

## The complaint

Mr S complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin") have failed to refund money that he lost as part of an investment scam.

## What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr S says he was contacted by a company that I will call B who said that it had taken over a trading account that Mr S held with a different firm. The representative of B said that it would trade on Mr S's behalf and would provide him with a large total return.

Mr S made a number of transfers from his current account and savings account to a crypto exchange. The funds were converted to crypto and were then sent on to B. When Mr S was unable to withdraw his funds from B, he realised that he had been scammed.

Mr S asked Virgin to refund these payments as he believes Virgin should have done more to prevent him from being scammed. Virgin did not agree with this.

One of our investigators looked into this matter and she initially thought that Virgin should have intervened during the third payment of the following list. To clarify, in the initial list outlined by the investigator some of the dates were wrong, so I have corrected them below.

Transaction Number	Date	Amount
1	30 March 2021	£1,000
2	31 March 2021	£1,000
3	21 April 2021	£8,800
4	15 June 2021	£5,500
5	16 June 2021	£500
6	21 June 2021	£3,000
7	19 July 2021	£6,000
8	19 July 2021	£10,000
9	25 August 2021	£600
10	24 September 2021	£2,500
11	30 September 2021	£2,500
12	30 September 2021	£3,500
13	5 October 2021	£1,500
14	29 October 2021	£960
14	11 November 2021	£500
15	3 December 2021	£10
16	13 December 2021	£500

The investigator upheld this complaint as she thought that had Virgin intervened during transaction 3 then the scam would have been stopped. She therefore initially recommended that Virgin should pay 50% of the loss from and including this transaction. The reason for the 50% deduction was that she thought Mr S was partially responsible for his own loss.

In response, Virgin highlighted that it did not think that it should have intervened as it argued that Mr S regularly made large transactions from his account and therefore the payments were not unusual. The investigator agreed with this and they decided that the payments were not sufficiently large enough or out of character to prompt an intervention from Virgin and therefore the payments shouldn't be refunded. Therefore, she did not uphold Mr S's complaint. Mr S did not agree with this and his complaint was passed to me to issue a decision.

Since the complaint has been in the queue for a final decision, Mr S has confirmed that the first three payments in the above list were not part of the scam and were in fact payments to his daughter in America. He has further explained that the reason for this was because transferring funds via crypto was easier than doing it via bank transfer.

### **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 final conclusions reached by the investigator for the following reasons.

It isn't in dispute that Mr S authorised the disputed payments he made to the crypto exchange (where his funds were subsequently transferred on to the scammers from his crypto wallet). The payments were requested by him using his legitimate security credentials provided by Virgin, 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 Virgin should have done more to prevent Mr S 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 transaction or transactions.

There is a balance to be struck here, between identifying payments that could potentially be fraudulent and allowing customers to make legitimate payments. There are a number of things to consider when deciding if a payment or pattern of payments was unusual. These include the size of the payments, where the payments were going to, the history of payments on the account and the pattern of the payments. In this instance, the size and pattern of the payments were not on their own sufficiently unusual to have prompted an intervention. I say this because Mr S regularly made large payments from his account including multiple payments on the same day.

Mr S has highlighted that where the payments were sent (a well known crypto exchange) should have caused Virgin to have questioned the legitimacy of the payments. He has also drawn attention to a different bank's policy on payments to such exchanges. But not all payments made to a crypto exchange are due to scams and I don't think the size and pattern of the payments combined with where they were being sent was sufficiently unusual to have prompted an intervention. I should also add that, by the time the scam had started (payment 4), Mr S had already made three legitimate payments to a crypto firm. So the funds were being sent to an established payee. Therefore, even if Virgin had intervened when the third payment was made, I think it would've been satisfied that the large payments Mr S was making to the crypto exchange were not part of a scam.

I should also add that had Virgin intervened solely because the funds were sent to a crypto exchange, and I don't think it needed to, it is likely that this would have been done in the first three transactions, which Mr S has confirmed were not part of the scam. So any questioning about the payments would not have uncovered the scam and would have discovered that Mr S was sending funds to his daughter and that he found it a convenient way of sending funds. This would in fact if anything have made subsequent payments seem even more legitimate and would have negated any further intervention, on the basis that it was a continuation of similar account activity.

I note Mr S's comments that as he had been scammed before then Virgin should have been more vigilant about the payments that he was making. But my understanding is that these scams took place in 2017 and 2018 so I don't think that in 2021 Virgin should have ongoing concerns about Mr S being scammed given that he had not been scammed for three years by this point.

So in summary, I don't think that Virgin should have intervened and had it done so - and to again clarify, I don't think it needed to - I think that the scam would not have been uncovered. I say this as any intervention would have likely been in the first three transactions, which Mr S has said were not actually part of the scam and were legitimate payments. So I don't think that Virgin needs to refund the transactions in question.

I've also thought about whether Virgin did enough to attempt to recover the money. But given the timescales involved, and due to the funds being forwarded on from the Crypto exchange, I don't think that funds could have been recovered. Also, Virgin was not part of the Contingent Reimbursement Model (CRM) when the transactions were carried out. So I don't think that the funds could be recovered under that scheme either.

I appreciate this will come as a disappointment to Mr S, and I'm sorry to hear he has been the victim of another scam. However, I'm not persuaded that Virgin can fairly or reasonably be held liable for his loss in these circumstances.

### **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 S to accept or reject my decision before 25 April 2024.

Charlie Newton  
**Ombudsman**