

The complaint

Mrs B complains that Clydesdale Bank Plc trading as Virgin Money won't refund money she says she lost to a scam.

In making this complaint Mrs B is represented by a third-party, but for the ease of reading I'll refer to Mrs B throughout this decision

What happened

The circumstances of this complaint are well known to both parties, so I have only summarised the background here.

In 2018, Mrs B was contacted by a third-party about an investment opportunity offered by a company I'll call W. She subsequently invested £10,000 in December 2018 using funds she held in a Virgin Money Individual Savings Account (ISA).

Mrs B received two interest payments in 2019 but no further interest payments were received. Mrs B complained to Virgin Money in October 2022 as she believed she had been scammed. She said Virgin Money should have intervened when she made the payment as it was large payment and out of character with her normal account usage.

Virgin Money looked into the matter but didn't uphold the complaint. It said that when Mrs B made her payment, W was a genuine company but had later gone into administration.

Mrs B didn't agree and referred the complaint to this service. One of our investigators looked into it. He accepted that Mrs B's payment was unusual based on her normal account activity. But he said - even if Virgin Money had intervened, he didn't think it would have prevented Mrs B from making the payment based on the information available about W at the time.

Mrs B replied in detail as she didn't agree with the outcome. The investigator considered what Mrs B had said but he didn't think this altered the outcome he had reached. He said that when Mrs B made the payment there were no significant warnings that W wasn't a genuine investment company. He maintained that even if Virgin Money had intervened, Mrs B would still have made the payment.

As agreement wasn't reached, Mrs B asked for her complaint to be reviewed by an ombudsman. The complaint was passed to me to decide, and I issued a provisional decision.

What I said in my provisional decision dated 20 October 2023

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'm not intending to uphold this complaint. I realise this will come as a disappointment to Mrs B. But I don't find that Virgin Money has acted unfairly or unreasonably. I'll explain why.

The starting position in law is that Mrs B is responsible for transactions she's carried out

herself. And Mrs B hasn't disputed authorising the ISA transfer. Rather, she says Virgin Money should have intervened before allowing the transfer to be processed given it was unusual activity for her account.

And taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I accept that Virgin Money should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

So, the starting point for me is to consider whether Mrs B's ISA transfer instruction was particularly unusual or uncharacteristic, when looking at normal payments on her account.

Our investigator said he thought Mrs B's payment was unusual based on her normal account activity. But the account Mrs B held was an ISA, so I wouldn't expect to see the same level of transactions on this type of account as you might expect on a current account (for example). And Mrs B was transferring her ISA to a new provider, and I don't consider it unusual for ISA investors to move part or all of their ISA around to benefit from better interest rates.

And in this case, it wasn't Virgin Money's role to give investment advice and it had no reason to be concerned about the transfer of the ISA, given there doesn't seem to be any concerns about W at that time. Overall, I don't find that Mrs B's payment instruction was unusual to the extent that Virgin Money was required to intervene before processing the transfer.

I've thought about whether Virgin Money had the opportunity to recover the funds for Mrs B. But I think it's unlikely any attempts to recover the money would have been successful given the time that has elapsed since the payment was made and when Mrs B raised her complaint with Virgin Money – particularly as W went into liquidation in the interim period. So, I'm not persuaded that Virgin Money did anything wrong when it didn't attempt to recover the funds.

In summary, I have a great deal of sympathy with Mrs B, she has lost a considerable amount of money. But it would only be fair for me to direct Virgin Money to refund her loss if I thought it was responsible – and I don't find this to be the case. As such, I cannot fairly and reasonably hold Virgin Money liable in these circumstances. It follows that I don't intend to tell Virgin Money to take any further action in respect of this 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.

I invited both parties to provide any further comments or evidence they wanted me to consider before I reached a final decision. But neither party has provided further comments or evidence. So, I see no reason to depart from my provisional decision as set out above.

My final decision

For the reasons given above (and in my provisional decision), I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 December 2023.

Sandra Greene
Ombudsman