

## **The complaint**

Miss G complains that Clydesdale Bank Plc (“Clydesdale”) failed to inform her about chargeback timescales and won’t refund £5,000 she says she lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Clydesdale could have delayed the payments while concerns about the payee were discussed with Miss G.
- So, I would need to be satisfied that the merchant (“E”) was operating a scam at the time the disputed payment was made in November 2020 in order to expect Clydesdale to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants) may use sales methods or communication styles that can be seen to be unfair. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for fraud.
- I’ve consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), as well as the FCA’s own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about E at the time these payments were made. In fact, the broker was regulated by the Cyprus Securities and Exchange Commission (CySEC) at the time and therefore authorised by the Financial Conduct Authority (FCA) in the UK under the Temporary Permission Regime.
- So, overall I’m not persuaded the investment firm can be said to have been fraudulent or operating a scam at the time in question. As a result, Clydesdale’s obligation to intervene wasn’t triggered. There was the inevitable risk of Miss G’s investments returning a loss based on market performance. But Clydesdale isn’t required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don’t consider it acted unfairly by failing to intervene in these payments.

- I appreciate that the FCA stopped E from offering CFD's to UK customers and issued a supervisory notice on 14 May 2021 due to its concerning sales and marketing practices. And I also understand that some of E's senior representatives have since been arrested. But even if I were to accept that E was likely operating a scam at the time, and that Clydesdale should have intervened to ask questions about the payments, there would have been very little to suggest that the investment firm was scamming Miss G, given it was regulated at the relevant time. So, any warning from Clydesdale to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have ultimately prevented the payments from being made.
- Miss G is also unhappy because she says that Clydesdale didn't manage her expectations around the 120-day timeframe she had in which to provide evidence to submit a chargeback claim. She reported the fraud to Clydesdale on 19 November 2020, at which point the bank asked her to send over any evidence she had to support the claim. However, by the time she sent the evidence back to Clydesdale, the 120-day time limit had elapsed, and the bank refused to pursue a chargeback claim.
- I appreciate Miss G may not have been informed of the 120-day timeframe. But during the call she had with Clydesdale on 19 November 2020, I can see that it told her she wouldn't be eligible to make a chargeback claim with Mastercard in any event, as the payment was associated with an investment. This is correct, as Mastercard's scheme does not consider claims about being unable to withdraw funds from trading accounts, and the scheme doesn't provide dispute resolution options for victims of alleged fraud. I understand that Clydesdale nonetheless said it would review any evidence Miss G had in any event. But given there was no reasonable prospect of a chargeback succeeding in these circumstances, I don't think the bank acted unfairly by failing to inform Miss G of the 120-day timeframe, as it had already managed her expectations by saying a chargeback would not be possible.
- Finally, I'm also aware that Miss G raised concerns about Clydesdale's handling of her fraud claim and subsequent complaint. And I acknowledge that it could've handled things better, such as the time it took to conclude its investigation, which the bank itself has conceded in its final response. However, Clydesdale has already offered £100 compensation in recognition of its poor handling of matters. I understand the experience would have been frustrating for Miss G, but having considered the likely impact of Clydesdale's handling, I'm satisfied that £100 represents fair compensation in these circumstances. So, I won't be asking it to make any further award.

I appreciate this may come as a disappointment to Miss G, and I'm sorry to hear about the money she has lost. However, I'm not persuaded there is any fair and reasonable basis in which to hold Clydesdale responsible for her loss in these circumstances.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 16 October 2023.

Jack Ferris  
**Ombudsman**