

The complaint

Mrs M has complained Clydesdale Bank plc, trading as Virgin Money, won't refund her for transactions she didn't make or authorise.

What happened

In June 2023, Mrs M was notified by Virgin Money of various transactions and asked to check whether these were fraudulent. Mrs M went into a branch and confirmed these were fraudulent.

Virgin Money confirmed they wouldn't be refunding Mrs M. They identified the device used to make the transactions matched a device used months before for a non-disputed transaction.

Mrs M brought her complaint to the ombudsman service. In the interim she'd been upset that Virgin Money wouldn't confirm the detail of the device used and had mistakenly told her it was a device that she knew nothing about.

Virgin Money confirmed the transactions were not subject to two-factor authentication or similar. Our investigator didn't think there was sufficient evidence to show Mrs M authorised the disputed transactions and under the distance selling regulations, along with the Payment Services Regulations, asked Virgin Money to refund Mrs M.

Virgin Money didn't agree with this outcome. They felt Mrs M had compromised the security of her card details which meant that the PSRs didn't apply.

This complaint has been referred to an ombudsman for 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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, 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 relevant time.

The regulations which are relevant to Mrs M's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other aspects do on occasion apply. So, for example, if a customer has been grossly negligent.

I can confirm, however, these don't apply when transactions are completed at a distance,

despite Virgin Money's claims.

To help me come to a decision, I've reviewed the evidence Virgin Money provided as well as what Mrs M has told us.

I believe these transactions were carried out by a third party and not Mrs M. I say this because:

- Virgin Money's evidence shows the device used with Mrs M's card details matched an iPhone used many months previously for a non-disputed transaction, This isn't in dispute. I also note this iPhone belonged to Mrs M's daughter. However there is no evidence – and I accept the point Virgin Money made about this – that Mrs M authorised the disputed transactions.
- The disputed transactions all credit the same merchant. Their nature and number clearly resemble fraudulent transactions. There were also numerous other attempted transactions which were declined.
- It is not the case under the PSRs that I have to specifically identify a point of compromise to be sure fraud has happened. Nor is it my role to explain how fraud takes place. All I need is to be satisfied there was an opportunity for fraud to take place and based on what I have seen here, I'm satisfied this is what happened here.

In cases where we find it difficult to explain exactly what happened, the correct response isn't just to confirm the customer must bear the responsibility. This wouldn't meet the requirements of the PSRs. In Mrs M's complaint, the nature of the transactions and the merchant being credited massively outweigh any evidence I have seen that Mrs M made or allowed someone else to make these transactions.

Overall I don't believe there's sufficient evidence to show Mrs M authorised these transactions.

Putting things right

This means Virgin Money will have to refund £816.90 to Mrs M. 8% simple interest will also need to be added.

I also noted the impact this had on Mrs M and her general health and welfare. There's no doubt she had difficulty reporting this as fraud. I found the statement within Virgin Money's final response *"I can only summarise that you may have chosen to be directed to an incorrect department"* indicative of the difficulties I believe she had.

Overall I'm going to ask Virgin Money to pay a further £100 to Mrs M for the trouble caused. I believe this is fair and reasonable in the circumstances of this case.

My final decision

For the reasons given, my final decision is to instruct Clydesdale Bank plc, trading as Virgin Money, to:

- Refund £816.90 to Mrs M;
- Add 8% simple interest from the date of the transactions to the date of settlement; and

- Pay £100 for the trouble caused to Mrs M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 February 2024.

Sandra Quinn
Ombudsman