

## The complaint

A company, which I'll refer to as F, complains that Clydesdale Bank Plc trading as Virgin Money ('Virgin Money') won't refund the money it lost in a scam. Mr S, who is a director of F, brings the complaint on F's behalf.

## What happened

F is represented in this case but for ease I'll refer to Mr S or F.

Mr S says he started his own business – F – in August 2022. F was going to sell gloves locally. He was in touch with a company I'll refer to as T in Asia. T sent samples to Mr S, and he was in regular contact with a representative of T. Mr S also received an invoice.

Mr S opened a business account with Virgin Money and said F would start trading on 14 October 2022. On 14 November 2022 Mr S went into branch to make a payment in USD that amounted to £8,691.87. Mr S, on behalf of T, made a further payment of £2,503.89 on 25 November. After he'd made the payments the representative of T stopped communicating with Mr S, so he tried other methods to contact T. Mr S received a response on social media from a genuine company with a very similar name saying that its details were being used fraudulently.

Mr S contacted Virgin Money to report the scam at the end of December 2022. Virgin Money considered F's claim but didn't agree to provide a refund. It said relevant scam advice was provided at the time the transactions were made and it had attempted to recover F's funds but had been unable to do so.

Mr S, on behalf of F, was unhappy with Virgin Money's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He noted that international payments aren't covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and went on to say there was no reason why Virgin Money should accept responsibility. F's account was relatively new, with very little activity, and the payments were in line with the information provided when the account was opened. And evidence from Mr S and Virgin Money indicated there was a discussion about the reason for the payment.

Mr S didn't agree with the investigator's view. In summary, he said:

- Branch staff should have asked more questions about the first payment, particularly given the prevalence of scams during the pandemic. Mr S said that had Virgin Money done so, the scam would have been prevented.
- Mr S was dealing with a company that was impersonating a genuine company. The genuine company had a fraud alert on its website at the time Mr S made the payments.
- Action Fraud published warnings about Personal Protective Equipment (PPE) as far back as May 2020, so Virgin Money should have been aware of this type of scam.
- As a bare minimum, Virgin Money should have provided a generalised warning about

purchase scams.

The complaint was passed to me to consider. I reviewed the complaint and asked Virgin Money for some additional information about what happened in branch when the first payment was made. I'll refer to this evidence in the section below.

### **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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The CRM Code doesn't apply in this case because it doesn't cover international payments.

So in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Virgin Money should fairly and reasonably:

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

In this case, I need to decide whether Virgin Money acted fairly and reasonably in its dealings with Mr S when he made the payments on behalf of F, or whether it should have done more than it did. I have considered the position carefully.

F's account was opened at the end of July 2022 and there was very little activity on it before the scam payments were made so it wasn't possible to establish what F's normal account activity looked like.

I've considered the information Mr S provided to Virgin Money when he opened F's account to see if the transactions made were in line with how Mr S said the account would be used. Mr F said he would be selling vinyl gloves and that the account was being opened for day to day trading. When asked how funds would be lodged, Mr S said by him. The annual turnover of the business was anticipated to be between £0 and £100,000. Before making the payments Mr S credited F's account with £10,000 and he was buying gloves. So I consider

that the transactions made by F were consistent with the information provided when the account was opened.

But the transactions were made in branch, so Virgin Money had the opportunity to take additional steps before processing them. I have been provided with a form that records Mr S's responses to the questions asked and the advice given on 14 November 2022. I have set out the detail below.

*"We asked you some questions about your payment and this is what you said:*

- 1. Have you received any unusual calls from someone advising they are from the bank or a known provider asking you to move money to a new or safe account? No*
- 2. Has anyone advised on how to respond or guided you on how to answer the questions if the bank were to ask you about this payment? No*
- 3. Are you being rushed or pressured into making this payment? No*
- 4. Have you received the invoice via eMail or in person? eMail*
- 5. Were you due to make a payment to this company for this amount? Yes*
- 6. Have you confirmed verbally with the company that the invoice came from them?*

***We have recommended that you don't make this payment until you have made further enquiries. You accept that you have been advised not to make the payment and still wish to proceed."***

I have also been provided with a statement from the member of staff who served Mr S. The advisor says that she went through the warnings and would have advised Mr S not to proceed but, given the time that has elapsed, cannot recall the exact conversation.

Mr S's signature appears below the text above to say he is happy to proceed with the payment. Given the advice from the Virgin Money advisor not to make the payment it's clear that relevant and proportionate questions were asked but Mr S decided to make the payment anyway.

In some cases, I'd conclude that a bank should refuse to make a payment until a customer provides further evidence rather than simply advising not to. In this case, Virgin Money has retained the invoice provided to Mr S which looks professional (although Mr S wasn't paying T, and this may well have been Virgin Money's concern). In addition to this, Mr S says he had received samples of gloves which Mr S said were of good quality; various certificates; had regular contact with a representative of T who was knowledgeable; viewed T's website and noted that it contained usual information, contact details and testimonials; found T on a map and also on social media. So I don't think there was enough going on for Virgin Money to be refuse to make the payment on the basis that it was clear F was being scammed. I think Virgin Money acted reasonably in highlighting concerns and urging Mr S to complete additional checks.

The second payment was made online by Mr S so there was no interaction with Virgin Money staff when it was made. I don't think Virgin Money needed to do anything more in respect of this payment given the reason the account was opened, its value and Virgin Money's previous interaction with Mr S.

Virgin Money contacted the bank that received F's funds but was unable to recover anything. This is common when international payments are made, as the obligations that exist in this country don't apply abroad and scammers remove scam funds from recipient accounts quickly.

I appreciate that the loss of funds has had a substantial impact on Mr S's new business. But I need to be fair to both parties here. The evidence shows that Virgin Money intervened and told Mr S not to make the payment until further enquiries had been made.

**My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 12 September 2023.

Jay Hadfield  
**Ombudsman**