

## **The complaint**

Mr and Mrs R, on behalf of the estate of Mrs T, complain that Clydesdale Bank Plc trading as Virgin Money held Mrs T liable for payments which she didn't authorise.

## **What happened**

The details of this complaint are well-known to both parties. So rather than repeat them all here, I'll recap the key points, and focus on giving reasons for my decision.

In early 2022, Mrs T used her Virgin Money debit card to withdraw money from an ATM and saw she had less money than she was expecting. She went to a Clydesdale branch (as they provided her Virgin Money account) and discovered a number of payments had been taken which she didn't recognise.

Virgin Money asked Mrs T if she had received any suspicious calls or texts and she confirmed she hadn't. She also said she hadn't shared her card details with anyone.

Virgin Money found One Time Passcodes (OTPs) had been used to complete some of the disputed payments. They had been sent to the number it had on file for Mrs T – which she confirmed hadn't changed. It also checked and found no evidence suggesting a SIM swap or hostile account take over had occurred.

The disputed transactions went to two merchants: one providing cryptocurrency services, and the other providing money transfer services. When Virgin Money contacted them about the fraud report, the money transfer merchant responded that the funds had been paid to an account held with them in Mrs T's name.

Virgin Money declined Mrs T's fraud claim. Sadly, she passed away shortly after. Mrs R is the executor of her estate. She and Mr R complained to Virgin Money, on behalf of the estate, that it hadn't considered Mrs T's claim fairly. Mr R explained he had found records that Mrs T had received a number of suspicious calls on the day of the payments. He disputed that she had held an account with the money transfer merchant – and said she didn't do any online banking or payments.

Virgin Money didn't agree with the complaint. It maintained it had considered the claim fairly. Unhappy with this response, the estate referred the matter to our service. Our investigator didn't uphold the complaint. She thought the transactions looked suspicious but didn't think we knew enough about the circumstances to conclude that Virgin Money should fairly be held liable.

The estate has appealed the investigator's outcome. They argue that, if Virgin Money had acted appropriately in response to the suspicious transactions, a lot of the loss could have been prevented. And they further dispute that Mrs T had set up the merchant accounts. The case has been passed to me to decide.

## **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 of the investigator. I'll explain why.

In explaining my findings, I'm mindful the estate has made quite detailed submissions to us about this complaint. I would like to reassure them that I have considered everything they have submitted carefully. But I won't be responding in similar detail. If I don't mention a particular point or piece of evidence, that is not because I haven't taken it into account. It is just that I don't believe it necessary to reference it to explain my decision, which is focussed on what I consider to be the main issues. This is not intended as a discourtesy; rather, it is a reflection of the informal nature of our service.

In line with the Payment Service Regulations 2017 (PSRs), customers are generally liable for payments they authorise – and their bank is generally liable for unauthorised transactions. But there are exceptions to this.

In some circumstances, a customer may be held liable for unauthorised payments if they failed with gross negligence, or intent, to keep their personalised security credentials safe, or comply with their account terms – and that has allowed an unauthorised transaction to be made.

We also expect banks to take steps to help protect their customers from harm from fraud and scams. If we think a bank should have identified that their customer was at risk from fraud, yet failed to take appropriate action to protect them, which would have prevented their loss, we might consider it fair to hold them liable – even if the customer authorised the payment.

The disputed payments do look unusual amongst Mrs T's general account use. And it does appear that she received a number of suspicious calls around the time they were made. Which does indicate Mrs T likely fell victim to some type of scam. But in line with the regulations I've outlined above, that in itself doesn't mean Virgin Money is liable for her loss.

The main issue here is that, as all parties acknowledge, there are some details of what happened that we simply don't know. It is certainly plausible that fraudsters completed these payments without Mrs T's authorisation. But it's difficult to know whether that is the more likely explanation – and if so, how that occurred. Or whether there is another explanation for what happened. All of this is crucial for determining whether Virgin Money is liable.

I do put weight on Mrs T's actions when she found out about the payments. I accept they are consistent with her not authorising them. But as touched on, there are other plausible explanations. Under the PSRs, a customer consents to a payment when they complete the agreed form and procedure to execute a payment transaction. If Mrs T was somehow tricked into completing the steps to make a payment, without perhaps even realising that was what she was doing, that would still be considered an authorised payment.

If the payments were unauthorised, we don't know how a fraudster got hold of the details needed to complete them. Based on the calls Mrs T seems to have received, it could be that she was called by a fraudster who tricked her into disclosing certain details (such as the OTP codes she was sent). But again, without an account from Mrs T of whether and how that happened, it's difficult to say whether she might hold any liability under the PSRS – if her disclosure enabled the transactions to be made.

As touched on above, there are also circumstances in which Mrs T may have authorised the payments – by completing the agreed form and procedure to execute the payment, without realising she was making them. Or, she may have realised she was making payments – but was tricked about the destination or purpose. There are a number of common scams we see like this. And some of the information we have about what happened are consistent with these being authorised payments.

For example, we don't have an explanation for how an unauthorised person obtained the OTPs. Particularly as, when asked about what happened, Mrs T told Virgin Money that she hadn't received any suspicious calls or texts. Which seemingly contradicts her phone records. We don't know why Mrs T didn't disclose the calls to Virgin Money.

Furthermore, I'm satisfied with Virgin Money's reasons for thinking one of the accounts paid was held in Mrs T's name, based on the information provided by that merchant. It could be that a scammer set up the account in Mrs T's name, with or without her knowledge. But that would add another level to the scam which, as things stand, we don't have an explanation for. As it seems there was some form of identity verification used to set up that account, and Mrs T's genuine details (such as her date of birth and address) were used.

So, in all the circumstances, I'm not persuaded it's *more likely* these were unauthorised payments – *and* that the circumstances in which they were made means Virgin Money should be held liable. But I've also considered whether, if these were authorised payments, it might still be fair to expect Virgin Money to accept some liability for the loss.

As mentioned above, I agree that the nature and pattern of the payments looked suspicious. I therefore think there is an argument that Virgin Money should have taken further steps, beyond sending OTP codes, to assess whether Mrs T was falling victim to a scam. But that in itself doesn't mean Virgin Money should refund the estate. That depends on whether any failings had a material impact on Mrs T's loss.

Again, that is difficult to gauge given the limited information we have about what happened. And based on what we do know, there are reasons to question whether Virgin Money would have succeeded in uncovering the scam and preventing the loss. It's common for customers to be coached by scammers into giving 'cover stories' and not divulging the real reason they have been told for why they should make the payments.

I do consider it significant that we don't know why Mrs T didn't tell Virgin Money about the calls she seems to have been receiving at the time of these payments, despite being asked about any suspicious calls or texts. That could be an indication that she had been coached not to disclose them. And if she deliberately didn't disclose these calls to Virgin Money – which I think is a possibility I must entertain, when weighing up the possible scenarios to decide what's more likely – that makes it harder to conclude that she would have told Virgin Money if it had contacted her at the time.

I appreciate Mr and Mrs R are acting out of concern for a vulnerable person who likely did lose out to a scam. But based on what I know – or perhaps more crucially, what I *don't* know – I'm not directing Virgin Money to refund these payments. As I'm not persuaded there is enough to show it's more likely than not that the circumstances in which these payments were made mean Virgin Money is liable for them.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs T

to accept or reject my decision before 15 September 2023.

Rachel Loughlin  
**Ombudsman**