

## **The complaint**

Mr B complains Clydesdale Bank Plc trading as Virgin Money (Clydesdale) won't refund money he lost when he fell victim to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, and based on the evidence I've been provided, I understand it to be as follows.

In September 2021 Mr B was looking to buy a vehicle. He saw one advertised through an online marketplace that interested him. Mr B contacted the seller, who told him he bought cars at auction and sold them on. Mr B has said he searched the vehicle's registration number on the 'DVLA' website and found that it had been taxed recently and had recently had a transfer of owners, which he thought matched what the seller had told him.

Mr B added that the seller was very knowledgeable of the area, which gave him confidence. Alongside this he was able to do a test drive and the seller had the documentation for the vehicle ready for him to review. Mr B negotiated a price of £5,000 with the seller, as on inspection it appeared the vehicle needed some repairs. Mr B decided to buy the vehicle and, on 30 September 2021, went ahead and made a payment for £5,000 to the bank details the seller gave him, which he was told were for his business partner.

Mr B took the vehicle home, registered it in his partner's name and taxed and insured it. However, in early December 2021, over two months after Mr B had bought it, Mr B received a visit from the police, who seized the vehicle. The police said this was because the vehicle had previously been bought using a stolen credit card. Unfortunately, unknown to him at the time, Mr B had been dealing with a fraudster, and had sent money to an account they controlled.

Mr B complained to Clydesdale, but it didn't uphold Mr B's complaint as it didn't consider it should be held liable for the loss. Clydesdale did recognise that the service it provided, when Mr B reported the scam, could have been better and paid Mr B £100 compensation for this.

Mr B then brought his complaint to our service and one of our investigators looked into things. Our investigator considered whether Mr B was due a refund under the Lending Standards Board Contingent Reimbursement Model (CRM code), which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. She recommended Mr B be refunded under those considerations.

Clydesdale didn't agree with our investigator's view. This was because it said it didn't become a signatory of the CRM code until February 2022. It said that as the payment Mr B had made was before this time, it couldn't assess the payment Mr B had made under the CRM code.

In view of Clydesdale's comments, our investigator then looked into things again and didn't uphold Mr B's complaint. She explained that she couldn't apply the principles of the CRM

code as Clydesdale were not signatories at the time he had made the payment. She considered whether there was any other reason why Clydesdale may have been liable, but she didn't think there was.

The investigator considered it wasn't unreasonable that Clydesdale didn't recognise Mr B could be the victim of a scam when he made the payment. This was because she didn't think the payment Mr B made, to the fraudster, would have appeared as particularly unusual or suspicious in appearance to Clydesdale, considering Mr B's normal accounts and payments activity. She added that even if Clydesdale had intervened, and had asked Mr B questions about the transaction, she didn't think the scam would have been uncovered. She said this because Mr B had both viewed and test driven the vehicle. Overall she didn't think Clydesdale had missed an opportunity to identify the payment was in relation to a scam.

Our investigator added that she considered the £100 compensation Clydesdale had paid Mr B, for not recording his claim when he first reported it, was fair. She added that Clydesdale had been unable to recover any of the funds Mr B had lost from the receiving bank (the bank to which the money was paid). She said that given the payment was made in September and the scam didn't come to light until December, it was unlikely any funds would remain. This was because, generally, once a fraudster receives their victim's payment it is withdrawn immediately, leaving no opportunity for the money to be claimed back.

Mr B didn't accept our investigators view and so the complaint has been passed to me for a decision.

### **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 be good industry practice at the time.

I'm sorry to hear of what's happened to Mr B, and I can understand entirely why he feels so strongly that this money should be returned to him. But having thought very carefully about Clydesdale's actions, I think it did act fairly and reasonably in allowing the transfer to be made. I also don't think it would have been able to recover any of the money Mr B lost. So having considered everything, I'm not going to uphold Mr B's complaint.

I do appreciate how disappointing this will be for him, but I don't think I can fairly say Clydesdale should reimburse Mr B the £5,000 he has unfortunately lost to the fraudster. I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with 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 and 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 Clydesdale 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.

This means that, particularly with the increase of sophisticated fraud and scams in recent years, there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

In this case, I need to decide whether Clydesdale acted fairly and reasonably in its dealings with Mr B, when Mr B transferred money to a fraudster and when Mr B reported the fraud, or whether it should have done more than it did.

I'm aware that our investigator initially reviewed this complaint with the principles of the CRM code in mind. However, as the payment Mr B made pre-dates when Clydesdale became signatories of this code, I am unable to consider the provisions of the CRM code in this decision.

Mr B has accepted that he authorised the transfer. Because of this, Clydesdale had an obligation to follow his instruction. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the transfer - as I've explained, I consider that as a matter of good practice Clydesdale should've been on the lookout for unusual and out of character transactions.

Clydesdale has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. But on balance, I can't fairly say that the transaction was so unusual or suspicious, in comparison to Mr B's normal account activity, that it ought to have alerted Clydesdale that Mr B was at risk of financial harm.

The £5,000 faster payment Mr B made was for a fairly substantial sum and was to a new payee. But having looked through Mr B's statements from the months leading up to the scam, I can see this wasn't the first larger payment he had made. And then, as here, the payment was funded by Mr B moving money into the account to facilitate the payment. The payment also didn't clear the majority of the balance on the account, which can sometimes be the indicator of a scam.

Overall the payment simply didn't look so unusual or suspicious to me that I think Clydesdale ought to have intervened. As a result, I don't think Clydesdale acted unreasonably in not making enquiries about the payment before processing it. There isn't enough here for me to think Clydesdale should have suspected Mr B might be the victim of a potential scam.

Even if I were to think that Clydesdale should have intervened, which for the avoidance of doubt I don't, I don't think it would have made a difference. I say this because if Clydesdale had contacted Mr B, before allowing the payment to be progressed, I'd have expected it to ask some questions about the payment. For example, it could have asked what the payment was for, whether Mr B had seen the vehicle, whether Mr B knew the seller and whether he'd carried out any research. Had Clydesdale asked these, or similar questions, I'm persuaded

Mr B would have been able to give plausible and persuasive answers to the bank. He would have been able to explain he'd carried out checks and had seen and test driven the vehicle.

Importantly he would also have been able to say he was taking possession of it. I don't think the answers Mr B would likely have given would have demonstrated the usual hallmarks of scams involving the purchase of vehicles, where typically victims don't tend to see or take possession of a vehicle, before paying money to the fraudsters.

Given the answers I think Mr B is likely to have given, I think Clydesdale would have been satisfied Mr B was not at risk of financial harm and I don't think I can fairly or reasonably say Clydesdale should have foreseen that the vehicle may have been stolen.

I've gone on to think about whether Clydesdale did what it should've done once Mr B reported to it that he'd been the victim of a scam. Clydesdale recognised that the service it provided could have been better, and has paid £100 in recognition of this. Considering the circumstances of this case I think this is fair and reasonable.

In this case I can see it wasn't until around two months after the payment that Mr B became aware that he'd been scammed. Clydesdale wasn't able to recover any of the money Mr B lost. But sadly, this isn't surprising – as typically a fraudster will move a victims money out of the receiving account, soon after it has been paid, to avoid the opportunity for funds to be recovered.

It's very unfortunate Mr B has lost this money to what is a cruel and sophisticated scam, and I understand the whole experience will have been frustrating and upsetting for him. But in the circumstances, I don't think I can fairly say Clydesdale should have done more to prevent him losing this money. So I don't think it would be fair or reasonable for me to ask Clydesdale to refund the loss.

### **My final decision**

For the reasons above, my final decision is that I don't uphold Mr B's complaint against Clydesdale Bank Plc trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 October 2022.

Stephen Wise  
**Ombudsman**