

The complaint

Miss C complains Clydesdale Bank Plc, trading as Virgin Money ("VM"), has failed to refund transactions on her credit card account she didn't authorise. Miss C also complains about the poor customer service she has received.

Miss C says this matter has caused her severe distress and inconvenience.

What happened

Miss C opened a new credit card account with VM in December 2020 by completing an online application. She says she did this to transfer an existing credit card balance over from another credit institution as VM had offered her a 0% interest account.

Once the VM account was opened, Miss C transferred around £7,000 into it. Miss C says she never received the card or a PIN in the post. Nor did she activate the mobile banking app. Miss C says she called VM to say she hadn't received the card and was told a replacement one would be sent to her – but one wasn't. VM says it doesn't have any record of such a conversation.

Miss C adds she didn't follow up the card request because she didn't intend to use it as she was focused on clearing the credit card balance. And she wasn't checking her statements as the payments were being made by monthly direct debit, and she wasn't intending on using the account otherwise.

In 2021, over 30 transactions were made on Miss C's account ranging from payments to a well-known gaming platform, cash withdrawals and other retail payments. VM later contacted Miss C by letter informing her that she had reached her credit limit and needed to make payments to bring her account under it.

Miss C says this is when she first learnt there were transactions being carried out on her account which she had not authorised. So when learning about this, Miss C made a complaint to VM.

Miss C says she has contacted VM repeatedly to get the disputed transactions looked into. And initially when finding out, she contacted Action Fraud and was given a crime reference number. Because VM were not giving her any answer on her fraud claim, Miss C says she stopped making regular payments to service the debt.

As Miss C stopped making payments, the account fell into arrears. Subsequently, the debt was sold to a third-party debt management organisation ("DM"). Later, VM registered adverse markers against Miss C with relevant credit reference agencies.

VM has sent Miss C several responses. It accepted its customer service had fallen below the standards it expects and offered to pay Miss C £25 for any distress and inconvenience she suffered. VM says its investigation into Miss C's fraud claims is still on-going. But as Miss C hasn't made any payments since May 2022, the balance increased due to the interest charged. So VM hasn't done anything wrong.

VM also said its required to report accurate information to the credit reference agencies, and as it had not received payments, it has done nothing wrong by doing so. In other response, VM explained why it needed Miss C to provide her with identity documents. This has subsequently been completed by Miss C.

Miss C is unhappy VM have continually failed to address her complaint about the disputed transactions. She says VM's failure to act has affected her credit file, and she's not been able to get a competitive new mortgage product. This has led to now paying around £500 more a month on a variable rate mortgage. Miss C says VM's actions have directly led to her falling into financial difficulty which is exacerbated as she has two children to support.

Miss C says this matter has also caused her substantive mental health issues, which at one point led to her falling over resulting in severe facial injury.

Unhappy with VM's responses and failure to investigate her fraud claim, Miss C referred her complaint to this service. One of our Investigator's looked into Miss C's complaint, and after several attempts to get information from VM, they sent their findings to both parties. Some of the key points they made were:

- VM can only refuse to refund the disputed payments if they can prove Miss C authorised the transactions or allowed someone else to use the card
- VM has been on notice about these payments since December 2021, but it says it is still investigating the fraud claim. VM hasn't provided enough evidence to suggest Miss C carried out the transactions or allowed someone else to do so
- VM has had sufficient time to investigate Miss C's claim and complaint, and it's delayed the investigation causing her more distress, inconvenience and financial detriment
- To put things right, VM should:
 - o Recall the debt from the third-party organisation it sold it to
 - o Rework the account removing all disputed transactions, interest, fees and charges
 - o If the re-work results in a credit balance this should be refunded to Miss C plus 8% simple annual interest, calculated from the date the account would have first entered into a credit balance to the date of settlement and remove any adverse information it might have recorded on her credit file in relation to this account
 - o If the re-work results in there still being an outstanding capital balance, VM should allow Miss C to repay the balance in line with the contractual terms and remove any adverse information it might have recorded on Miss C's credit file in relation to this account
 - o Pay Miss C £900 for the distress and inconvenience it caused her
 - o Refund Miss C's cost of calls to VM from December 2021 until present date. Miss C should provide VM with an itemised telephone bill to prove these costs

Miss C wasn't happy VM had more time to respond to what our Investigator said as it had had around three years to deal with it already. She explained the longer the matter remained

unresolved, she had to pay increased mortgage costs - of which, the cost of an extra £500 should be borne by VM.

In response, VM said its fraud team were still looking into the disputed transactions. It also disagreed that the debt should be recalled from the third-party organisation with immediate effect. VM say Miss C has only paid around £2,450 against the balance transfer amount of about £7,000 – so despite the fraud claim, there's still a non-contested balance which she's required to service. As Miss C didn't do this, the account was correctly sold to the DM.

VM also disagreed it should refund the cost of Miss C's calls as its contact centres are free to call. And although some mobile phone operators charge a fee, VM should not be held liable for this.

Miss C then sent in evidence to show her mortgage payments had increased – this was for September 2023. Miss C says her fixed rate product with her lender ended in June 2023.

Our Investigator explained that Miss C should remain liable for any debt she legitimately owes VM from her balance transfer. Our Investigator also explained this to VM. They also added that VM's internal records show the debt should not have been sold onto the DM and it can be returned to VM. They emphasised also that Miss C would need to provide evidence to VM of the cost of the calls for it to refund her.

This complaint has now been passed to me to decide.

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 decided to uphold this complaint. I'll explain why.

The crux of this complaint relates to Miss C's claims that she didn't authorise a host of payments outside of the balance transfer. She says she never received the credit card nor did she set-up an online account.

Section 83 of the Consumer Credit Act 1974 says that a customer isn't liable for the use of a credit facility unless they (or someone acting as their agent) used the facility. But as an exception to that, section 84 says that a customer who gives someone a credit token is liable for any use of it by that person. So VM can only refuse to refund these transactions if it can show they were authorised by Miss C or someone she gave authority to.

Miss C says she isn't aware of any postal issues, she doesn't own a gaming machine aligned to the platform payments that were made nor has she ever had a card for the account. VM have given me very limited records which include records of a mobile phone logging into the online account. It hasn't, as I would expect, shown me technical records to show how the payments were made and authenticated.

So because of this, the question as to whether Miss C authorised the disputed transactions falls on the plausibility of her assertion that she never received the card - and so didn't carry out the transactions herself, nor authorised someone to do so.

Miss C has consistently maintained that she opened this account solely for the balance transfer, and as she was making regular payments by direct debit, she didn't need to monitor it closely. She says as soon as it was bought to her attention that she had met or exceeded her credit limit, she contacted VM to discuss this issue.

From the information I've been given, I'm persuaded this was most likely the case. That's because the timeline of events, and Miss C's testimony, are consistent with this. VM responded to Miss C's complaint points about poor customer service, her credit file markers and the debt being sold on – but till date it has failed to provide her with an answer to the root cause of her complaint. That is, the disputed transactions.

VM has had more than sufficient and reasonable time to provide evidence it thinks shows Miss C did authorise the payments. So based on the information I do have, I uphold Miss C's complaint about not authorising all payments outside of her balance transfer. That means they need to be refunded or removed from the account from the day they were made. Any related interest and charges should also be refunded. That includes any fees and charges for cash withdrawals.

Miss C has explained in detail the impact of VM not refunding her charges, and not dealing with the matter in a timely manner, have had on her. This includes severe financial difficulty and distress affecting her mental health. She says that the stress of VM not properly investigating matters led to her falling and sustaining severe facial injuries.

It's difficult to determine how much of a direct consequence VM's actions had on Miss C falling and injuring herself based on the information I have. I do of course think that VM's failings would likely have impacted Miss C's mental health.

Miss C says that because of the adverse markers placed against her by VM, she hasn't been able to obtain a new lower interest rate mortgage fixed product when her previous product finished in June 2023.

There's no guarantee Miss C would get a similar rate as she had before, especially as the market for mortgages has changed significantly from when she likely had her former product. Nor is this a reasonably foreseeable consequence. So any award I make will take this into account.

But I do agree that VM's failings have led to a protracted and longer period in which Miss C would have been severely distressed and inconvenienced. More so, because it's more than evident from the phone records and emails I've seen that she was constantly pressing VM to look into the fraud claim.

I accept Miss C owes a debt to VM as the payments she did make haven't satisfied the debt she created when transferring over her balance. So this is something she must pay back to VM. But VM have sold this onto DM and argue it isn't able to take it back. I don't agree.

VM's internal notes show it made the wrong decision when transferring this debt on, and I do question why it did such a thing when it knew that there was a dispute regarding what Miss C says she owed and had authorised. These internal notes and emails also show that the debt can be rewound back from DM to VM.

VM argue that as Miss C always owed money to it from the balance transfer, and as she stopped making her regular contractual payments in May 2022, the adverse credit information its reported to the credit agencies is accurate and shouldn't be changed. Generally I would agree with this. But in the individual circumstances of this complaint, I don't. That's because I'm persuaded Miss C took a reasonable position by stopping the payments as VM were not dealing with her disputed transactions claim over a substantially long period, and by doing so she felt it would.

I've listened to some calls between Miss C and VM's agents, and in one such call in September 2022, Miss C says this service told her to stop the payments. I wouldn't expect

this guidance to be given by our employees – nor have I seen any evidence that was the case. But I still think Miss C took up a reasonable position due to VM delaying and not considering the disputed transaction claim. So that means I'm persuaded VM should remove any adverse markers its placed against Miss C and put her back in the position she was in up until the date of the transactions.

VM should also put the account back in the position it was before the transactions in dispute were made and allow Miss C to make payments in line with the contractual terms and conditions of the account.

Lastly, I note VM says that its call centres are free, and so it shouldn't have to pay for any calls Miss C made to it. I'm satisfied Miss C made many calls to VM to try and resolve her complaint. But despite assurances, the fraud claim has never been investigated satisfactorily. So if Miss C can provide VM with clear evidence from any phone company that she did incur costs such costs, these should be refunded.

Putting things right

To put things right, VM should:

- Recall and the debt from DM, and reconstruct the account with it at no cost to Miss C
- Rework the account removing all disputed transactions, any associated interest, fees and charges
- If the re-work results in a credit balance this should be refunded to Miss C plus 8% simple annual interest, calculated from the date the account would have first entered into a credit balance to the date of settlement and remove any adverse information it might have recorded on her credit file in relation to this account*
- If the re-work results in there still being an outstanding capital balance, VM should allow Miss C to repay the balance in line with its contractual terms and conditions and remove any adverse information it might have recorded on Miss C's credit file in relation to this account
- Pay Miss C £900 for the distress and inconvenience it caused her
- Refund Miss C's cost of calls to VM from December 2021 until present date. Miss C will need to provide VM with an itemised telephone bill to prove these costs before they can be refunded

* If VM considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss C how much it's taken off. It should also give Miss C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons above, I uphold this complaint. Clydesdale Bank Plc, trading as Virgin Money, should now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 24 November 2023.

Ketan Nagla
Ombudsman

