

Complaint

Mr K complains that Virgin Money plc unfairly delayed applying a default to his credit card.

Background

The background to this complaint and my initial conclusions are set out in my provisional decision - a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought Mr K's complaint about Virgin Money should be upheld and how it should be resolved. I invited both parties to send me any additional comments or information they wanted me to take into account before I made my final decision.

Mr K didn't provide anything else for me to consider. Virgin Money responded to say it didn't agree with my provisional decision. Virgin Money said that by delaying the default it gave Mr K more time to see if there was a way he could bring his account back up to date. Virgin Money said that if the account had been defaulted at an earlier point and Mr K was subsequently able to pay off his arrears he'd have been in a worse position.

My findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered the points Virgin Money made in response to my provisional decision.

Virgin Money said its approach gave Mr K more time to try and rectify his account, in effect reducing the chance he would default. It says that if Mr K's position had changed during this period it would have given him more time to bring his account up to date and avoid the default.

I take Virgin Money's point. But, the financial information I've seen shows there was a surplus household income of £867 after normal living expenses had been covered. That figure takes Mr K's income into account as well as his partner's. So the surplus income doesn't solely relate to Mr K. The information from the debt advice service shows Mr K had extensive unsecured debts that took up the surplus income each month. Looking at the information available, I think it was reasonably clear from an early stage that Mr K's relationship with Virgin Money had broken down as he wasn't able to afford his monthly payments or address the arrears on his account.

Taking all the information I've seen into account, I don't think there was any realistic chance that Mr K's position would change. I think the fairest point to accept the relationship had broken down and apply the default was around three months after the debt advice service got in touch and Mr K's account went into arrears.

As I said in my provisional decision, Mr K complains that the delay in registering the default means his chances of obtaining credit in the future are lower. Information about the default will remain on his credit file for six years. I agree that the default was registered later than it should have been and that it will remain on Mr K's credit history for a six year period. By backdating the default to February 2016, it will drop off Mr K's credit file sooner.

I've considered Virgin Money's response to my provisional decision. Having done so, I remain of the view that the fairest approach here is to amend the date of the default to February 2016 in line with my provisional decision.

My final decision

My decision is that I uphold this complaint and direct Virgin Money plc to amend the default date for Mr K's credit card to February 2016.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 April 2020.

Marco Manente
Ombudsman

Copy of the provisional decision

Complaint

Mr K complains that Virgin Money plc unfairly delayed applying a default to his credit card.

Background

In November 2015 Mr K contacted a debt advice charity as he was experiencing financial difficulties and couldn't maintain his debts. The debt advice charity contacted Mr K's creditors and offered reduced payments. The third party offered Virgin £22.18 a month against an expected payment of around £41.

Virgin stopped adding interest and charges and went on to apply a default in December 2016.

In 2018 Mr K complained as he thought Virgin waited too long to register the default. As a result, it will remain on his credit file for longer which Mr K feels is unfair. Virgin didn't agree it had made an error and said it had acted in line with its process and industry guidance.

Mr K referred his complaint to our service and an adjudicator looked at it. She recommended Virgin change the default date to November 2015 – the date the third party contacted it and gave details of Mr K's financial difficulties. Virgin didn't agree so Mr K's complaint's been passed to me to make a decision.

My provisional findings

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

Virgin's told us that it's standard policy is that it will default an account once it's missed six full payments. In this case, because Mr K was making payments of around half of what was expected each month it meant the default wasn't applied until around thirteen months after Virgin was told about his financial difficulties.

I agree that Virgin is free to decide how to handle customers who are in arrears and that it's taken the industry guidance into account. But in this case, I think Virgin's decision to wait for six months full arrears to accrue has unfairly impacted Mr K.

I've looked in detail at the information Virgin was sent by the third party in November 2015 and it shows the majority of Mr K's disposable income was used up making reduced payments to unsecured creditors. Unless something significant changed for Mr K I think it was clear that the default was highly likely. As I'm satisfied it was clear from an earlier point that Mr K's account would most likely default I don't think Virgin achieved anything by waiting for six months arrears to build in full before taking that step.

Virgin responded to the adjudicator's view by saying that it had followed its standard process by waiting to default his account. But the risk to treating all customers in the same way is that it can fail to take their personal circumstances into account. And the industry guidance allows for flexibility in how businesses treat customers in financial difficulties. There may be situations where waiting for a full six months missed payment to build is the fair thing to do. But, in this case, I'm satisfied that from November 2015 it was reasonably clear to Virgin that Mr K was highly unlikely to be in a position to bring his account back up to date. At that stage I think Virgin should have considered when to fairly apply the default.

The industry guidance says lenders will generally consider applying a default when an account is between three and six months in arrears. As I've said above, there is some flexibility built into the guidance so businesses can decide how best to treat customers in financial difficulties. And the guidance also says the default reflects the breakdown in the relationship between the borrower and lender. I think the point where it was reasonably clear the relationship had broken down came considerably earlier than December 2016 so I think the default should have been applied sooner.

The adjudicator asked Virgin to move the default date to November 2015 – when the debt advice charity got in touch and offered reduced payments. But I think Virgin could have reasonably waited around three months – until February 2016 – to see if Mr K's circumstances changed. This is in line with the industry guidance and would have given Mr K some breathing space to look at his options. But it wouldn't have prolonged the situation unreasonably.

Mr K says that by waiting until December 2016 to register the default it will remain on his credit file for longer. And that has a negative impact on him because it's likely he'll experience more difficulty getting credit in the future. I think that's a reasonable point and I agree that by registering the default in December 2016, instead of when it was reasonably clear Mr K wasn't able to bring his account back up to date, his ability to secure future credit has been negatively impacted.

It's up to Virgin to decide how to treat customers experiencing financial difficulties. But I think applying the default only after six full payments had been missed unfairly impacted Mr K in this case. As a result, I intend to tell Virgin to change Mr K's credit file to show the default was applied in February 2016 – three months after the debt advice charity contacted it in November 2015.

My provisional decision

My provisional decision is that I intend to uphold this complaint and tell Virgin Money plc to amend the default date for Mr K's credit card to February 2016.

Mr K and Virgin Money plc have until 25 July 2019 to send me anything further they'd like me to consider before I make my final decision.

Marco Manente
Ombudsman