

## The complaint

Mr D is unhappy Clydesdale Bank Plc, trading as Virgin Money, will not refund the money he lost as the result of an authorised push payment (APP) scam.

## What happened

Both parties are familiar with the details of the scam so I will not repeat them in full here. In summary, Mr D sent the following five faster payments totalling £111,000 in order to invest in company P:

payment	date	value, £
1	07/03/2021	27,000
2	08/03/2021	27,000
3	09/03/2021	26,000
4	09/09/2021	20,000
5	10/09/2021	11,000

Mr D was introduced to the opportunity by a financial adviser he had known for many years. He carried out his own extensive due diligence prior to investing. The financial adviser also met with a director of company P to verify the opportunity and exactly how the investment would work. After making payments 1-3 Mr D received ongoing updates from company P and this led to him making payments 4 and 5. In early 2022 Mr D started to receive some requests from company P that concerned him, but he took the requested actions after checking with the financial adviser and other investors.

The police contacted Mr D in November 2022 as there was a pending investigation into company P. Mr D then contacted Virgin Money to report the suspected fraud. This was on 30 November 2022. Virgin Money rejected Mr D's refund claim saying even if the transactions had flagged for further authorisation it believed Mr D would have gone ahead.

Our investigator did not uphold Mr D's complaint. He said the payments were not out of character for Mr D's account and he did not find Virgin Money had failed to treat Mr D fairly.

Mr D disagreed and asked for an ombudsman's review. In summary, he said the payments were over £10,000 and so should have been checked; other high value payments he made were largely to another account in his name so these were different; Virgin Money has repaid other victims of the same fraud who invested much less so it is not treating him fairly; and he is being penalised as Virgin Money had not signed up to the Contingent Reimbursement Model (CRM) code then – but that aside, it ought to have protected him under the relevant regulations and guidelines in place at the time.

I reached the same conclusion as the investigator but made different findings so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to submit any comments or new information by 21 November 2023.

*Extract from my provisional decision*

*There's no dispute that Mr D made and authorised the payments. Mr D knew why he was making the payments. At the stage he was making these payments, he believed he was investing in company P. I don't dispute Mr D was scammed and he wasn't making the payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.*

*It's also accepted that Virgin Money has an obligation to follow Mr D's instructions. So in the first instance Mr D is presumed liable for his losses. But there are other factors that must be taken into account.*

*To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments pre-date when Virgin Money signed up to the CRM code its principles do not apply in this case. This means I think that Virgin Money should have:*

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

*In this case I currently do not think Virgin Money ought to be held liable for the transactions. I'll explain why.*

*I think as the first payment was for £27,000 and to a new payee Virgin Money ought to have intervened and contacted Mr D to check it. I accept Mr D had made debit payments of similar values, but these were predominantly to an account in his own name.*

*However, the outcome to this complaint does not turn on this finding as what I need to decide is if Virgin Money's intervention would have made a difference to Mr D's decision to make the payment(s). On balance I don't think it would. I say this based on the questions Virgin Money should have asked given the features of investment scams at the time – but taking into account it had no duty to give investment advice.*

*At this time investment scams were often characterised by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now' and rates of return that were too good to be true. So if Virgin Money had spoken to Mr D I would have expected it to ask a proportionate level of questions to understand the context surrounding the first payment – for example, how he had come across the investment opportunity, the mechanics of the opportunity, and what due diligence he had done.*

*I can see from Mr D's testimony when he reported the scam to Virgin Money that he had thoroughly researched the opportunity. He had learnt about it through a financial adviser he had been associated with for over 25 years. And the adviser had met directly with the director of company P to ensure the opportunity was legitimate and fully understood by them. Mr D had also researched the director's background himself. He had then asked the financial adviser to check the payment details he was sent by email, prior to making the first*

*payment. I have seen no evidence there was any urgency placed on Mr D to invest quickly.*

*So I cannot see a conversation with Mr D would have revealed any of the characteristics associated with an investment scam. And from what I can see there were no public warnings about company P at the time of the payments that could have alerted Virgin Money that there was a risk of financial harm to Mr D.*

*So, in the round, I don't think a proportionate level of questioning by Virgin Money would have led it to conclude Mr D was at risk of financial harm and that it should not process the payment(s).*

*I have then thought about whether Virgin Money did what this service would expect to recover the funds once Mr D reported it in 2022. Given the length of time that had passed I think that recovery from the receiving bank was unlikely, but I can see Virgin Money promptly contacted the receiving bank and was told no funds remained.*

*I'm sorry Mr D lost a very significant amount of money as a result of a complex and sophisticated scam. I can see this has been a stressful experience for him. But for the reasons I've explained, I don't think Virgin Money, who had no involvement in the scam itself, can be fairly held liable for his losses.*

Mr D responded to my provisional decision. He said he is distraught Virgin Money had not signed up to the CRM code at the time. This scam has destroyed his personal life and marriage. He argues if Virgin Money had investigated at the time of the first payment it might have discovered this was a scam. He feels it would be fair if he got £111,000 back from Virgin Money due to its error, in the same way his friend got £20,000 back. As the bank did not follow the protocols as expected (that is, having systems in place to look out for unusual transactions and in some cases declining to make payments altogether) he would hope for a full refund and, if not, as a gesture of goodwill on Virgin Money's behalf the first £27,000 payment.

He also raised a query about the receiving bank which I can see the investigator has responded to.

Virgin Money did not respond.

### **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.

I have thought carefully about Mr D's comments but they do not change my conclusion. Mr D has again referenced a related claim where the bank refunded the victim, saying he must also receive a refund to be treated fairly. As I said previously, I can only comment here on the merits of this complaint, but I would add - to hopefully give Mr D some context - that whilst we would always expect the bank to adopt the same approach for assessing fraud claims this may not result in the same outcome, even for the same scam.

Mr D argues as Virgin Money did not intervene it made an error and so he should receive a refund. But our approach in cases like this is to look at what would most likely have happened had the bank intervened – in other words, would it have prevented the financial loss?

And for all the reasons set out above in my provisional decision I do not find that a proportionate intervention would have stopped Mr D making the payment(s). I would expect

the bank to ask certain key questions as I described above, not to interrogate Mr D or scrutinise the worth of the investment opportunity. And as I said, I think he would have provided plausible answers to a sufficient line of questioning, so it would have been reasonable for the bank to release the payment(s). I would add it was never my finding that the characteristics of the payment(s) were such that Virgin Money ought to have decline to make the payments(s) altogether.

It follows my decision is that I cannot fairly hold Virgin Money liable for Mr D's losses. I remain very sorry he fell victim to this cruel scam, and that he has suffered so much as a result.

### **My final decision**

I am not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 December 2023.

Rebecca Connelley  
**Ombudsman**