

## **The complaint**

Mr S complains that Clydesdale Bank Plc trading as Virgin Money ('Virgin') has wrongly charged a cash advance fee on a credit card transaction.

## **What happened**

Mr S holds a credit card with Virgin. When he took the card out, Virgin defined 'cash advance' in a way that did not include investment activity. Virgin says that it wrote to customers between June and July 2021, describing a change to the terms and conditions which would come into effect in August 2021. This included bringing investment activity, including binary trading, share trading and adding money to an investment account within the meaning of cash advances. The effect of this was that investment activity would attract a cash advance fee.

Virgin says that this change was not enforced in August 2021, for reasons related to the Covid-19 pandemic. So it says that it wrote to customers again in June 2022 to remind customers of the change before it began to rely upon it. It says that it emailed Mr S such a reminder on 13 June 2022. The email says that the 'changes we were making to Cash Advance fees didn't happen at that time, and they will now be live from this month'. The terms and conditions of the account provided that the agreement could be changed to Mr S's disadvantage where Virgin gave him 30 days' notice of that change.

On 27 June 2022, Mr S made a transaction adding money to an investment account. He says that he did so in order to see whether it would attract a cash advance fee, which it did not. On 29 June 2022, Mr S made a second, larger, transaction of the same type. A cash advance fee was charged.

Mr S says that the fee was unfair as it relied upon a change to the agreement made without the proper notice. He says that the relevant change to his agreement was not the change to the written terms in August 2021, but the change which occurred in June 2022. He says that this change was to his disadvantage and that both the relevant term of the agreement and general fairness require that he get proper notice of that. He says that the email of 13 June 2022 did not give any date upon which the change would become effective, and that he was entitled to rely upon his 'test' transaction of 27 June 2022 as indicating that the change had not come into effect.

Virgin says that the terms and conditions of the account provided that the agreement could be changed to Mr S's disadvantage where Virgin gave him 30 days' notice of that change. The combined effect of the notice in July 2021 and the reminder in June 2022, was that effective notice of the change to cash advance fees had been given. It says that the charge in relation to the 29 June 2022 payment was properly applied.

Our investigator thought that Virgin had given the necessary notice of the change. They thought that 30 days' notice had been given of the change to the terms, and that it was not necessary to give 30 days' notice of the change in practice. They did not think that Virgin had acted unfairly or unreasonably.

Mr S did not agree and so this has come to me for a 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.

There does not appear to be any dispute about whether the relevant transactions by Mr S amount to investment activity within the meaning of the terms of the card. I am satisfied that that Virgin was entitled to treat the transactions in this way and that it has done so fairly. So what I've focused on in this decision is whether Mr S was provided sufficient notice of the fact that Virgin would treat them this way.

Virgin can't provide the exact email which was sent to Mr S in June or July 2021. Instead, it's provided a template of what it says would have been sent to all affected customers, including Mr S. I have considered the email address which has been used by Virgin for Mr S and can see that it is the same one which he provided to this service. In the circumstances, I am satisfied that it is more likely than not that he was provided with proper notice of the change to the terms and conditions which came into effect on 5 August 2021.

Mr S argues that the wording of the agreement means that, in effect, Virgin should also have provided 30 days' notice of the change that it made in June 2022 to start applying cash advance charges when previously it hadn't. But I think that the terms of the account are clear that the relevant section refers to changes to the agreement. The change Virgin made in June 2022 wasn't a change to the agreement though – that change took place in 2021 and I'm satisfied that Virgin notified Mr S of that.

That being said, it would have been good practice to have provided Mr S reasonable notice that while it may not have applied cash advances to investment transactions – it would now be doing so. I think that the email of 13 June 2022 provided this. While it did not give a specific date from which Virgin would begin to rely upon the change to the terms, it told Mr S that it would do so that same month. So I think Mr S was on notice that any payment he made in June 2022 carried an increased risk of attracting the new charges.

I understand Mr S's point that he made his transaction on 27 June as a 'test' to see if a payment was applied. When it wasn't, he then made another similar payment two days later and was surprised that a fee was applied. But I think the email Virgin sent was clear that in June 2022, it would and could start applying fees for the type of transaction Mr S wanted to make. He made the payments two weeks after the date of that email. And if Mr S was unclear as to what the situation was, or wanted to know more specifics about the date from which fees would be applied, then he could have contacted Virgin to ask.

So, I think Virgin has applied the fee fairly, in line with the notices and messages it sent. That means I don't think it's acted unfairly or unreasonably here and so I won't be asking it to pay back the fee it applied, or compensation in the way Mr S wants.

Mr S has also mentioned that Virgin should pay him compensation for Virgin's failure to respond to him in a timely manner. Our investigator has explained why we can't consider complaint handling as a separate activity under our rules. But I note that Virgin itself acknowledged this in its final response and offered Mr S £50 because of this. As I'm not telling Virgin to do anymore here – Mr S is free to contact it if he'd now like to accept this.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 August 2023.

James Staples  
**Ombudsman**