

## **The complaint**

Mr K complains that Clydesdale Bank Plc trading as Virgin Money unfairly charged him cash advance fees and cash interest on payments he made to e-money accounts.

## **What happened**

Mr K says that he opened a credit card with Virgin Money in September 2019, and he has used the account in the same way for almost three years incurring no charges or having any issues before Virgin Money suddenly changed their terms. He says he made five payments to third party accounts in July and August 2022 totalling £39,480, but these incurred cash advance fees of £1,974 and a further £656.95 without appropriate pre-warning. He said Virgin Money also offered to increase his credit limit in July 2022 without him asking for this or needing this. Mr K said the terms regarding cash advances need to be properly explained and the email Virgin Money sent him was delivered to a mailbox for junk.

Mr K says that he had been charged interest despite the funds not being paid to his own third party e-money account as this was paid into another person's account. Mr K says that in July 2022, Virgin Money offered to increase his credit limit even without him asking for this or requiring a higher credit limit. Mr K made a complaint to Virgin Money.

Virgin Money did not uphold Mr K's complaint, but they refunded £100 of interest to his account as a gesture of goodwill. They said that their terms were updated in August 2021 which made it clear that a cash advance also includes adding money to a prepaid card, virtual card or e-money account. Virgin Money said in July 2022 they sent him a reminder about the terms. This confirmed some of the changes to the cash advance fees didn't happen, but they would be going live from July 2022. They said on page four of his statement, it displays the daily and annual interest rates and it was his responsibility to review his statements, and to let them know if he disagreed with any information on his statements. Virgin Money said that as there are many providers which offer e-money accounts, it would be impractical to include all brand named services in this category.

Mr K brought his complaint to our service. He said Virgin Money did not engage with further communication he sent them regarding his complaint. Our investigator did not uphold Mr K's complaint. She said Virgin Money fulfilled the requirement to send notification of changes to the terms and they sent a further communication before the delayed change came into effect. She said although the payments Mr K made weren't to his e-money account, the account Mr K sent the money to was an e-money account, irrespective of whose name it's in, and the terms don't specify that a cash advance would only be to the cardholder, so the payments were still classed as cash advances under the revised terms.

Mr K asked for an ombudsman to review his complaint. He made a number of points. In summary, he said Virgin Money did not respond to his complaint dated 4 January 2023. He said in a lay persons use of language, adding money to their own account would be termed as adding money, whereas paying or sending money to a third party is called paying or sending money, and not adding money to their account. He said the terms do not specify that a payment to a third party e-money account would be classed as a cash advance. He said cash advance terms need to be better explained, and he was never in need of a cash

advance or loans around the time that he had been charged the fees and interest.

### **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.

Firstly, I'm aware that I've only summarised Mr K's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I'd like to explain to Mr K that it is not within this service's remit to tell a business what their terms and conditions should say and how this is communicated to customers. Or to tell them to display warnings for any transactions which may incur a cash advance fee and cash interest. It would be the role of the regulator – the Financial Conduct Authority, who have the power to instruct Virgin Money to make changes to their policies and procedures, if necessary.

I asked Virgin Money why they didn't respond to Mr K's complaint in January 2023. They told me that they couldn't see any records to show Mr K had registered a second complaint in January 2023, as such no response was issued. While this would be disappointing for Mr K to hear, I'm not persuaded that this impacted his ability to bring his complaint to our service. As Virgin Money had already provided a final response to Mr K's original complaint, they are not obliged to respond to further points made by Mr K even if they would have received his second complaint when they had provided referral rights to our service.

I have looked at the email that Mr K received dated 24 June 2021. This sets out that his terms on the account are changing. It tells him the terms come into effect on 5 August 2021, so I'm satisfied that they provided the required notice here. The email also informs Mr K that if they don't hear from him, they'll assume he's happy with the new terms. It also mentions that if he is unsure of anything or has a question for them to check out their online help, and they provided a link for him to do this. I've copied the relevant new term below:

#### ***"Cash Advances***

*We're updating the definition of a Cash Advance. This still includes cash you withdraw using your credit card and buying foreign currency or traveller's cheques - but we've made it clear that a Cash Advance also includes:"*

*"adding money to a prepaid card, virtual card or e-money account".*

I've considered what Mr K has said about this wording. But I'm not persuaded the wording is misleading or inaccurate. The term *"adding money"* would be accurate in the sense that Mr K was adding money to a third party's e-money account. The wording used does not lead me to believe that a lay person would assume that *"adding money to a prepaid card, virtual card or e-money account"* would only be applicable to any e-money accounts in the Virgin Money account holders name only, so I can't agree with what Mr K has said about the wording here. And due to the multiple e-money accounts available with third party providers, it would be impractical for them to list the different e-money account providers in this section So I'm satisfied that Virgin Money were clear that adding money to an e-money account would be classed as a cash advance from 5 August 2021, even if Mr K was not in need of a cash advance or loan around the time that he had been charged the fees and interest.

Virgin Money sent Mr K an email dated 15 July 2022 and the email stated “*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 email reminded Mr K what was included in a cash advance such as adding money to an e-money account. It mentioned that this meant for some transactions that he may have made in the past, he could now see a cash advance fee on his statement and interest applied in line with the cash advance annual interest rate. There was also a section on the email if he was unsure of anything or had a question for them, then he could click on the link provided.

Looking at Mr K’s statements, he wasn’t charged a cash advance fee for adding money to an e-money account prior to the 15 July 2022 email they sent him. And they informed him that it would be live from that month. So when Mr K added money to an e-money account on 17 July 2022 – even though this wasn’t his account, then the cash advance fee and associated interest was applied. As Mr K was told about the change to the terms on 24 June 2021, then I’m satisfied that he had time to ask Virgin Money about the changes prior to them being implemented if he was unsure about the wording.

Mr K has said the email from Virgin Money was delivered to his junk mail. But I can’t hold Virgin Money responsible for this when they have emailed the registered contact email address. If Mr K was receiving marketing emails from Virgin Money which he considered to be junk, he would have been able to opt out of marketing at any time. I don’t doubt that Mr K didn’t open the email sent in July 2022 when it was delivered to him as Virgin Money have been able to send me information which shows that Mr K first opened this email on 23 September 2022 at 13:12pm. But as Virgin Money had sent Mr K an email reminding him about the cash advance fee and what transactions are included in this, then I can’t hold them responsible if Mr K did not view this email when it was delivered to him.

Virgin Money also made monthly statements available to Mr K. So he would have been able to see that adding money to an e-money account in July 2022 attracted a cash advance fee and interest. But despite this, he continued to add money into an e-money account after this statement. It would be Mr K’s responsibility to check his statements. If there was an issue receiving statements then it would be proportionate for him to contact Virgin Money about this, or if there was something wrong on his statements to contact them. So Mr K ought to have been aware that the two payments he made in July 2022 were classed as cash advance transactions. And despite his statement showing these as cash advances, he continued to make payments to e-money accounts after the statement was issued.

I’ve considered what Mr K has said about Virgin Money offering to increase his credit limit. But Mr K is not obliged to accept any credit limit increase offered. If he does not want Virgin Money to offer to increase his credit limit, then he may wish to contact them to see if he can opt out of credit limit increases. But it follows I don’t require Virgin Money to do anything further here.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 27 October 2023.

Gregory Sloanes  
**Ombudsman**