

The complaint

Mr K complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") is holding him liable for transactions on his account which he didn't authorise.

What happened

On 3 April 2024, I issued my provisional decision on this complaint. I wanted to give both parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, in June 2023 Mr K got in touch with Virgin Money to let it know there were payments showing on his statements which he hadn't authorised. The payments number 20, total £6,961.63, and span 5 April 2022 to 5 June 2023; and they have been previously detailed elsewhere. Virgin Money and Mr K couldn't reach agreement about things, so Mr K referred his complaint about Virgin Money to us. As our Investigator couldn't resolve things informally, the case has been passed to me for a decision.

What I've provisionally 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.

Having done so, I'm minded to uphold this complaint in part (although in the main). I'll explain why.

The first disputed transaction

One of the reasons Virgin Money has given for not refunding Mr K is the length of time it took him, from the date of the transactions, to dispute them as unauthorised despite him being sent monthly statements. The Payment Services Regulations 2017 ("the PSRs") are relevant here. Under these, Mr K can be held liable for transactions made more than 13 months before he reported them. But it's only the first disputed transaction for £130 on 5 April 2022 that was made more than 13 months before Mr K reported things. I understand Mr K appears to have used his account for savings, and he has said he didn't notice the disputed transactions until when he reported them in 2023. But there doesn't seem to be any dispute Mr K was receiving monthly statements, so I don't think it's unreasonable to say that, if Mr K didn't authorise the first disputed transaction for £130 on 5 April 2022, he reasonably ought to have been aware of this when he received the relevant monthly statements around that time. I therefore don't think it was unfair, given what I've said, that Virgin Money declined to refund this particular transaction.

The remaining disputed transactions

Mr K did, however, report the remaining disputed transactions (totalling £6,831.63) within 13 months of them occurring. Generally speaking, under the PSRs, Virgin Money is required to refund any unauthorised transactions. A payment out of Mr K's account can only be

authorised if he consented to it. So, it's not enough for Virgin Money to show how the disputed payments were authenticated. To decide Mr K authorised the transactions I'd also need to be persuaded Mr K most likely consented to them. And under Regulation 75 of the PSRs, where Mr K denies having authorised transactions like this, it's for Virgin Money "to prove that the payment transaction was authenticated, accurately recorded, entered into [Virgin Money's] accounts and not affected by a technical breakdown or some other deficiency in the service provided by [Virgin Money]".

We consequently asked Virgin Money for technical evidence around this, to inform our assessment around authentication and consent. But Virgin Money hasn't provided relevant technical evidence to satisfy me on authentication (or, by inference, consent). In the absence of this evidence, I am persuaded it is fair for these transactions to be treated as unauthorised.

Under the PSRs Mr K can be held responsible for any spending on his account if he, with intent or gross negligence, failed to protect his account, for example by not keeping his card safe, and things like his PIN and online bank details secret. But intent generally means an action that someone has deliberately taken, and I've seen nothing that persuades me Mr K deliberately gave away security details enabling a third party to make the transactions. And with regards to gross negligence, there isn't an exact definition of this. But it's beyond ordinary carelessness – there would need to be a serious disregard or indifference to an obvious risk, and the bar is a high one. I've not seen evidence persuading me Mr K's actions meet this threshold. Instead, from what he's said, it seems he generally kept his card either in his drawer at home or locked in his briefcase. I've seen no evidence that he acted with serious disregard or indifference to his security information. And Virgin Money hasn't provided any evidence to persuade me it would be fair to say Mr K should be held responsible for the transactions due to gross negligence.

I'm aware Virgin Money has also said it declined Mr K's claim because he disputed the transactions so long after they were made. But I've already addressed above why I think it wasn't unfair for Virgin Money to hold Mr K responsible for the first disputed transaction on this basis. But the remaining disputed transactions were made within the 13-month period, so this hasn't changed my mind.

This means I'm minded to uphold this complaint in part (although in the main) and to direct Virgin Money to pay Mr K £6,831.63, plus interest (to compensate Mr K for having been deprived of this money since the date of the transactions) calculated at 8% simple per year from the date of each transaction to the date of settlement.

My provisional decision

For the reasons explained, I'm minded to uphold this complaint in part and to direct Clydesdale Bank Plc trading as Virgin Money to pay Mr K:

- *£6,831.63; plus*
- *interest on this amount calculated at 8% simple per year from the date of each transaction to the date of settlement (if Virgin Money deducts tax from this interest, it should send Mr K the appropriate tax deduction certificate).*

Now that both parties have had fair opportunity to respond to my provisional decision, I'm now ready to explain my final 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.

Having done so, I've reached the same conclusions as in my provisional decision, and for the same reasons.

Virgin Money replied to my provisional decision and said that it can confirm the transactions were processed as they should have been without technical issues; it can't confirm the IP address for the device used for the disputed transactions; but that data shows Mr K was registered for online account access (to view balances and transactions but through which transactions couldn't be made) such that he had sight of his account during the period of the disputed transactions. As I explained to Virgin Money in my email of 22 April 2024, I've thought about this, but this doesn't show Mr K authenticated (or, by inference, consented) to the transactions. So I'm not persuaded to depart from my provisional decision that it would be fair for these transactions to be treated as unauthorised.

Virgin Money also said that Mr K initially told it that his card was sometimes kept in a drawer accessible by his family but subsequently changed this to say only his wife had access to his card. From what Virgin Money has said, I understand it is suggesting Mr K, with *intent* or *gross negligence*, failed to protect his account. But, as I explained to Virgin Money in my email of 22 April 2024, I already considered this in my provisional decision, so this hasn't changed my mind.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Clydesdale Bank Plc trading as Virgin Money to pay Mr K:

- £6,831.63; plus
- interest on this amount calculated at 8% simple per year from the date of each transaction to the date of settlement (if Virgin Money deducts tax from this interest, it should send Mr K the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 May 2024.

Neil Bridge
Ombudsman