

## **The complaint**

A company ("S"), complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") hasn't protected it from losing money to a scam.

Mr and Mrs W – directors of S – bring the complaint on S's behalf.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, in 2021 S made some payments to a company ("J") which it thought was legitimate. The payments were instructed by S on the following dates for the following amounts.

26 March 2021	£4,578.60
6 April 2021	£1,500
7 April 2021	£500
21 August 2021	£7,619.68
21 August 2021	£7,619.68

S subsequently considered it had been scammed by J and got in touch with Virgin Money. Ultimately, Virgin Money didn't reimburse S's funds, and S referred its complaint about Virgin Money to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent S and Virgin Money my provisional decision earlier this month explaining why I wasn't intending to uphold this complaint. I said that before finalising my decision, I'd consider any further comments from the parties so long as I received them by 20 September 2023. To date I have received no reply from either party to my provisional decision, and I'm now ready to explain my final 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've reached the same conclusions as in my provisional decision and for the same reasons. I've explained why again below.

A first consideration in a case like this would normally be: was J operating a scam as S alleges? This often wouldn't, in a case like this, be a straightforward question to address. This is because to be satisfied S fell victim to fraud, I'd need to be persuaded J had a settled intention to scam S; and it would be difficult to know what was in the mind of J when it agreed to carry out the services for S.

Here, though, I'm satisfied that I don't need to answer the question of whether or not S was most likely scammed. This is because I don't think I could uphold the complaint either way, for the following reasons.

S has referred to the Contingent Reimbursement Model (CRM) code. This was introduced by the Lending Standards Board in 2019. It is one of the more recent initiatives in response to the increasing amount of fraud and scams. Generally, where the CRM code does apply (which is not everywhere), it requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. The CRM code, however, does not cover private civil disputes. However, even if I accepted S's case here isn't about a private civil dispute but about it actually having been scammed by J, I *still* couldn't ask Virgin Money to refund S under the CRM code. This is because the CRM code is voluntary. And whilst Virgin Money is covered under the CRM code from 28 February 2022, this isn't retrospective. So, I wouldn't be able to reasonably tell Virgin Money to refund S's payments (made in 2021) on the basis of the CRM code.

The CRM code, however, didn't and doesn't replace other various and long-standing obligations payment service providers like Virgin Money have to be alert to fraud and scams and to act in their customers' best interests. But these obligations are predicated on there having been a fraud or scam. So, if J was *not* operating a scam, Virgin Money had no obligation to prevent S's payments to J, and so I couldn't reasonably hold it responsible for not preventing the payments.

If, on the other hand, J was operating a scam, I'm satisfied I still couldn't reasonably uphold the complaint. I say this because:

- I'm satisfied S authorised the relevant payments. Virgin Money would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, S would be presumed liable for the loss in the first instance, in circumstances where it authorised the payments. That said, as a matter of good industry practice Virgin Money should have taken proactive steps to identify and help prevent transactions – particularly unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Virgin Money to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.
- In this case, I couldn't reasonably say Virgin Money ought to have been obliged to intervene in S's first payment of £4,578.60. S is, after all, a limited company; it had, in its account history, made a larger payment than this. And I can't say this instruction would have been unusual enough to say it ought to have caught Virgin Money's attention before it followed S's instructions to send it.
- The second and third payments (listed above) would likely have not concerned Virgin Money either, being made to a, by now, established payee, and for lesser amounts, without anything else remarkable or suspicious about them.
- The fourth and fifth payments were larger. And they were both for the same amount. But by now, S's previous account activity would not only have shown previous payments for the £4,578.68 (and above), but also an unrelated payment of £20,000 in June 2021. So, I'm not persuaded I can reasonably say the amount of these two final payments to J, taken singularly or together, ought reasonably to have looked sufficiently unusual or suspicious to Virgin Money in order for it to have been *obliged* to have paused them, pending enquiries with S, before following S's instructions to send them.

- Given the fourth and fifth payments to J were for exactly the same amount, I have nevertheless, for the sake of completeness, thought about what I think most likely would have happened if Virgin Money had paused these payments, pending enquiries with S, to check S wasn't at risk of financial harm from fraud or a scam. I am not persuaded, though, that even this is likely to have made a difference. *If J was a scam*, I don't think Virgin Money could reasonably have known this. I think Virgin Money could, at best, have been expected to warn S about the risk of fraud and scams and the importance of undertaking adequate research and checks before making payments like this. However, whilst I understand S's dealings with J (by now in August 2021) had not exactly been plain sailing, J had, after all, been approved and recommended by appropriate bodies, which I understand is at least part of the reason S decided to do business with them in the first place. I don't think it's likely reasonable intervention from Virgin Money is likely to have changed S's mind to send these further payments in these circumstances.
- If J was operating a scam, therefore, I'm satisfied I couldn't fairly say Virgin Money unreasonably missed an opportunity to prevent the payments (nor therefore S's loss) – because I think it's most likely if Virgin Money had intervened this wouldn't have prevented S from making the payments anyway.

I'm also not persuaded Virgin Money can be fairly and reasonably held responsible for S's failure to recover the payments after they were made. Even if I assumed in S's favour that J was operating a scam, it is my understanding that S didn't tell Virgin Money until 2022 that it thought it had been scammed. This is some time after the payments. And in my experience, it would be uncommon (if I assume this was a scam) for the funds to be available for recovery from the recipient account by then. Bearing this in mind, alongside that Virgin Money, in order to obtain co-operation from the recipient bank, would have needed to have persuaded it S had been scammed rather than this being a civil dispute, I think the chances of the funds being recoverable by the time S contacted Virgin Money were basically zero.

So, in summary, I don't think I can tell Virgin Money to reimburse S. If S wasn't scammed, there'd be no obligations on Virgin Money to have done anything. And even if S was scammed, it wouldn't be covered under the CRM code, and I wouldn't reasonably expect Virgin Money to have been able to prevent the payments or to have recovered them.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S and S to accept or reject my decision before 19 October 2023.

Neil Bridge  
**Ombudsman**