

The complaint

Mr and Mrs T complain that Clydesdale Bank Plc trading as Virgin Money didn't do enough to prevent them losing money to a scam.

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 November 2016 Mr T attended a branch and instructed an international payment of just under £100,000 from the Clydesdale joint account that he held with Mrs T to fund an investment with a firm I'll refer to as 'S'. The payment was sent to an account held internationally to fund an investment with a firm I'll refer to as 'S'. Mr and Mrs T have provided evidence of a loan agreement they'd entered into with S which set out the returns they could expect. I understand they'd been introduced to the investment by a former colleague of Mr T's.

In 2022 Mr and Mrs T complained to Clydesdale. Their letter of complaint included that:

- Following their investment they'd received monthly payments for 9 months.
- In September 2017 they were told that S had banking issues.
- The Swiss Regulatory Body (FINMA) launched an investigation into S and froze their accounts.
- In March 2019 they were told that FINMA had initiated bankruptcy proceedings against S. The FINMA appointed liquidator expressed the view that S was likely a ponzi scheme.
- Throughout 2020 S' representatives made promises to repay but nothing was forthcoming.
- Mr and Mrs T believe Clydesdale failed in their duty of care with regards to the payment and would like to be reimbursed.

Clydesdale didn't agree that they'd done anything wrong and the matter was referred to our service. One of our Investigators considered the complaint and didn't recommend it should be upheld. She said she didn't think Clydesdale reasonably could have said or done anything at the time that would have resulted in the discovery of the scam.

Mr and Mrs T don't agree and have asked for an Ombudsman to review their complaint.

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 outcome as our Investigator and for largely the same reasons. I know this will be disappointing for Mr and Mrs T, so I'll explain why.

Mr and Mrs T accept that they instructed the payment in dispute that went to S. And there is no obligation for Clydesdale to intervene in authorised payments unless there is a fraud or scam to protect against. It's not entirely clear whether S were operating a scam at the time of the payment in question, particularly as Mr and Mrs T's initial submissions say that S were regulated by FINMA at the time, and they went on to receive payments for a number of months.

But I don't think I need to make a finding as to whether S were operating a scam to decide this complaint. Because even if they were, I agree with our Investigator that I don't think any intervention that could reasonably have been expected at the time would have made a difference. I appreciate Mr and Mrs T feel this outcome is based on assumptions. But inevitably, to reach a conclusion, a judgement has to be made as to what I think would most likely have happened, given all the available evidence and arguments.

Both parties agree that the payment was instructed in branch. Mrs T says that she wasn't asked any questions beyond filling in the 'purpose of payment' on the International Payment Form – the form itself is signed by Mr T. Clydesdale say that due to the passage of time they haven't been able to provide further evidence of any interaction in the branch.

I appreciate Mr and Mrs T's position is that they weren't asked questions, and they should have been. But it's important to note that whilst the obligations to be alert to fraud and scams are longstanding, it wouldn't be fair for me to apply today's standards and expectations to a payment made in 2016. So even if I were to accept that there was a failure by Clydesdale in not asking questions, that wouldn't alone be enough for me to uphold this complaint. I'd still need to be persuaded that the error in question had caused the loss. And I agree with our Investigator that even if Clydesdale had probed, asked questions, and provided a warning about the potential for a scam, I don't think this would have made a difference to Mr and Mrs T instructing the payment.

It's clear from the timeline above that the alleged impropriety from S took years to come to light. I've searched and haven't been able to find any warnings from around the time of the payment that might have indicated there was a potential problem with S. So even if Clydesdale had provided detailed warnings, and this had prompted Mr and Mrs T to do further research, I don't think there was anything they would have found which would have deterred them from making the payment. Particularly as this investment opportunity came about through someone they had an existing personal connection with.

I've considered Mr and Mrs T's points that the payment was going to a different country to where S were based. But it isn't unusual for a firm to have accounts in numerous territories. And I don't agree this is something that would have made a material difference at the time. The funds clearly credited the intended account as the initial returns at least were paid.

Mr and Mrs T have also highlighted that a previous payment they'd made (a few weeks earlier) and also intended for S, had been returned. They think this should have put Clydesdale on notice of a potential problem. The evidence I've seen from Clydesdale shows that the payment was returned because there was 'no account'. I don't agree that anything Clydesdale were told in relation to that payment, means anything they might have done in relation to the second payment would have made a difference. I don't think anything they received in relation to the returned payment was suspicious or indicative of a potential scam.

Mrs T says that she was vulnerable at the time due to her personal circumstances. I'm sorry to hear of Mrs T's difficult situation at the time. But the evidence suggests that either Mr T alone or both Mr and Mrs T together instructed the payment. And I've not seen anything which makes me think Clydesdale did anything wrong based on Mrs T's vulnerability at the time.

For completeness, given what is now known about the bankruptcy proceedings against S, I don't think there was anything Clydesdale did or didn't do which impacted whether a successful recovery could have been made once the matter was reported to them.

I'm sorry to hear that Mr and Mrs T have lost so much money. But as there isn't sufficient evidence to persuade me that this is something Clydesdale are responsible for, there isn't a reasonable basis upon which I can direct them to do more to resolve this complaint.

My final decision

For the reasons 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 T and Mrs T to accept or reject my decision before 21 September 2023.

Richard Annandale
Ombudsman