

The complaint

Mrs I complains about Clydesdale Bank Plc (trading as Virgin Money).

She says that she was the victim of a scam run by a company called 'O' and that Clydesdale didn't do enough to protect her from losing her money to the scam.

What happened

In 2016, Mrs I was browsing through her emails when she saw an advert offering binary options from 'O'. Mrs I visited O's website which she found professional and informative and did some research online where she saw that O was registered and there were no negative reviews.

Mrs I completed an enquiry from, and was shortly contacted by a representative of O. She made an initial investment of £250, followed by several more payments, while also receiving some payments back from O too.

In January 2017, Mrs O decided that she did not want to make any further investments and wanted to withdraw the money she had left in the account with O. Mrs I received £56,139.37.

In total, Mrs I paid O £147,913.90, and received payments from O of £62,217.09.

Mrs I was disappointed – she thought that she had made more money than this and felt that she had been scammed. She says that had Clydesdale intervened and warned her, then she would not have lost the money.

Mrs I reported that she felt she has been scammed to Clydesdale on 11 August 2022 and made a complaint.

Clydesdale didn't uphold her complaint.

Unhappy, Mrs I brought her complaint to this Service. Our Investigator looked into things but didn't uphold the complaint. They said that the first two payments Mrs I made were out of our Service's jurisdiction due to how long ago they were made, which Mrs I accepted. They also said they felt that there was not enough evidence to persuade them Mrs I had been scammed, and it was more likely that she had made an investment which didn't turn out to be as profitable as she had hoped.

Mrs I asked for an Ombudsman to review her complaint, so it has been passed to me to make 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.

Having done so, I've decided not to uphold this complaint, for broadly the same reasons as our Investigator. I know that this will be disappointing for Mrs I, so I'll explain why.

Not every complaint referred to us and categorised as a binary options or forex trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some binary options platforms may have promoted these products—which are unregulated—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e., dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers (“PSPs”) have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the Financial Conduct Authority (“FCA”) has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor’s 2012 consultation paper on investment fraud).

So, the first question to resolve is whether O was a fraudster – and if Mrs I was the victim of a scam.

Having examined the information I’ve been provided with – I am not sufficiently persuaded that Mrs I has been the victim of a scam for the following reasons.

- Mrs I was able to instruct O to withdraw funds from the investment – and received a significant sum of money – albeit not as much as she had put in
- Mr I paid into the investment over a period of five months, and received credits during this time – and after seven months was paid £56,139.37 when she no longer wanted to continue the relationship. I think it unlikely that a scammer would pay Mrs I this significant return at the end of the relationship rather than disappear with the money Mrs I had paid as quickly as possible
- When Mrs I told O that she wanted to end her involvement with the investment, O paid Mrs I the money that remained in her account without delay, or pressure to continue to invest
- Mrs I made the payments directly to O, rather than Mrs I being asked to fund the investment via other means such as cryptocurrency

I have also paid particular attention to the financial Conduct Authority’s (FCA) warning list and the International Organisation of Securities Commission (IOSCO) website to see if O has been listed as a scam by either organisation – but O isn’t listed on either. If O was operating as a scam, then I think it is likely that it would be listed as such.

I understand that Mrs I’s representatives feel that O was a scammer – and have provided information which was provided by Australia, Canada and New Zealand which provided warnings to their residents that O was not authorised in these countries but was still soliciting residents to invest.

I have considered what Mrs I’s representatives have said here – but these warnings don’t show for certain that O was operating as a scam – only that it was not licenced to provide services in these countries.

I also think that this information would have been very difficult for Clydesdale to discover when Mrs I was making the payments. At the time, Clydesdale was expected to comply with the Payment Services Regulations (PSR’s) 2009 – which only gave limited guidance on how

to research potential scams. And as I have explained above, O has never appeared on any warnings provided by the IOSCO or FCA.

Miss I's representatives have also provided copies of reviews from other consumers who had invested with O and lost money as a result. But again, these reviews do not show that O was a scammer – but that individuals lost money. And as I have previously said, I think it is likely that O was offering high risk investments, so it is not unusual for individuals to have lost money and feel aggrieved about this. And again, I do not think that Clydesdale would have been able to discover this information when Mrs I was instructing it to make the payments.

To conclude. I'm not persuaded that O was operating a scam given high the legal threshold or burden of proof for fraud. And taking everything into consideration, I'm not persuaded that O was in fact a fraudulent company.

As explained previously, Clydesdale's duty is to guard against the risk of fraud and scams; it is not to give investment advice or protect consumers from bad bargains. Ultimately, I think it's most likely Mrs I paid a legitimate company. To that end, I cannot safely conclude that the bank acted unfairly or unreasonably by not intervening to ask questions about the transactions before processing them.

I empathise with the fact Mrs I invested significant sums into a product that hasn't gone to plan. But this does appear to be a legitimate investment opportunity that has gone wrong, rather than an investment scam.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 17 November 2023.

Claire Pugh
Ombudsman