

The complaint

Mr S complains that Clydesdale Bank Plc trading as Virgin Money has failed to refund over £127,000 he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Mr S says he fell victim to an investment scam with "Trends Turbo" in June 2021 after he was encouraged to invest. The amounts he said he has lost have sometimes fluctuated, and Virgin Money hasn't been able to provide statements or a list of disputed transactions either. However, his professional representatives have now submitted a final list of payments he is disputing along with his statements, which totals over £127,000 made to crypto platforms such as Binance and CoinJar:

Date	Amount	Payee
7 July 2021	£2,600	CoinJar
13 July 2021	£2,400	CoinJar
26 July 2021	£10,000	CoinJar
26 July 2021	£10,000	CoinJar
29 July 2021	£10,000	CoinJar
29 July 2021	£2,000	CoinJar
16 August 2021	£3,500	CoinJar
16 August 2021	£10,000	CoinJar
19 August 2021	£10,000	CoinJar
19 August 2021	£3,700	CoinJar
23 August 2021	£1,725	CoinJar
25 August 2021	£10,000	CoinJar
25 August 2021	£5,500	Coinjar
2 September 2021	£10,000	CoinJar

7 September 2021	£10,000	CoinJar
7 September 2021	£10,000	CoinJar
7 September 2021	£10,000	CoinJar
8 September 2021	£6,140	CoinJar
Total:	<u>£127,565</u>	

Virgin Money said it initially blocked a transaction of £2,600 being made to Binance on 25 June 2021 as it flagged up on its security system. It said Mr S came into branch to discuss the payment, where he said he didn't feel forced, pressured or had been asked by any third party to make the payments, and confirmed the Binance account was in his name.

Virgin Money said it also contacted Mr S about a payment of £2,600 he made to CoinJar on 7 July 2021. When asked what this payment was for, the bank said Mr S told it the money was being sent to a stocks and shares account, and that he wasn't being pressured into sending the funds. It also said he told them he had a long-term relationship with his stocks and shares provider and hadn't had any issues so was happy to proceed.

Virgin Money said it contacted Mr S for the third time on 29 July 2021, where it said he confirmed that he has done his research into the investment and that it was 100% legitimate. It said it wouldn't be able to refund his money if it turned out to be a scam, but that Mr S was still happy to make the payment.

Mr S disputed this. He said no phone calls were made to him on either 7 or 29 July 2021. He said not once did Virgin Money warn him about fraud, and neither did he ever go into branch to explain anything. Mr S said the only phone calls he had with the bank were on 26 June 2021 where he failed the security questions and was told to visit his local branch.

Virgin Money eventually acknowledged that it had made a mistake. It said Mr S *didn't* come into branch as it had originally stated and said that it verified Mr S via his ID documents online, as he told the bank he was unable to come into branch. However, it maintained that phone calls were made, but said it couldn't locate copies of the call recordings.

Our investigator didn't uphold the complaint. She didn't think any further or earlier intervention by Virgin Money would have prevented Mr S's loss, as the bank said that he hadn't been forthcoming with what he was doing when he spoke to it over the phone. Mr S continued to maintain that these phone calls did not happen. As he disagreed, the matter was escalated to me to determine.

I issued my provisional decision on this complaint in April 2023. I said I was minded to uphold it and set out the following reasoning:

Virgin Money do not dispute that Mr S has fallen victim to a scam. And given there is a warning published online by the Financial Conduct Authority about Trends Turbo (along with various other anecdotal evidence on online forums about the merchant being fraudulent), I'm not persuaded the merchant had honest intentions, but instead set out to defraud Mr S of his money.

It is also common ground that the disputed payments were 'authorised' by Mr S for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force

at the time. This is because they were made by him via online transfer to his crypto wallets using the legitimate security credentials provided by Virgin Money, where his funds were subsequently transferred on to the scammer. But having concluded that this was a scam, it's also necessary to consider whether the disputed payments were unusual or uncharacteristic enough for Mr S's account, such that they ought reasonably to have triggered an intervention by Virgin Money.

It isn't in dispute that the payment of £2,600 Mr S made to Binance on 25 June 2021 was unusual given that it did trigger the bank's fraud prevention systems and was automatically blocked pending further enquiry. Mr S called the bank to discuss the transaction, but he was unable to pass its security checks, which is when it asked him to go into branch. Mr S told Virgin Money that he was unable to visit his branch, at which point it agreed to accept ID documents uploaded online.

I can see from the bank's notes that the payment was flagged due to concerns about impersonation and that it might not have been Mr S who was attempting to make the payment, rather than any concerns that he might have been falling for an investment scam himself. So, I think Virgin Money's intervention and simply asking Mr S to prove his identity was proportionate in these circumstances, as there was nothing else suspicious about the payment that would have warranted a more in-depth intervention. This payment was also subsequently returned by Binance, which is why it doesn't feature on the table of disputed payments being claimed by Mr S as it doesn't form part of his loss.

Following this, Virgin Money said it spoke to Mr S again on 7 July 2021 to discuss the payment of £2,600 he was making to CoinJar. However, Mr S disputes this phone call ever being made. Virgin Money said that Mr S told it he was paying a stocks and shares account of which he had a long-term relationship, and that he hadn't been forced or pressured into the payment. It isn't clear where Virgin Money have got this from, as I haven't seen any corresponding notes to evidence this discussion. It also hasn't been able to provide copies of call recordings for this or any other calls it says it has had with Mr S.

Given the lack of corresponding evidence to show what was said on any of the calls, I can't be sure that any intervention Virgin Money made went far enough, or whether the calls even happened at all. Indeed, Virgin Money initially told us that Mr S visited its branch and told it that he didn't feel forced and hadn't been pressured by any third-party to make the payment. But it turns out that no such discussion ever took place with Mr S in relation to this payment, as he didn't visit the branch. I therefore cannot place much weight upon the other notes Virgin Money has provided about its interactions with Mr S (which, in any event, are extremely limited and lacking in any sufficient detail to build a full picture about any discussion that may have taken place).

So, without any further contemporaneous evidence such as call recordings, I'm unable to place much weight on the notes Virgin Money has provided to conclude that the bank did intervene after 25 June 2021. I note, however, that Virgin Money said that the payment made on 7 July 2021 did flag on its fraud prevention systems. So, it therefore ought to have called him to ask probing questions about what the payment was for to see if he was at risk of falling victim to a scam.

If Virgin Money had contacted Mr S and asked him further questions and for more of the basic surrounding context, I think it's likely he would have explained what he was doing and that he was making an investment off the back of an advertisement he saw online, where he was being told to send money to a third party broker via

cryptocurrency wallets that had been set up over Anydesk – all of which are typical features of these sorts of investment scams. As I've set out above, I've not seen enough persuasive evidence to suggest that Mr S wouldn't have been forthcoming if asked about the circumstances of the payment.

Overall, I'm satisfied that a warning to Mr S from his bank would have probably led to him carrying out further research, where he could have discovered the various scam warnings online about Trends Turbo at the time. So, but for Virgin Money's failure to act on clear triggers of potential fraud or financial harm, Mr S probably wouldn't have lost his money.

Contributory negligence

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). And in these circumstances, I'm satisfied that Mr S should also be held partly responsible for his loss.

Mr S says he carried out some research about the broker online, where he found positive reviews on websites such as Trust Pilot and Sitejabber. But having consulted these and other online forums, it appears there were also several negative reviews posted from as early as April 2021 stating that Trends Turbo was a scam. Therefore, I'm not persuaded Mr S carried out sufficient due diligence before deciding to part with his money, or when being persuaded to invest higher amounts for example (where he could have then found an FCA warning).

I can see that Mr S was also offered "risk free trading" by the scammer, whereby he would receive a refund of any losses suffered. This also ought to have seemed too good to be true and should have put him on notice that something wasn't right.

Given the significant amount Mr S was investing, as well as the dubious promises he was being made, it's reasonable to expect a sufficient degree of independent research to be carried out to be satisfied the investment opportunity is genuine. There was enough information in the public domain that was easy to come by about the merchant he was dealing with, which would have put him on notice that he was likely being scammed. I therefore consider a reduction of 50% is reasonable in these circumstances.

Interest

I can see that the Virgin Money account Mr S sent the money from was an Easy Access E-saver. The first two payments he made to the scammer on 7 July and 13 July 2021 were funded from money he already held in his savings account, so I intend asking Virgin Money to award interest on these payments at the applicable savings account rate he would have earned on this amount at the time.

From 26 July 2021 onwards, money is then transferred in from another of Mr S's accounts in order to fund the payments being made to the scammer. He has said this money came from a joint account held with his wife, which held funds that they were in the process of saving up to eventually pay off their mortgage. As a result, for the payments made from 26 July 2021 onwards, I intend asking Virgin Money to pay interest at the applicable rate that would have been earned at the time from the originating account.

I invited further comments and evidence from both parties. Mr S accepted the proposals set out in my provisional decision, but Virgin Money disagreed.

In summary, it said it accepted that it mis-informed our service about Mr S's branch visit, but that the evidence from their system showing calls were made should be enough to demonstrate that they did take place, as well as their staff member's testimony.

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've decided to uphold it for the reasons set out above in my provisional decision.

I accept it's possible that Virgin Money *did* call Mr S on 7 July 2021, and that he may not remember the call taking place. However, as I set out in my provisional decision, there simply is not enough persuasive evidence to show what would have been said on this call in order to determine whether any intervention went far enough.

Virgin Money has said, for example, that Mr S was not forthcoming with information about what he was doing when it spoke to him over the phone. However, without the call recordings, I can't know what sort of questions would have been put to Mr S to determine whether he answered truthfully or not. There are also very limited call notes to show what exactly would have been said on this call, or whether Virgin Money asked sufficiently probing questions. I accept Virgin Money may have provided testimony from its staff members. But given it was incorrect about the branch visit, I'm afraid I cannot place too much weight on its other testimony that is not supported by any other evidence.

As a result, Virgin Money's further comments have not changed the conclusions reached in my provisional decision. It therefore follows that I uphold this complaint.

My final decision

For the reasons given above, I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to:

- Refund the disputed payments Mr S made to the scammer from 7 July 2021 onwards, less any credits received, along with a 50% deduction in recognition of Mr S's own negligence that contributed to his loss.
- For payments made between 7 July to 25 July 2021, pay interest at the applicable Virgin Money savings account rate Mr S would have received at the time, from the date the payments were made until the date of settlement.
- For payments made from 26 July 2021 onwards, pay interest at the originating account rate applicable at the time, from the date the payments were made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 June 2023.

Jack Ferris
Ombudsman