

Complaint

Mr L has complained about the overdraft charges Clydesdale Bank Plc (trading as “Virgin Money”) applied to his account.

Mr L is being represented, by the (“representative”), in his complaint. The representative has said the charges applied to Mr L’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on him.

Background

Mr L was initially provided with an overdraft with a limit of £100 in October 2007. Mr L’s limit was increased on a number of occasions until it reached £1,000.00 in June 2010.

In March 2024, Mr L complained saying that he was allowed to continue using the overdraft in a way that was unsustainable and which caused him continued financial difficulty. Virgin Money rejected Mr L’s complaint as it didn’t think that it had done anything wrong or treated him unfairly. Mr L was dissatisfied at Virgin Money’s response and referred his complaint to our service.

One of our investigators reviewed what Mr L and Virgin Money had told us. She reached the conclusion that Virgin Money hadn’t done anything wrong or treated Mr L unfairly in the period up until August 2022. However, she also thought that Virgin Money shouldn’t have allowed Mr L to continue using his overdraft from August 2022 onwards as it ought to have realised that it had become unsustainable for him.

So the investigator partially upheld Mr L’s complaint and recommended that Virgin Money refund all the overdraft interest, fees and charges that it added to Mr L’s account after August 2022 onwards. Virgin Money accepted the investigator’s assessment. However, the representative, on Mr L’s behalf, disagreed with the investigator and asked for an ombudsman’s decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’m satisfied that what Virgin Money has already agreed to do to put things right for Mr L is fair and reasonable in all the circumstances of the complaint. I’m therefore not requiring it to do anything more or anything further and I leave it up to Mr L to decide whether he wishes to accept Virgin Money’s offer.

Before I go any further, as this essentially boils down to a complaint that Mr L was unfairly charged as a result of being allowed to continue using his overdraft, I want to be clear in saying that I haven’t considered whether the various amounts Virgin Money charged were fair and reasonable, or proportionate in comparison to the costs of the service provided.

Ultimately, how much a bank charges for its services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Virgin Money's charging structure per se, it won't have acted fairly and reasonably towards Mr L if it applied this interest, fees and charges to Mr L's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr L was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Virgin Money didn't treat Mr L fairly and reasonably.

In other words, I've considered whether there were periods prior to August 2022 where Virgin Money continued charging Mr L even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

Having looked through Mr L's account statements throughout the period up to August 2022, I don't think that it is clear cut that Virgin Money ought reasonably to have realised that Mr L was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mr L's overdraft. I'll explain why I think this is the case in a little more detail.

There is no dispute that Mr L used his overdraft regularly. The representative's arguments appear to suggest that this in itself means that Mr L was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr L's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this. I think that if Mr L was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that prior to August 2022, Mr L was in receipt of a salary that exceeded his overdraft limit and so was in a position to clear the overdraft within a reasonable period of time. Therefore, I'm satisfied that Mr L's case isn't one where the borrower was in an overdraft with no hope of being able to exit it. Although I do accept that there were plenty of times where Mr L met the criteria of someone who displayed a pattern of repeat use of their overdraft.

For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this. However, even if Virgin Money didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Mr L lost out as a result of any potential failing.

I've also therefore considered whether Mr L's use of his overdraft (and Virgin Money continuing to allow him to use it) was causing him to incur high cumulative charges that were

harmful to him. Having considered matters, I'm satisfied that this isn't the case in this instance. I'll now proceed to explain why.

To start with, while I'm not seeking to make retrospective value judgements over Mr L expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr L's account. I do accept that Mr L had other credit commitments. That said, there isn't a prohibition on providing a customer with an overdraft in such circumstances.

I accept none of these things in themselves (or when taken together) mean that Mr L wasn't experiencing difficulty. But I don't agree that it is incontrovertible that Mr L was unavoidably reliant on credit, or his overdraft, prior to August 2022. The funds he received left him in a position where he was comfortably able to make any essential commitments without using his overdraft. However, he chose to use his overdraft to make discretionary transactions.

Given the repeat usage letters Mr L is likely to have been sent by Virgin Money, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr L had no choice other than to use his overdraft to get by as the representative says.

I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

The representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances. This concept of proportionality runs right through CONC 5 as a whole. Given the amount of funds that Mr L was in receipt of in the period leading up to any reviews that may have taken place prior to August 2022, I'm not persuaded that Virgin Money ought reasonably to have realised that Mr L's overdraft usage was causing him harm at this stage.

I've also seen what the representative has said regarding CONC 5D.3.2R (3). However, CONC 5D.3.2 R (1) makes it clear that CONC 5D.3.2R only applies to customers who have a pattern of repeat use *AND* there are signs of the customer being in actual or potential difficulty.

In the first instance, it's worth noting that there isn't any suggestion Mr L contacted Virgin Money to explain he was experiencing difficulty, or he needed help repaying his overdraft, prior to his complaint. Furthermore, as I've not seen anything in Mr L's statements, indicating that there were any of the signs highlighted in CONC 1.3, I'm satisfied this isn't a case where there were signs of Mr L may have been in financial difficulty prior to August 2022.

As this is the case, I'm satisfied that the applicable section of CONC 5D, to Mr L's circumstances, is CONC 5D.3.1, rather than CONC 5D.3.2. CONC 5D.3.1 permits a firm to employ more subtle techniques such as sending a customer a further letter. So I don't think that Virgin Money had to call Mr L in the way that the representative has suggested.

For the reasons I've explained, in this case, I'm satisfied that Virgin Money had no reason to believe that Mr L was experiencing difficulty. And in circumstances, where there appears to be no dispute that Mr L did not expressly reach out to Virgin Money and ask it for help to repay his balance, I think that telling him what he was paying to use his overdraft in the way he was reasonable.

Overall and having considered everything, I don't think that it was unreasonable for Virgin Money to have proceeded adding the charges that it did prior to August 2022. This is particularly bearing in mind the consequences of Virgin Money taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate. I say this because at that time, I don't think that it would have been proportionate for Virgin Money to demand that Mr L immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr L clearing what he owed in a reasonable period of time.

Indeed, I think that if Virgin Money had suggested that it would take corrective action for most of this time, Mr L wouldn't have had the benefit of the hindsight of knowing that he'd end up in an Individual Voluntary Arrangement. So I think it is likely Mr L would have argued that it would have been unfair for Virgin Money to act, bearing in mind the consequences of such action being taken, in circumstances where he was using the overdraft in line with the terms and conditions and appeared to be able to afford to use it in the way he was.

So overall and having considered everything, while I can understand Mr L's sentiments and appreciate why he is unhappy, I'm nonetheless satisfied that what Virgin Money has already agreed to do to put things right for Mr L is fair and reasonable in all the circumstances of this complaint. I'm therefore not requiring it to do anything more or anything further and I leave it to Mr L to decide whether he wishes to accept Virgin Money's offer. I appreciate this will be very disappointing for Mr L. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Clydesdale Bank Plc has already agreed to do to put things right for Mr L is fair and reasonable in all the circumstances of his complaint. I'm therefore not requiring it to do anything more or anything further. And I leave it to Mr L to decide whether he wishes to accept this offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 July 2025.

Jeshen Narayanan
Ombudsman