to provide evidence of the invoices for Virgin to challenge the transactions with D. Eventually Virgin concluded that they couldn’t dispute them. Some months later, Mr L was told that the matter should have been reported as fraud, but Virgin could no longer do so due to timescales laid out by the card provider’s rules (Mastercard).

Mr L raised a complaint and asked why Virgin hadn’t intervened at all because the volume of payments and the amount spent with D was out of the ordinary. Mr L asked for a refund of all the disputed transactions.

Virgin declined to refund them, referring to their payment data that showed many of the transactions had been made from the same IP address as other undisputed transactions. Also, that many of them required additional security steps to be carried out (called 3DS) using Mr L’s registered phone.

Note: IP addresses are a means to identify physical locations that online transactions/devices are connected to and can be their actual physical location or other locations connected to the provider of the data services.

After reviewing the situation, Virgin declined his complaint and told Mr L that he could still report the matter as fraud. Mr L was reluctant to do this as he thought a family member may be involved in the use of his card.

He remained unhappy with the handling of his complaint and brought it to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the circumstances and asked both parties for information about the complaint.

Mr L was able to say that :

- He had only made a few transactions to D for his close family member.
- He hadn't given permission for any further use of his account to make additional purchases.
- Other family members had use of his phone and likely knew how to access his banking app.

Virgin provided some details about the complaint including their own summary of the investigation, copies of calls and statements. They were unable to confirm some of the transaction details at the time. After reviewing the evidence, the investigator concluded that Virgin should refund the disputed transactions to Mr L as they hadn't provided evidence to show that they had been properly authenticated.

Further evidence was provided by Virgin showing how the transactions had been authenticated but the investigator still didn't think that Mr L was responsible for them.

Virgin didn't accept the investigator's recommendations and asked Mr L for further details of some of the disputed transactions. Mr L supplied this information to Virgin who advised they'd gone back to D to obtain additional information about the payments. In the meantime, they temporarily refunded a few of the payments. They told Mr L that if there was evidence that D had provided the service paid for, they would take those refunds back.

As no agreement could be reached about the complaint, it's now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Virgin can hold Mr L liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but Virgin cannot say that the use of the card payment details conclusively proves that the payments were authorised.

Unless Virgin can show that consent has been given, it has no authority to make the payment or to debit Mr L's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr L. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr L responsible for the disputed transactions or not.

*Transactions carried out by a household member without the account holder's consent – what the Regulations say.*

Mr L has been consistent about how he made a few legitimate payments to D and the

reason he used them was to control the use of his funds for gaming. It seems that he didn't want to provide his card details directly to the gaming platform precisely to avoid any overspending.

As I've set out above, a customer is liable if they've authorised the transactions, and I accept on the evidence available here that Mr L didn't authorise them. I think it's most likely that they were carried out by a member of his family who had access to his card details and phone, so I've looked at the Regulations about this situation.

These transactions were carried out on a credit card, and slightly different rules apply from transactions on a debit card. On a debit card, the account holder can be liable if they've not kept their devices and details secure, as it can under certain circumstances count as "gross negligence". But that doesn't apply on a credit card.

Given the family relationship, it's not particularly surprising that Mr L's phone was able to be used so regularly without arousing his suspicion. Mr L had already taken steps to provide appropriate credit (the gaming vouchers) with minimum risk to his account, so he wouldn't naturally think that his close family member would be abusing this arrangement.

If Mr L had provided access to the card (such as lodging it with the gaming platform), he would have given "apparent authority", likely making him responsible for its use, even if he wasn't aware of the individual uses of the card. But here, his actions to restrict usage by purchasing vouchers through D shows he wasn't intending for anyone else to use his card and therefore there's no evidence to show he's provided "apparent authority" to anyone else.

As I've concluded that Mr L was unaware of the disputed transactions and didn't authorise them himself, I find that he isn't liable for them under the Regulations, so Virgin should refund him. Nor can I see any other reason that it would be fair and reasonable for Virgin to hold Mr L liable for the transactions here.

I understand Virgin latterly made several applications through the payment system for a refund which they (temporarily) applied to Mr L's account. They asked for further time for the process to be completed and advised that they may take those refunds back depending on the result of those applications. I was a little confused about their approach here as this type of application is usually made at the earliest point in a dispute. Nevertheless, as I've made a finding that Virgin should now refund those transactions disputed by Mr L, the issue of whether their applications through the payment process are successful or not are no longer relevant.

### **My final decision**

My final decision is that I uphold this complaint against Clydesdale Bank Plc trading as Virgin Money and they're instructed to settle the complaint by:

- Refunding any outstanding disputed transactions not already repaid, based on the original transactions reported by Mr L totalling £5,256.31.
- Refunding any interest, fees or charges associated with these transactions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 June 2024.

David Perry  
**Ombudsman**