

The complaint

Mr C complains that Clydesdale Bank Plc (trading as “Virgin Money”) won’t refund over £17,000 he says he lost to two separate investment scams between October 2021 and January 2022.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr C fell victim to an investment scam after he was contacted by a broker (the scammer) from ‘*SwissUnion*’. They encouraged him to invest and instructed him to open a cryptocurrency account with Swissborg, where he then sent several payments over the course of three months totalling over £17,000. After his funds were paid into his crypto account, they were subsequently transferred on to the scammer. He realised he had been scammed when the broker stopped responding to him and he was unable to withdraw his funds.

Mr C said he also fell victim to another investment scam around the same time with a different broker called ‘*Worldtradecentre*’, which led to him making a €250 payment to vikingex.com.

Mr C reported the fraud to Virgin Money, but it refused to refund the money he had lost as he had authorised the transactions. Our investigator also didn’t uphold the complaint. He noted that Virgin Money had spoken to Mr C about one of the payments he was making as part of the first scam, and thought the bank could have gone further with its intervention. However, he didn’t think this would have ultimately prevented the scam due to the lack of adverse information about the scammer at the time. And in terms of the second payment, he didn’t think this would have appeared unusual enough to warrant an intervention.

Mr C disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons:

- It isn’t in dispute that Mr C authorised the disputed payments he made as part of both scams. The payments were requested using his legitimate security credentials provided by Virgin Money, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.
- However, I’ve considered whether Halifax should have done more to prevent Mr C from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

- It's common ground here that at least one of the payments Mr C made was considered unusual by Virgin Money given that the initial scam transaction of £780 on 29 October 2021 did trigger the bank's fraud prevention systems and was automatically blocked pending further enquiry. Accordingly, it's just a question of whether the bank went far enough in all the circumstances with its intervention.
- When Virgin Money called Mr C on 29 October 2021, it asked him the reason for the payment, to which he said he was investing in cryptocurrency. The agent asked Mr C if anyone else had asked him to make this payment, to which he said they hadn't. Virgin Money then told Mr C that he should seek independent advice before making the payment and to check the company is regulated and authorised by the FCA, but Mr C said he was happy to proceed. Based on what was said on the phone call, I accept that Virgin Money could have arguably gone further in its questioning of Mr C. But even accepting this as the case, I'm not persuaded any such further questioning would have ultimately uncovered the scam and prevented the loss in any event.
- Mr C said he had no indication that SwissUnion was a scam at the time. He said there were no warnings online, nor was there anything published by the FCA. I appreciate that an FCA warning was later published about the scammer after Mr C had made his payments. But having carried out my own research, I cannot see that there was any adverse information about SwissUnion in October 2021 either. So, if Virgin Money had warned him that he might be being scammed and to carry out further research, it's unlikely he would have found anything significant that would have led him to believe he was being scammed. Indeed, Virgin Money told him to do just that and to check if the broker was registered, but it seems that Mr C was happy with the research he had already carried out and was happy to proceed. He also said he had been told by the scammer to lie to the bank and say that he hadn't been asked by anyone else to make the payment. So, it also seems unlikely that any further questioning would have revealed the scam in any event.
- Therefore, I don't think Virgin Money's failure to ask further probing questions can reasonably be considered as the proximate cause of Mr C's loss in these circumstances, as it seems likely he would have proceeded to make the payments irrespective of any intervention by the bank.
- I understand that Mr C fell victim to a separate scam around the same time, where he made a payment of €250 to vikingex.com. But given the low value of this payment, I don't think it would have appeared particularly unusual or out of character, so I don't think Virgin Money ought to have intervened and questioned Mr C about this payment, meaning it can't reasonably be held liable for this loss either.
- Mr C has said that during the time of the scam he was suffering from very poor mental health and was experiencing issues from the medication he was on that affected his cognitive state. I'm very sorry to hear about the difficult time Mr C has been going through, and I appreciate how this would have likely impacted his thinking. But I can't see that Virgin Money had been made aware of any vulnerabilities, or that it ought reasonably to have been on notice that Mr C lacked capacity to make financial decisions when it spoke to him on 29 October 2021. As a result, it wouldn't have been reasonable for Virgin Money to refuse a payment mandate given by Mr C after he had assured it that he was happy to proceed with the payment.
- I've also thought about whether Virgin Money could have done anything more to recover the money Mr C lost after he reported the scam. The bank said it raised a fraud claim with the beneficiary bank but was advised that no funds remained. And given we know that the funds were swiftly transferred out of Mr C's crypto wallet, it's unlikely that any

earlier action by the bank to try and recover the money would have been unsuccessful as well. I note that Mr C has also questioned why his faster payments are not being refunded under the Contingent Reimbursement Model (CRM Code). Virgin Money was not signed up to the Code at the time Mr C made his payments. But even if they were, the Code only applies to transfers made to 'another person'. In this instance, Mr C made the transfers to a crypto account in his own name, so they wouldn't fall within the scope of the Code in any event.

- In terms of the €250 card payment, I can see that Virgin Money raised a chargeback claim, but this was successfully defended by the merchant as it showed that Mr C had paid for a voucher that had been provided. As a result, it doesn't seem likely that there would be any successful prospect for a chargeback claim to have succeeded here, so I don't think Virgin Money acted unreasonably by choosing not to pursue it any further.
- I understand that Mr C is also unhappy with the time it took Virgin Money to respond to his complaint. However, complaint handling is not a regulated activity, so I'm afraid it is not something I am able to comment on as part of this decision.

I appreciate this will likely come as a disappointment to Mr C, and I'm sorry to hear he has been the victim of a cruel scam. However, in the circumstances, I do not consider it would be fair and reasonable to hold Virgin Money liable for his loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 November 2023.

Jack Ferris
Ombudsman