

The complaint

Mr T has complained that Clydesdale Bank Plc trading as Virgin Money ("Virgin") has refused to refund him money he lost as the result of a scam.

What happened

Mr T was looking to invest money and found an advertisement online for a company that I will call C on Facebook. He called the number given on the advert and was put through to a broker. He persuaded Mr T to install remote access software and to purchase crypto with the end goal of this then being invested in commodities such as oil.

Mr T sent a total of £46,934 to C from his Virgin current account as set out below;

Transaction Number	Date	Merchant	Amount	Running Total
1	02/11/2021	Swissborg solution	- £71.00	- £71.00
2	02/11/2021	MB Swissborg solution	£ 5,000	£ 4,929
3	02/11/2021	MB Swissborg solution	£ 2,000	£ 6,929
4	04/11/2021	MB Swissborg solution	£ 20,000	£ 26,929
5	05/11/2021	MB Swissborg solution	£ 15,000	£ 41,929
6	08/11/2021	MB Swissborg solution	£ 5,000	£ 46,929
7	10/11/2021	Refund from Swissborg solution	-£ 4,995	£ 41,934
8	10/11/2021	Coinbase	£5,000	£ 46,934
9	10/11/2021	Refund from Coinbase	£ 5,000	£ 41,934
10	11/11/2021	Coinbase	£2,400	£ 44,334
11	11/11/2021	Refund from Coinbase	£2,400	£ 41,934
12	11/11/2021	MB Foris Dax Mt Li	£100	£ 42,034
13	11/11/2021	MB Foris Dax Mt Li	£4,900	£ 46,934

Mr T attempted to withdraw his “profits” but was told that he was unable to do so without paying additional funds. Mr T was encouraged to take out a loan by C (which he did not do) and at this point he realised that he had been scammed.

He raised a complaint regarding this matter and asked for the transactions to be refunded. Virgin did not agree with this as they felt they had acted correctly. Mr T therefore referred his complaint to our service.

I issued a Provisional Decision on 4 May 2023 explaining why I provisionally was upholding this complaint. In that decision, I said the following;

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. The circumstances of this complaint are not in dispute and the evidence provided by both Mr T and Virgin set out what happened. What is in dispute is whether Virgin should refund any of the money Mr T lost because of the scam.

Mr T has accepted he authorised the payments he made, so the starting point here is that Mr T is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on unusual transactions to guard against money laundering and the financial harm caused by fraud and scams.

The second transaction I believe should have been considered unusual and Virgin agrees with this as it did get flagged and a conversation was had with Mr T. I have listened to this conversation, and I do not think that it went far enough. Virgin should have asked Mr T in depth questions to find out what the payments related to. Had Virgin done so at this point, I think its likely Mr T would have explained the reason he was making this transaction was to purchase crypto before sending it on to C who was going to trade on his behalf. I think he would have also explained that he had installed remote access software on his account to facilitate this and he did not really understand what he was doing. This is shown by the fact that he did admit this during the call on 10 November 2021. It is clear from the calls that I have listened to that Mr T had not been coached and was readily forthcoming about what he was doing and why.

This should really have prompted Virgin not just to warn Mr T of how scams operate but to say that it is likely that he was being scammed as the above as his experience had all the hallmarks of common crypto scams – which ought to have been well known to Virgin as the financial professional. I’m satisfied that a warning from Mr T’s trusted bank would have probably alerted him to the common issues arising in relation to crypto scams, which in turn would have revealed the truth behind the C’s representations. This would have probably stopped Mr T in his tracks. So, but for Virgins’ failure to act on clear triggers of potential fraud or financial harm, Mr T probably wouldn’t have made the additional payments.

Virgin may argue that it did ask sufficient questions during the 10 November 2021 call and did provide sufficient warnings at this point and yet Mr T still transferred on further funds. But whilst I accept that more questions were asked during this call and general warnings were given. I don’t think that the warnings went far enough. Mr T had admitted he was using a broker and was sending crypto on to a third party who was trading on his behalf using remote access to his computer. I think the member of staff really should have identified that based on what he had described he was almost certainly being scammed. In other words, it could have prevented further payments had Virgin gone further.

In addition to the expectations on Virgin to have effective fraud prevention systems in place, it's expected that customers should take responsibility for their decisions. In the circumstances I don't think it would be fair to say Mr T contributed to the loss. I say this because Mr T had no previous experience in this type of investment and was lulled into a false sense of security by a business that went to great lengths to appear to be legitimate. I can't see that there were any warnings in place about C when Mr T was being scammed. So, I don't think it would be fair to reduce compensation on the basis that Mr T should share blame for what happened.

Putting things right

1) Refund all transactions from transaction 2. Minus any transactions already refunded.

2) Pay simple interest at 8% simple per year from the date of each transaction to the date of settlement less appropriate tax."

Mr T did not respond with any additional points. Virgin did respond and in summary said the following:

- That it does not believe any further warning or discussions would have uncovered the scam or stopped Mr T making the payments that he made.
- That there was a detailed discussion about Mr T giving a third-party access to his computer and a sufficient warning was given to Mr T about this. Mr T explained his reasons for giving access and this was sufficient to nullify the call handlers concerns about this issue.
- There were not a sufficient number of red flags presented to the call handler for him to solidly conclude that it was likely that Mr T was being scammed.
- That given that there were no warnings about C at the time, it would have been incredibly difficult to dissuade Mr T from making the transactions.

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 relation to the points that Virgin have raised, I remain of the opinion that more stringent questioning would have uncovered that Mr T was being scammed. And had this been uncovered and a stronger warning given, I don't think that Mr T would've continued to transfer money to the scammer.

To explain further, Virgin says that there are some legitimate uses of brokers and remote access software, so the call handler being told that Mr T was using a broker and had allowed him access to his computer should not have alerted the call handler to the likelihood that Mr T was being scammed.

I don't think that this is correct. I accept that there may be occasions when someone would allow a third-party access to their computer. I fail to see how a legitimate trading company would ever require a broker to access someone's personal computer to place trades on behalf of a consumer. In my view, a 'broker' requesting access to a client's personal computer so that it can 'execute trades' ought to have been a very clear red flag that a scam is taking place as this is a common feature of investment scams.

When this information was uncovered, given that Virgin should be the experts on what constitutes a scam, I think that Mr T should really have been given a clear warning and Virgin should have explained how investment scammers operate in order to help Mr T identify that he was potentially being scammed. I think a clear warning would likely have uncovered to Mr T that he was potentially falling victim to a scam.

I also remain of the opinion that if Mr T was told that he was likely being scammed, I don't think he would have continued with the transactions. I say this because regardless of there not being specific warnings about C online at the time, a warning from his bank who are financial professionals would likely have been heeded. Also, if Mr T, after receiving such a warning, had done some research on common scams regarding trading and remote access software, he likely would have found multiple warnings online about the dangers of doing this.

So overall, I am of the opinion that Virgin should have intervened further during the calls it had with Mr T and had it done so, I am satisfied that the scam would have stopped at transaction 2. I remain of the opinion that Virgin should pay redress in line with what I outlined in my provisional decision.

Putting things right

- 1) Refund all transactions from transaction 2. Minus any transactions already refunded.
- 2) Pay interest at 8% simple per year from the date of each transaction to the date of settlement less appropriate tax.

My final decision

For the reasons given, my decision is that I uphold this complaint in part and require Clydesdale Bank Plc trading as Virgin Money ("Virgin") to put matters right, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 July 2023.

Charlie Newton
Ombudsman