

The complaint

Mr and Mrs I complain that Clydesdale Bank Plc trading as Virgin Money didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In August 2022, Mr I received a cold call from someone who I'll refer to as "the scammer". The scammer said she worked for a company I'll refer to as "E" and told Mr I he had some shares which were due to increase in value owing to an impending take-over of the company.

Mr I believed what the scammer told him because he had previously owned some shares and he researched E and was satisfied it was a genuine company which was registered on Companies House. He could also see the scammer had a profile on LinkedIn.

Mr I was required to sign a Non-Disclosure Agreement ("NDA") and on 6 September 2022, he was told to sign and return a 'guarantee agreement', which was endorsed by the New York Public Notaries Office.

On 9 September 2022, Mr I went into a Virgin Money branch and made a payment to a new international payee for £5,723.33. On 14 October 2022, the scammer told him there were preferential shares available, so he made a further payment of £11,000 to the same payee. And on 16 November 2022, Mr I made a further payment of £17,489.93 to a new international payee, which he was told was 40% of the Federal Tax due. Each payment incurred a £25 fee.

On 22 November 2022, the scammer told Mr I the funds he'd sent on 16 November 2022 wouldn't be released due to additional words on the transfer document. He contacted Virgin Money to ask for the payment be expedited and the scammer confirmed the funds had cleared, but he would be charged a late payment fee amounting to \$15,000.

Dissatisfied that he'd been charged an additional fee, Mr I attended the branch on 13 December 2022 to find out what had happened and Virgin Money concluded he'd been scammed and advised him to contact the police.

When Mr and Mrs I realised they'd been scammed, they complained to Virgin Money arguing that it failed to provide effective warnings when Mr I had attended the branch to make the payments. They also said it had failed to ask probing questions to understand the context of the payments or invoke the Banking Protocol, which could have prevented financial harm. And they were unhappy it didn't launch an investigation into the matter or raise any concerns with the receiving banks.

Virgin Money refused to refund any of the money they'd lost. It said Mr I had made three transactions in branch and each time he brought with him the International Outward Payment mandate pre-filled with the payee details. The mandates had certain other requirements that needed to be completed and read through and Mr I was taken through the requirements and asked about the purpose of the payment.

It said the payments weren't out of character given the information known to it about the account usage over many years and Mr and Mrs I had conducted similar payments in the past, so the payments weren't suspicious. It said Mr I was taken through the scam warnings and questions on the forms which state that fraudsters can pose as trusted organisations, it's common for them to apply pressure to make payments, and that money is unlikely to be recovered in the event of a scam. He was also asked if he'd been told what to say to the bank, or if he'd been or rushed or pressured, which he said wasn't the case. It said Mr I had been persuaded to enter into an NDA and told to give a false reason for the payments, so his answers to those questions weren't accurate, meaning it was unable to identify the scam.

It accepted the account was credited with £17,500 from a credit card transfer which was used to fund the third payment, but it said the full details of the source weren't viewable so soon after the receipt and without such information, it had no reason to be suspicious. It also said it invoked the Banking Protocol on 13 December 2022 even though Mr I was still maintaining that he wasn't being scammed. But it accepted it should have asked questions about the deposit of funds into the account before the third payment and so it offered to pay Mr I £8,749.47 as a gesture of goodwill, which was the equivalent of 50% of the third payment.

It said it had contacted the receiving banks but it was only able to recover £147.14, and as the receiving accounts were held by a legitimate financial institution, there was no reason to question the liability of the receiving bank.

Mr I wasn't satisfied and so he complained to this service with the assistance of a representative. He said Virgin Money had three separate opportunities to intervene and it failed to ensure he understood the true nature of the payments or to provide effective warnings when he wanted to pay a new international payee. He argued that Virgin Money should have asked probing questions, which would have helped it to discover that he was falling victim to an elaborate investment scam. It could then have provided an effective warning which would have prevented his loss.

His representative said Virgin should have intervened because Mr I made three international payments to two new payees totalling £34,297.26 within the space of two months. They said the payments had obvious signs of fraud including a sudden increase in spending, payments for large and unusual amounts, payments to new international payees and large amounts of money coming into the account and quickly being transferred out.

They said the regular account activity included low-value payments and the highest payment in the months pre-dating the scam was £3,000, so payments ranging from £5,723.33 to £17,498.93 should have raised concerns. Further, the account was subject to a high influx of payments into the account, which is indicative of an investment scam and was out of the ordinary for the account.

The representative said the first payment was a high-value payment which Virgin Money should have questioned, and on 16 November 2022, Mr I received a money transfer of £17,500 from his credit card and within 24 hours he paid £17,498.23 to the scam. They argued that Mr I rarely inherits and forfeits such high values at this pace, and the activity is a known-fraud indicator, which it should have picked up on.

They argued that Virgin Money should have asked Mr I why he was making the payments, how he found out about the company, whether he'd researched the company, whether he'd checked the FCA website, whether he'd been promised unrealistic returns, whether he'd received any withdrawals and whether was being pressured to make the payments. And with the answers he'd have given it should have realised he was likely falling victim to an elaborate investment scam and provided an effective warning, which would have prevented his loss. They also said there was enough suspicion during the interactions, so the Banking Protocol (BP) should have been invoked sooner.

Virgin Money further explained that Mr I was known to its branch staff who knew he'd worked abroad in the past, so international payments weren't unusual for the account. And there was a genuine transfer on 3 August 2022 for £3,000 and a counter transaction on 26 January 2021 for £2,480, both of which were comparable to the first payment.

It said on 8 September 2022, Mr I came into the branch with the payment detail pre-filled on the form as 'services rendered'. When he was asked for more information, he said it was for 'research work'. He was then asked the fraud questions on the mandate and he denied being told what to say or being rushed or pressured. He also confirmed he knew who he was paying. He was warned scammers might pose as banks, police or other trusted organisations before the payment was processed.

On 13 October 2022, Mr I came in again with the payment detail on the form pre-filled with 'buying property' as reason for payment. The fraud questions were asked and he was read the warnings. It accepted the second payment was larger, but it was going to a previously authorised payee and as there was a gap of a month between the first and second payments it didn't spot an emerging pattern of payments.

On 16 November 2022, Mr I came in again with the payment detail on the form pre-filled with 'services rendered'. The fraud questions on the mandate were asked and he was read the warnings. He said he was making the payment to exercise a share option, even though the form said services rendered. When he was questioned about the description he agreed to add 'property purchase', because the company he was investing in were realtors.

Virgin Money said that on 24 November 2022, Mr I came into the branch complain that the third payment had stalled because of the payment description on the mandate. He blamed it for insisting on adding 'property purchase' to the description and said the payment was for a tax liability.

It invoked the Banking Protocol on 13 December 2022 when Mr I attended the branch. On that occasion, he disclosed more about the circumstances of the payments but maintained he wasn't being scammed and didn't complain to it about the scam until May 2022.

Virgin Money maintained it shouldn't be liable for Mr I's losses beyond its offer to pay 50% of the third payment because Mr I misled its staff by concealing the true reason for the payments which denied it the opportunity to explore the payments further and provide more tailored scam warnings.

Our investigator didn't think the complaint should be upheld. She explained The Contingent Reimbursement Model ("CRM") code doesn't apply to card payments and international transfers, so the disputed payments wouldn't be covered by the code.

Our investigator noted Virgin's comments that Mr I was well known to branch staff and made frequent international transfers, so she was satisfied there was an established level of knowledge about the way he managed his account. But the disputed transactions were international payments to a new payee and the last two payments had large credits received

into the account shortly before being transferred out to the scam. And the payments were unusual for the account because it didn't have history of payments of similar value.

She accepted Virgin Money had completed checks when Mr I had made the payments and that it had warned him about scams. But the warnings weren't relevant to the scam and she thought Virgin Money ought to have asked more questions when Mr I attended the branch to make the payments, especially when he made payments 2 and 3.

However, she didn't think this would have made any difference because Mr I had signed an NDA which prohibited him from disclosing the details of the investment to anyone. She noted there was email correspondence between Mr I and the scammer in which Mr I stated that he was reluctant to give extra information on the International Outwards Payments form because of the NDA. And in a further email, there was a discussion about what he should say to Virgin Money about the transfer. She said Mr I disclosed the real reason for the payments when he complained to Virgin Money about the fact he had to pay a tax penalty and she didn't think he'd have done so if there hadn't been a problem with that payment. So she didn't think he'd have disclosed the real reason for the payments if Virgin Money had asked him more questions, therefore it wouldn't have been able to uncover the scam.

Finally, she was satisfied that Virgin Money had done what it could to recover the funds once it was aware of the fraud, but she explained the disputed payments were international transfers and there is no guarantee an international bank will return funds without the account holder's permission. And she didn't think Mr I was entitled to any compensation because the upset he experienced was caused by the scammers and not Virgin Money, and she hadn't seen any errors or delays in the investigation once the scam was reported.

Mr and Mrs I have asked for the complaint to be reviewed by an Ombudsman. Mr I has said he was never asked if he had any worries about transferring money abroad. He didn't speak with the branch manager until 12 December 2022, and he agreed it could be a scam on 13 December 2022.

He accepts he regularly received credits from international accounts and he also made international transfers, but they were to an account in his own name. He was never asked about the reasons for the disputed transfers or whether he thought it could be a scam and he believes the fact Virgin Money reimbursed £8,749.47 is an acknowledgement of its failings.

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 conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr and Mrs I have been the victims of a cruel scam. I know they feel strongly about this complaint and this will come as a disappointment to them, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs I says they've fallen victim to, in all but a limited number of circumstances. But said the CRM code didn't apply in this case because the code doesn't apply to international payments.

I'm satisfied Mr I 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

It's not in dispute that this was a scam but although Mr I didn't intend his money to go to scammers, he did authorise the disputed payments. Virgin Money is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Virgin Money could have done more to prevent the scam from occurring altogether. Virgin Money ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr I when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Virgin Money to intervene with a view to protecting Mr I from financial harm due to fraud.

As Mr I attended the branch each time he made a payment, I need to consider whether Virgin Money's staff could have done more to protect him. Virgin Money has explained that Mr I was known to its branch staff and that it wasn't unusual for him to make international payments. But payments 2 and 3 were high-value when compared to the normal spending on the account, and he received large credits into the account before each payment, which should have raised concerns.

Virgin Money has explained that Mr I was asked the fraud questions on the mandate and that he was warned scammers might pose as banks, police or other trusted organisations before the payment was processed. He was also asked if he'd been told what to say to the bank, or if he'd been or rushed or pressured. But in the circumstances, I think he should have been asked some more probing questions around the purpose of the payment, who he was paying, whether he was being advised by a third party and if so how he met them, whether he'd done any research and whether he'd been promised unrealistic returns.

But Mr I only disclosed the real reason for the payments when he realised there was a problem with the third payment and I'm satisfied he'd had no intention of disclosing the real reason for the payments before that point. The available evidence shows he trusted the scammer and that he had signed an NDA, which he was concerned about breaching. This is supported by email correspondence between Mr I and the scammer in which he said he was reluctant to give extra information on the International Outwards Payments form due to the NDA. And in a further email, there was a discussion about what he should say to the bank about the transfer.

This was a sophisticated scam which was believable because Mr I used to hold shares, and he was satisfied with the research he'd done. The scammer was professional and convincing as were the documents and correspondence he received. So, I agree with our investigator that if Virgin Money had asked Mr I more questions when he made the payments, it's very unlikely that he'd have answered those questions truthfully, meaning the branch staff wouldn't have had enough information to identify that he was being scammed. And without further information, it wouldn't have been able to provide a tailored scam warning or tell him there were red flags present indicating that he was being scammed.

So, while I think Virgin Money could have asked more questions when Mr I attended the branch to make the payments, I don't think this represented a missed an opportunity to have prevented Mr and Mrs I's loss.

Mr I has suggested the fact Virgin Money has offered to pay him 50% of the third payment is an indication that it acknowledges its failings, but this was a gesture of goodwill and in the circumstances I can't fairly ask it to do anything further to resolve this complaint.

Overall, I'm sorry to hear Mr and Mrs I have lost money and the effect this has had on them. But for the reasons I've explained, I don't think Virgin Money is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

Recovery

Virgin Money successfully recovered £147.14 from the international bank, but considering the earlier payments were made in September and October 2022, there was little prospect of a successful recovery. And as there is no guarantee international banks will return funds without the account holder's permission, I'm satisfied it has acted reasonably in the circumstances.

Compensation

Mr and Mrs I aren't entitled to any compensation or legal costs.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr I to accept or reject my decision before 26 January 2024.

Carolyn Bonnell
Ombudsman