

The complaint

Mr R complains that Clydesdale Bank Plc trading as Virgin Money didn't do enough to protect him from the financial harm caused by a scam, or to help him recover the money once he'd reported the loss.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In February 2021, Mr R needed a loan to purchase a farm for £1,400,000. He contacted a company I'll refer to as "M", with which he'd had previous positive dealings and who he knew was regulated by the Financial Conduct Authority ("FCA"). M put Mr R in touch with a broker who was also regulated by the FCA and who put him in touch with another lender I'll refer to as "G". Mr R paid the broker £3,000 for the service he provided.

He then reviewed G's website, which looked professional and featured details of the loans they offered and where they were based. G told Mr R he'd need to pay £51,000 as a security bond, after which the loan would be approved within 3 to 5 working days. They asked for a copy of Mr R's ID, the bank address, details of where he wanted the loan to be paid, and a business plan (which cost £2,000) detailing how he planned to use the loan.

G told Mr R he could get a loan at 3% interest over 15 years, which he thought was reasonable. G advised that once the whole amount of the loan had been repaid, including interest, the security bond would be returned.

Mr R asked for a monthly breakdown of fees which he was told would be provided once the security bond had been paid. He sent the money to G on 2 June 2021, expecting the loan would be approved and the funds received. But the payment bounced, so Mr R contacted G and was given new account details, to which he sent the funds on 8 June 2021. Barclays flagged the second payment, but it was released following confirmation that the payment was genuine.

Mr R then received an invoice from G for £85,000 for an 'origination fee'. He became concerned because this fee had never been mentioned to him before. He contacted the broker who told him this was a scam and not to send any further funds.

All subsequent attempts to recover the funds were unsuccessful and Mr R lost all contact with G, having never received the loan money. He contacted Virgin Money because he felt it should have advised him of the risks involved when he made the payment. He said it should have blocked the payment and provided advice on advance fee scams which would have broken the spell of the scam.

But Barclays refused to refund the money he'd lost. It said there was no bank error in relation to the first payment attempt. It said the second payment was flagged, Mr R was contacted in line with its processes at the time and he confirmed the transaction was genuine. It explained that, since then, it has adopted a more robust line of questioning and

customers are asked to confirm not only the person processing the transaction but that they have performed due diligence in confirming the payee's identity. They are also warned of any potential risks where appropriate.

It said it had considered what would have happened if it had adopted the new process and, given the fact he'd contacted a trusted regulated broker who had referred him to one more suitable, he would still have instructed the payment to be processed. It pointed out he had no suspicions about G until February 2022 when the additional fee was requested and argued there would have been no difference had it told him to perform checks and provided a scam warning. Finally, it confirmed it did contact the beneficiary bank and no funds were recoverable.

Mr R wasn't satisfied and so he complained to this service. He explained he'd been unable to buy the farm and has had to sell cattle, sheep, and machinery because he's now unable to rent buildings. He wants Virgin Money to refund the money he lost, because it didn't block the payment or provide any scam advice. It said Virgin Money should have contacted him on both occasions to challenge the authenticity of the payment and asked relevant questions, and had it done so, he would have realised sooner that he was falling victim to an elaborate advance fee scam.

He said he authorised the payments on the false belief that he was paying a genuine company for a loan and that if Virgin Money had intervened and warned him about the risks, he would have realised that his situation contained the common hallmarks of a scam.

Mr R's representative said Virgin Money failed to intervene when he made the two payments despite clear red flags, which included the rapid depletion of funds in the account, multiple unusually high payments, a sudden increase in spending, a sudden change to the operation of the account and a new payee. Specifically, he made two high-value transactions in six days, yet in the three months prior to the scam, the account was used mainly for low value transaction, such as £56.85 and £48.81 to Sainsbury's. And at the time of the scam, the account balance decreased significantly from £56,366.58 on 1 June 2021 to £4,963.53 on 2 June 2021, which is irregular and should have raised concerns.

They explained Mr R should have been given a warning when he set up the new payee and immediately before he authorised the payment, and that there were no effective pop-up messages.

They said Virgin Money should have contacted Mr R when the payment bounced to tell him it had failed due to a closed account. And it should have contacted him and asked questions around why he was making the payment, how he found out about the company and whether he'd researched the company, and with that information it would have realised he was likely falling victim to an advance fee scam. They explained Mr R wasn't prompted to give false answers and so it would have had information to suggest G was a scam.

Virgin explained the first payment on 2 June 2021 was returned by the receiving bank and the second payment on 8 June 2021 was made via Swift transfer and it did call him to confirm the payment was genuine.

Responding to the complaint, Barclays said it did contact the beneficiary bank on 8 February 2022 when Mrs R reported the scam, but the account was closed. And it reiterated that, given the fact Mr R had contacted a trusted regulated broker who he'd used previously, he would have proceeded with the payment if it had intervened.

Our investigator didn't think the complaint should be upheld. He noted Mr R had initially spoke with M, who had recommended he should speak with a broker who referred him to G.

He felt that, given Mr R had proceeded on M's recommendation, he would probably have gone ahead in the face of further questioning from Barclays, so the loss still would've occurred.

Mr R has asked for the complaint to be reviewed by an Ombudsman. He's said he would expect Virgin to ask probing questions as to why he was making a payment to secure a loan, and that this would likely have prompted it to tell him he was falling victim to a scam.

His representative maintains the payments were unusual for the account as they were to a new international payee and the account balance had decreased significantly.

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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr R has lost money. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

I'm satisfied Mr R 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr R is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I have concerns around whether Mr R has shown G was operating a scam. But even if I accept this was a scam, I don't think an intervention from Barclays would have made a difference. I'll explain why.

Prevention

Although Mr R didn't intend his money to go to scammers, he did authorise the disputed payments. Barclays is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

I've thought about whether Barclays could have done more when Mr R made the payments, because it had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr R when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Mr R from financial harm due to fraud.

The second payment was blocked by Barclays systems, but it was released after a short call, during which Mr R's wife confirmed the payment was genuine. I've listened to the call

and the caller asked what the payment is for and Mr R's wife stated it was for a guarantee bond. The call handler noted this down and told her the payment will be processed. I've considered whether Barclays did enough during this call, and I don't think it did. This was a very large payment to a new international payee, and in the circumstances, I think the call handler should have asked more questions around the purpose of the payment.

Baring in mind the very high value of the payment, I would expect the call handler to have questioned Mr R's wife in great detail about the purpose of the payment. I would expect these questions to examine the purpose of the loan and how Mr R came into contact with G. And I would expect this to include close examination of Mr R's relationship with M and the broker and the circumstances of how he was introduced to G.

With this information, the call handler should then have discussed the nature of the checks Mr R had undertaken on M, the broker and G, and provided advice on further measures to ensure sound due diligence. And having given this robust advice, I would expect the call handler to describe the sorts of scams to look out for and to draw attention the fact the payment had the hallmarks of a specific type of scam.

However, our investigator has said he doesn't believe a call from Barclays would have made a difference to Mr R's decision to go ahead with the payment and I agree with that assessment. This is because even though there were fraud markers present, I'm satisfied that Mr R believed he was borrowing money from a legitimate company. He'd had previous dealings with M, which was a regulated company he trusted and who provided a referral to someone it believed would help him to find a suitable lender. From there Mr R had dealings with a broker who, again, was registered with the FCA and who he trusted because of the circumstances of the referral from M. So, there was no reason for Mr R to question that that either party was genuine.

At the time he made the payment, Mr R believed G was a legitimate lender and was impressed by the professional looking website and the communications and emails he'd received. Because it was based overseas, G wasn't registered with the FCA and there were no IOCSO warnings. And I haven't seen any evidence that there was any other information was available about G which would have dissuaded Mr R from making the payment in circumstances where he reasonably believed it was a genuine company. Therefore, while I don't think Barclays did enough during the call, I don't think this represented a missed opportunity to provide a warning in circumstances when to do so might have prevented Mr R's loss, so I can't fairly direct it to do anything further.

I'm sorry to hear Mr R has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Barclays is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 October 2023.

Carolyn Bonnell
Ombudsman