

## **The complaint**

Mrs W complained because Clydesdale Bank Plc, trading as Virgin Money, refused to refund her for transactions which she said she didn't make.

Mrs W and her husband had been evacuated from their home by the Fire Service because of a serious house fire. Her card had been in the house at the time, and so had her diary in which she had her PIN and security details.

## **What happened**

On 1 March 2023, there was a serious fire at Mrs W's house. She and her husband were evacuated by the Fire Service, and taken by ambulance to hospital. They spent several months in hospitals and rehab, before being moved to a care home. This was a temporary measure while their insurance company dealt with the clearance and rebuilding work.

On 22 August, Mrs W rang Virgin. She told Virgin about her house burning down. Her call was then disconnected. She rang again, and said she'd waited three quarters of an hour to get through and the previous adviser had then put the phone down. She explained again that her house had burned down on 1 March, and she couldn't go down to the branch because at the moment she couldn't walk. She said she didn't have her card or any paperwork, because of the house burning down. She said they had a few things which had been saved from the fire which were in storage but she didn't know what was in there.

The adviser told her that her balance was £6,459.59, and that there had been cash withdrawals. Mrs W was clearly very distressed. She said she should have well over £15,000. She said she hadn't used her account since the fire in March.

Mrs W rang Virgin again on a number of occasions. She said fraud was meant to ring her back and hadn't, and she also couldn't access her account. She needed the replacement debit card and PIN. But Virgin had sent these to her home which had burned down, not to the care home where she was temporarily living. This happened more than once.

On 8 September, Virgin rang Mrs W. It asked for copies of all correspondence with her insurance company. Mrs W said that everything with her insurer had been done by phone, and she didn't have any correspondence. She asked why Virgin needed to know her insurance details, but didn't get an answer. Virgin also asked for Mrs W's current address, which she provided. Mrs W didn't know the postcode and handed the phone to a carer to provide this.

Virgin's adviser told the carer that she was from Virgin's Fraud team. The carer provided the postcode, and handed the phone back to Mrs W. Mrs W told the adviser that she wasn't happy that Virgin had told the carer that the adviser was from Virgin's Fraud team. She said that she'd told Virgin about this before, as it was nothing to do with where she was currently staying, and she didn't want everyone in the building knowing her business. The adviser said sorry but she hadn't been told not to.

On 20 September, Virgin wrote to Mrs W. It said that as the disputed withdrawals had been cash withdrawals, they'd have used Mrs W's card and PIN, and no-one apart from Mrs W should know the PIN. Mrs W had said that Virgin should have noticed the unusual activity and stopped the fraud from happening, but Virgin said that cash withdrawals weren't monitored in the same way as online ones. It said the withdrawals weren't out of the ordinary on Mrs W's account, but said its fraud investigation team was investigating and would be in contact in due course. It said that as an apology for the call waiting times, and its adviser telling the carer she was from Virgin's fraud team, it had credited her account with £50.

Mrs W wasn't satisfied. She replied that she'd spent hours on the phone, up to two hours at a time trying to speak to someone in the fraud team. She also pointed out that Virgin had sent three new cards, two of which had been sent, with passwords, to her home which had been burned out. She said she couldn't believe Virgin's fraud team hadn't taken any notice of her. She pointed out that there would be plumbers, electricians, gas people, painters etc in and out of the house as it was being rebuilt. She said that she and her husband were both stressed out and Virgin was putting them under more stress. She said Virgin's advisors needed more training, especially when they just cut you off.

Virgin replied on 10 October. It said it had reopened Mrs W's complaint to add her complaint about the cards and PINs being delivered to the burned-out house. It paid Mrs W £150 as an apology for the error. This letter too said that the fraud investigations team was still investigating.

On 13 October, Virgin's fraud team wrote to tell Mrs W that it wasn't upholding her claim and wouldn't refund her for the disputed transactions. It said it couldn't substantiate how her card and PIN had been compromised. It said that Mrs W had said there was a house fire and it couldn't determine how any fraudster had obtained Mrs W's information. And it said the police hadn't charged or convicted anyone. Virgin said it wouldn't re-open Mrs W's complaint without evidence that the police had charged anyone.

Mrs W remained very unhappy and contacted this service. She explained that the fire had started when she'd had an online shopping delivery. They'd brought in the bags for her, and she'd asked them to put the perishable food in the kitchen. Mrs W said she'd been in another room when she could smell smoke. She'd gone into the kitchen, and had seen that the online shopping delivery firm had put all the bags around and on top of the toaster. This had turned the toaster on, which was on fire, and the fire had spread to the fuse box. Mrs W and her husband were evacuated by the Fire Service and taken to hospital by ambulance. Their home burned down. They'd been in various hospitals and care homes since then. Mrs W said they hoped that they'd be able to move back at some point during 2024 after the rebuilding, being organised by their insurer, had been completed.

Our investigator upheld Mrs W's complaint. She said that Virgin should refund the losses from the date of the fire on 1 March 2023 to the point when the card was cancelled. Mrs W hadn't authorised the withdrawals and hadn't given anyone her card or PIN. And there had been a point when the card and PIN could have been compromised at the house. The spending also didn't follow Mrs W's usual pattern of spending.

Virgin didn't agree to refund Mrs W. It said that before it could consider a refund, it wanted more evidence from the investigator. This included asking for:

- Evidence from the Fire Service that the house fire did occur and the extent of the damage;
- Evidence from Mrs W's insurance company about who had access to the house after the fire;
- How the investigator believed the PIN had been compromised and where Mrs W kept her debit card;

- Virgin said that the pattern of the disputed cash withdrawals wasn't typical of a fraudster who would normally empty the account quickly. And it said there were card spends as well as the cash machine withdrawals. It said there had been large cash withdrawals before the fire, and asked the investigator to explain why she believed the contactless transactions hadn't been carried out by Mrs W or someone she knew.

Our investigator sent Virgin a copy of the email which the Fire Service had helpfully sent us. An officer who had been at the scene confirmed that *"the house was fully smoke logged and there was fire and heat damage to the whole house with the main fire damage which had been in the kitchen. The windows in the kitchen were also burnt away."*

The investigator also told Virgin that at the time of the fire, Mrs W had said her card had been out on a table. Mrs W had also confirmed she had a little book with banking information including PINs noted in it. The investigator said that Mrs W was well within her rights to have personal banking details noted down inside her home. And the fact that Mrs W had made occasional cash withdrawals in the past, didn't indicate that she'd done the many substantial disputed cash withdrawals. The investigator considered that the spending pattern could display a fraudster making optimum cash withdraws without any in store spends. And Mrs W's call to Virgin where she'd been told that thousands of pounds had gone, showed she'd been genuinely very shocked and upset at this devastating news.

Virgin said it would review the file and respond. But more than six weeks later, it hadn't replied. So Mrs W's complaint was referred to me for an ombudsman's decision.

### **My provisional findings**

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion from our investigator – I upheld Mrs W's complaint as the investigator did, but I thought Virgin should pay more compensation. So I issued a "provisional decision". This means that both sides could provide additional arguments and evidence if they wished to, provided they did so by the date stated for responses, when I'd issue a final decision.

In my provisional decision, I first said I was very sorry to hear that Mrs W and her husband had had such a terrible experience with their house being burned down. It's clear they've had a really dreadful time with the loss of their home, having to be rescued and having hospital treatment, and then staying in temporary accommodation in a care home because their home isn't yet habitable for them to return to. Mrs W is clearly very distressed on all the call recordings I've listened to. She also said they won't be back in their home until about a year after the original fire. I am very sorry indeed to hear they've had such a dreadful experience.

### ***What I need to consider – the Regulations***

In deciding the outcome, I take account of 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 regulations don't define "gross negligence", but there has been advice from the regulator, the Financial Conduct Authority (FCA), and there have also been legal cases. The relevant standard is a higher standard than the common law standard of negligence. The FCA say it has to be "a very significant level" and in a key legal case, the judge said it had to be serious disregard of risk.

So, in my provisional decision, what I needed to consider about Mrs W's case was:

- whether it's more likely than not that Mrs W, or a third party, authorised the disputed transactions, and
- whether Mrs W had failed to keep her details secure to such an extent that it could be termed "gross negligence."

*Did Mrs W authorise the disputed transactions herself?*

I considered that Mrs W did not authorise the disputed transactions herself, and that she also did not give her card and PIN to any third party for them to carry out the transactions for her. The reasons why I found this included:

- Mrs W was very clearly genuinely distressed on all the call recordings I listened to. I didn't believe she was faking this and had carried out the transactions herself;
- This service obtained evidence from the Fire Service that a serious fire genuinely did burn down Mr and Mrs W's home. I noted that Virgin asked for evidence that a fire had occurred, and for the extent of the damage. The Fire Service evidence provided to this service was clear, provided by an officer who attended, and it confirms the extent of the damage.
- Mrs W's evidence, which I accepted, was that she and her husband were in a series of hospitals, rehab and a temporary care home after the fire. The disputed transactions started within a few days of the fire. I considered it wasn't possible for Mrs W physically to have carried out the transactions when she was in hospital. Nor do I think it likely that she'd have been able to take any possessions with her when evacuated in the sudden emergency of a fire. So I didn't consider Mrs W had her card or PIN in hospital and I found she couldn't have passed them to a friend or relative to make the withdrawals on her behalf. And I couldn't see that she'd have had any need for sudden large cash withdrawals when taken to hospital as an emergency. It's much more likely that a third party opportunist thief took the card and the notebook containing the security details.
- Virgin said it had to have evidence from Mrs W's insurance company about who'd had access to the house after the fire. I didn't think this was a reasonable request. The insurance company would have been dealing with assessing the loss, and arranging clearance, and arranging rebuilding. I don't consider the insurance company could be expected to provide day-to-day accounts of who might have been able to access the severely damaged home, either by breaking in at night or perhaps by a dishonest workman during the clearance and rebuilding. Similarly, it wasn't for me to guess who might have accessed the property after the fire, police, and ambulance services had left. What matters was that I accepted that in these very unusual circumstances, it would have been possible for a third party to enter the building and pick up Mrs W's Virgin card and her diary with her PIN and security information in it. The test is whether it's more likely than not that Mrs W authorised the transactions herself. It's not for Virgin to require categoric proof of who removed the card and PIN.
- Virgin also objected that the pattern of the disputed cash withdrawals wasn't typical of a fraudster who would normally empty the account quickly, and that there had been card spends as well as the cash machine withdrawals. I looked carefully at Mrs W's bank statements for before the fire, as supplied by Virgin. There are certainly occasional cash machine withdrawals, but not frequently, and certainly not on the scale of the withdrawals from the date of the fire. After the fire, the withdrawals

happened almost daily, mainly with cash withdrawals but occasionally card ones too. Virgin said these aren't typical of a fraudster because a fraudster would take all the money out as soon as possible. But here, I think that what the fraudster was doing was taking out regular large cash withdrawals, perhaps hoping to get away with these for a considerable time. It would have been well known in the area that Mr and Mrs W had been taken to hospital and the fraudster might have hoped to continue to make these large withdrawals for a substantial time, especially as Mrs W had pension payments regularly crediting her account.

*Did Mrs W fail to keep her details secure to such an extent that it could be termed gross negligence?*

I've set out above that in some circumstances, account holders can still be liable for unauthorised payments – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*." I've set out an outline of the test for gross negligence. And in all the circumstances of this complaint, I find that Mrs W was not guilty of gross negligence.

Virgin asked us how we believed the card and PIN had been compromised, and where Mrs W kept her debit card. Mrs W explained this – her card was on her table at the time of the sudden emergency of the fire, and her PIN and security information in a notebook. Mrs W had no reason to expect the sudden emergency of a fire that would burn down her house and cause them to be rescued and hospitalised. I considered that having a debit card on her table at home, and her PIN and security information in her diary also inside her home, did not count as gross negligence.

I also considered whether Mrs W ought to have notified Virgin that she'd lost her card in the fire, sooner than she did. The fire was on 1 March and Mrs W first contacted Virgin in late August. In other circumstances, this might appear suspicious. But in all the circumstances of this complaint, I accepted that it wasn't feasible for Mrs W to have contacted Virgin sooner. She'd been in hospitals and rehab, and was also coping with all the stress of the insurance claim, as well as the emotional impact of what had happened so suddenly and shockingly. So I accepted that Mrs W's delay in reporting the loss of her card and PIN to Virgin wasn't unreasonable in all the circumstances of this complaint.

*Who's liable for the disputed transactions?*

So I concluded that Mrs W didn't carry out the disputed transactions herself, and nor did she act with gross negligence relating to her card and PIN. So I said that I intended to order Virgin to refund Mrs W for all the disputed transactions from 1 March 2023, the date of the fire, to the date when the card and PIN were cancelled and the disputed transactions stopped. In line with normal practice, I said that I intended to order Virgin to add interest at 8% from the dates of the transactions to the date when it refunds her.

*Compensation for distress and inconvenience*

In addition to Mrs W's financial loss, I also considered what would be a fair and reasonable sum for Virgin to pay Mrs W for the distress and inconvenience it caused her.

In a case where a customer is a victim of fraud, much of the distress is caused by the unknown fraudster. And sadly, it's not possible to trace the fraudster and make them compensate Mrs W. So in looking at compensation for the upset Mrs W suffered, I looked only at to Virgin's actions, and how its customer service and the way it treated Mrs W would have added to the distress she felt at this difficult time.

The elements I considered here included:

1. Long call waits, and phone calls being cut off;
2. The adviser on 8 September disclosing to the care home employee that the adviser was from Virgin's fraud department.

Virgin paid Mrs W £50 on 20 September as an apology for these. I consider £50 was inadequate compensation for these two elements. I listened to the 8 September call. Mrs W understandably didn't know the postcode of her latest temporary address while her home was being rebuilt, so the phone was passed to a passing carer for them to provide that information only. I found the adviser's announcement to the carer that she was from Virgin's Fraud team to be inappropriate. The only information required from the carer was the care home's postcode. It was not necessary for the carer to know the caller's identity. To disclose that the call was from Virgin was effectively to disclose Mrs W's personal financial information. The adviser went further and announced that she was from a fraud team. This could have given the carer the completely wrong impression that Mrs W had done something wrong and was being investigated. This might have led to rumours and gossip at the home. I noted that when Mrs W objected straightaway, the adviser just said she hadn't been told not to. But this shouldn't have happened and it caused upset to Mrs W. The adviser could just have said she was from Mrs W's bank and that Mrs W didn't know the home's postcode.

So I found that £50 was reasonable for the long call waits and phone calls being cut off, but I considered Virgin should pay Mrs W £100 for its adviser telling the carer that the adviser was calling from Virgin's Fraud team.

3. Repeatedly sending replacement debit cards and PINs to Mrs W's registered home address. This was despite the fact it knew this had burned down and that Mrs W was living temporarily in a care home while her home was being rebuilt.

Virgin paid Mrs W £150 on 10 October, which I find was fair and reasonable.

4. I also took into account the fact that Virgin appeared throughout to have been disproportionately reluctant to accept that this was a genuine claim by Mrs W in extremely challenging circumstances. In Virgin's 13 October final response refusing to refund Mrs W, it stated baldly that it required a criminal prosecution before it would consider re-opening Mrs W's complaint. It also said that it hadn't had confirmation from the insurance company about the level of fire and damage. I found that this was unreasonable. There was no suggestion the fire had been started deliberately – still less that Mrs W had done so herself. And if Virgin was referring to a criminal prosecution of whatever fraudster took advantage of the burned home to steal Mrs W's card and security information, rather than arson, that wasn't reasonable either. It's notoriously difficult to find any fraudster. I found that Virgin treated Mrs W unfairly when it set these barriers to a positive outcome to Mrs W's claim, and this added to her distress. The test for a disputed transaction claim is whether Mrs W authorised the transactions herself, not whether someone else had been criminally prosecuted.
5. I also found that Virgin didn't act with kindness or approachability towards Mrs W. A house fire which burns out the home so that it's not habitable is, thankfully, a rare occurrence, and one where it would have been appropriate for Virgin advisers to show kindness. It failed to do so on any of the calls or communications I've seen. Mrs W had never made any other claim about disputed transactions on her account, and I considered her evident distress on the phone calls was clear. But none of the advisers on the calls I've listened to expressed sympathy for Mrs W and her terrible situation. Virgin's letters of 20 September, 10 October and 13 October also express no sympathy. One of the letters says *"as you are in temporary accommodation and*

*suffered injuries from the fire, I would like to make you aware that we have a Customer Advocacy team who are fully trained and specialise in supporting customers with understanding and managing their day-to-day banking.*" But this isn't the point. Mrs W wasn't unable to understand or manage her day-to-day banking. She was in a terrible situation and I found that Virgin's failure to deal with Mrs W in a kind, human, way, would significantly have added to the distress and inconvenience Mrs W suffered.

Taking all these factors into account, I found that a fair and reasonable amount for Virgin to pay Mrs W for distress and inconvenience would be:

- £50 for the long call waits and phone calls being cut off; and
- £100 for its adviser telling the carer that the adviser was calling from Virgin's Fraud team;
- £150 for repeatedly sending replacement cards and PINs to Mrs W's registered address when it knew this had burned down;
- £100 for setting unreasonable barriers for Mrs W to meet (criminal prosecution etc) and for Virgin's lack of sympathy or concern for Mrs W's personal situation.

This makes a total of £400. Virgin had paid Mrs W £200, so this would leave a further £200 still to pay for distress and inconvenience.

### **Responses to my provisional decision**

Mrs W replied that she was happy with the provisional decision. She said that Virgin said *"we are here to help you"* on its literature, but unfortunately on this occasion they failed to help her at all, quite the opposite. She said it was nearly always she who'd had to contact Virgin. She said she'd been with the bank since she was five years old, and she couldn't put in to words how Virgin had made her feel right from the start. She said that the reason she hadn't contacted Virgin before was that she and her husband had only gone to Rehab in the middle of August, and they then had fees to pay. That was when she saw her bank account balance was low. She said who on earth would lie over the severity of a fire in their home, and she just hoped that going forward any Virgin customer would be dealt with respect, not as a suspect as she had been.

Virgin accepted the provisional decision. It agreed to refund the disputed transactions from 1 March 2023 to 21 August 2023 totalling £16,355.65, and to pay interest at 8% until date of settlement. It also agreed to pay Mrs W a further payment of £200.00 for the distress and inconvenience caused.

### **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 reconsidered all the available evidence and arguments, and taking into account the responses to my provisional decision, I consider that my provisional decision was fair and reasonable in all the circumstances of this complaint.

### **My final decision**

My final decision is that I uphold Mrs W's complaint.

I order Clydesdale Bank Plc, trading as Virgin Money, to:

- Refund Mrs W with all the disputed transactions from 1 March 2023 to the date when the card and PIN were cancelled and there were no further disputed transactions;
- Pay Mrs W interest at 8% on the above refund, from the dates of the transactions to the date when Virgin pays her;
- If Virgin deducts tax from the interest on the award, it should provide Mrs W with a tax deduction certificate to show how much it has deducted, in order to allow Mrs W to reclaim the tax from HMRC if appropriate to her personal circumstances.
- Pay Mrs W a total of £400 for the distress and inconvenience it caused her. It has paid her £200 already, which would leave £200 still to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 3 April 2024.

Belinda Knight  
**Ombudsman**