

The complaint

DL, a limited company, complains that Clydesdale Bank Plc trading as Virgin Money did not refund a transaction it lost as part of a scam.

Mr D is the director of DL and facilitated the payment on its behalf. I'll refer to both DL and Mr D within this decision.

What happened

Mr D was looking to purchase property and found a development he was happy to invest in. He received photos, plans and paperwork for the property and once he was satisfied with this, he paid a £5,000 reservation fee on 9 January 2018 from DL's account with Virgin Money via online banking. However, soon after this, the communication between himself and the estate agent slowed down and he later found they did not own the property or have the relevant planning permission.

Mr D sent a complaint letter to Virgin Money which they received on 24 January 2023. Virgin Money responded on 23 February 2023 and explained that as the payment was authorised and the amount was not out of character when compared to the normal account activity, they didn't agree they should refund the £5,000.

DL referred the complaint to our service. Our Investigator looked into it and explained that the Contingent Reimbursement Model ("CRM") code did not apply to the transaction, as it occurred before the code was set up. And when they compared the £5,000 payment to DL's normal account activity, they didn't think it looked so unusual to have warranted intervention by Virgin Money before it was processed. Finally, they felt that Mr D had used DL's funds to make a personal investment, meaning the loss was Mr D's alone. So, they didn't agree DL had suffered a financial loss as a result.

Mr D, on behalf of DL, disagreed with the findings. He felt that the purchase was unusual when compared with the regular account activity and that there should have been some form of intervention by Virgin Money. And he pointed out that as he is the owner of DL, where the scam payment originated from did not matter, as he has still suffered a loss overall.

As an informal agreement could not be reached, the complaint has been passed to me for a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the

time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr D, on behalf of DL, authorised the payment of £5,000 as he believed it was part of a legitimate property purchase. So, while I recognise that DL didn't intend the money to go to scammers, the starting position in law is that Virgin Money was obliged to follow DL's instruction and process the payment. Because of this, DL is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Virgin Money did enough to try to keep DL's account safe.

To do this, I've looked over DL's bank statements and compared the transaction of £5,000 to the regular account activity. Generally speaking, business accounts tend to deal with higher value transactions, and I can see there were a number of high value withdrawals on the account. Though I do acknowledge Mr D has said these were largely dividend withdrawals to another internal account. There were other higher value payments to His Majesty's Revenue and Customs and other transfers for closer to £2,000. On balance, having considered the account activity as a whole, I just don't think the transaction in question was so unusual to have warranted intervention from Virgin Money prior to it being processed. So, I don't think it has missed an opportunity to reveal the scam.

I've seen evidence showing that when DL raised a complaint with Virgin Money about the scam payment, there were no longer any funds remaining in the receiving bank account. So, there was nothing further they could do to try and recover the funds once they were aware of the scam.

I appreciate that there is a disagreement over whether or not DL itself, which is the entity that has brought this complaint, has suffered a loss or if the loss actually sits with Mr D. However, as I don't think that Virgin Money needs to refund the £5,000, I don't think this needs to be discussed in further detail within this decision.

Having carefully considered everything available to me, I don't think Virgin Money needs to refund DL with the £5,000.

My final decision

I do not uphold DL's complaint against Clydesdale Bank Plc trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask DL to accept or reject my decision before 29 December 2023.

Rebecca Norris
Ombudsman