DRN-5555392

The complaint

Miss B complained because Clydesdale Bank Plc, trading as Virgin Money, refused to refund her for gambling transactions she said she didn't make.

What happened

In early July 2024, five gambling payments, to three different gambling organisations, debited Mis B's Virgin account. They totalled £1,400.

A few days later, Miss B rang Virgin. She said she hadn't realised until the previous night, but her 14 year old son had been gambling on her account. She said she did use the sites herself, but not often. She said she knew she shouldn't but she used the same password for everything, which was his date of birth. She said she'd told her son the password, in case he needed it in any emergency.

Virgin's adviser said that Miss B would need to contact the police, because it was her son who had made the transactions, so, technically, he had stolen from Miss B. It wasn't a fraudster who had made the transactions. The adviser also told Miss B to get the apps deleted from her phone, and to get replacement cards so they weren't stored on her phone. Miss B said she'd keep trying the gambling company, and she hoped it would give a refund and then close the gambling account.

Miss B rang Virgin again. She said she'd contacted the police, who'd had a chat with her son, and also gave her advice. She said she'd also contacted a gambling association. She explained that she'd taken out a loan to get some work done on her home, and the money had been in her bank account, and this was the money her son had taken. The adviser said he'd raise a fraud claim, though he couldn't guarantee a refund. Miss B said the payments should have been stopped, by the gambling company or the bank.

The adviser asked Miss B if she allowed her son to use her card. She said no, but she'd shown him how to get into her phone and how to use her PIN. She said that at the time of the disputed transactions the phone had been on charge, which was how her son had accessed it. Her son had also changed her password. Virgin issued a replacement card and new PIN, and investigated.

Virgin didn't agree to refund Miss B. It said this was because the payments had been made on Miss B's phone, and she'd given him the password. Miss B said she hadn't actually given him the password, but it was his date of birth. Virgin asked how he'd got onto the gambling sites, and Miss B said two of them had an app, and the other was still in her Google search. He'd seen her make payments in the past.

Miss B complained.

Virgin sent its final response to Miss B's complaint on 6 September. It said that there were three reasons why it had rejected her claim. This included the payments being made on her device, and a text being sent to Virgin confirming she'd made the payments. However, Virgin said one of its advisers has misunderstood notes, so Virgin's third reason for rejecting the claim hadn't been correct, so it paid her £100 compensation. But it said that although Miss B had said she wouldn't make such large payments herself in a short space of time, on 2 June 2024 she'd made payments totalling £750 to various gambling sides. And although Miss B had said she'd only noticed the payments the previous evening, there had been multiple logins to her app between the last disputed payment at 1.35am, and Miss B ringing Virgin the next day.

Miss B wasn't satisfied and contacted this service.

Our investigator didn't uphold Miss B's complaint.

She said Miss B had told Virgin that her phone wasn't passcode protected, but she'd given her son the passcode in case he need it in an emergency, and the passcodes were the same for all the apps. But the investigator pointed out that what Miss B had told her was that the passcode was the same for the tablet which she and her son used, so she thought he'd memorised this and then used it on the apps. The investigator said that this inconsistency between what Miss B had told Virgin, and what she'd told this service, made Miss B's evidence less credible.

The disputed transactions were all authorised in Miss B's mobile app, by entering the passcode. And one of them, the £200 transaction, had also been confirmed as genuine by a text response, which had been sent to Miss B's phone asking for confirmation the payment was genuine.

The investigator thought it more likely than not that Miss B herself had authorised the disputed transactions. Miss B had used the account before, and all the payments had been authorised using her passcode through her mobile app. But even if Miss B had given her passcode to another person, this would have been against the terms and conditions of the account, and would be classed as gross negligence.

Miss B didn't agree.

She said it was 100% not she who'd made the payments, but her son. She said she didn't make big payments. She said she hadn't given her passcode to her son, but he'd guessed as it was his date of birth. She said all she wanted was a refund, because if it had been online game platforms her son had used, she'd have been refunded. She said it was unfair because she hadn't made the payments. She said no-one believed her, because her son would have had to be 18 to play on the site, and he'd been 14 at the time. She also said her son had changed the password twice, and that showed it wasn't Miss B who had made the payments, because she had the same password for everything, so why would she need to change a password.

Our investigator explained to Miss B that no-one else should know her passcodes to apps and mobile banking, and that she still didn't uphold Miss B's complaint. Miss B asked for an ombudsman's 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.

What the Regulations, and Terms and Conditions, say

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn’t authorise the payments, and the customer is liable if they did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they’ve failed to keep their details secure to such an extent that it can be termed ‘’*gross negligence.’’*

The Terms and Conditions of Miss B’s account with Virgin say, under Section 9, ‘’*Keeping your account safe and sound’*
‘’Keep everything to do with your account safe. That includes your card, card details, PIN, passwords, passcodes, security devices and cheque books…
Keep your PIN top secret. This means:
Never tell it to anyone
Never write it down in a way that’s obvious to others
If you change it, don’t make it easy to guess.’’

Section 10, about disputed payments, says:
‘’We won’t usually refund the money if:
- *You’ve been very careless with your card or security details*
- *You’ve let someone else use your account when you shouldn’t have.’’*

What this means for Miss B’s complaint

The Regulations, and the Terms and Conditions of the account, are what decides the outcome here.

The technical computer evidence shows that all the disputed gambling payments were made using Miss B’s passcode, on her registered phone. They were verified in the same way as logins, and transactions, which Miss B hadn’t disputed – in other words, by the passcode on the mobile app. And on one of them, for £200, extra verification had been requested by text, and that had been passed by a text message from the registered phone, confirming to Virgin that the payment was genuine. So it’s clear that either Miss B or her son, rather than any fraudulent third party unknown to her, carried out the disputed payments.

The evidence has varied about whether Miss B told her son the passcode. I’ve listened to call recordings, and on one of them Miss B clearly told Virgin that she had told her son the passcode and how to access her phone, in case of emergencies. She later told our investigator that she thought her son had memorised the code because they both used a tablet which was accessed by the same code. But the outcome here is the same, whichever of these is correct. It still breaches the terms and conditions of the account I’ve set out above, whether she told her son her code, or he memorised it because Miss B used the same code on the tablet which she allowed him to use using the same code.

Miss B’s evidence throughout has been that she uses the same password for everything, including apps and internet banking. In one of her replies to our investigator, she said she has the same password for everything, so why would she need to change it. She’s also said it was her son’s date of birth, which doesn’t meet the requirement for being not easy to guess. Using the same password for everything, and using something that’s easy to guess by anyone who knew her son’s date of birth, mean that she didn’t keep her account secure. This breached the terms and conditions of the account.

I’ve considered whether Virgin should have blocked the disputed payments, as Miss B suggested. The payments were, however, made using Miss B’s banking app, correct passcode, and with confirmation by text. Miss B had also used all three gambling sites before, for genuine transactions. I also don’t agree with Miss B’s argument that she herself only made much smaller payments, because her Virgin statements do indeed show that she made undisputed gambling transactions for £750 on 2 June 2024, which wasn't long before the disputed ones in early July.

The fact that the disputed payments were made late in the evening doesn't make any difference either, because there's no reason why Miss B couldn't have made them at that time of day, even if she said her normal gambling took place earlier in the evenings. So I don't agree that Virgin had any reason to block the gambling payments.

I can't know for certain whether Miss B, or her son, carried out the disputed gambling transactions. Certainly Miss B's account statements do show other gambling transactions, and for large amounts. But it doesn't make any difference to the outcome which of them carried out the transactions. If Miss B authorised them herself, she is liable for them. If her son made them, there are two possibilities. Either Miss B told him the security information, effectively giving him permission, which counts as her authorising them. Or she was grossly negligent in not keeping her account secure under the Terms and Conditions of the account, because she used a password which was easy to guess, especially for her son as it was his birth date, and which she used for everything.

So this means that Virgin doesn't have to refund Miss B.

Finally, I've considered the £100 compensation which Virgin paid Miss B for its error in one of its three reasons for rejecting her claim. I find that that was fair and reasonable and Virgin doesn't have to do more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 August 2025.

Belinda Knight
Ombudsman