

## **The complaint**

Mrs G is unhappy Clydesdale Bank Plc trading as Virgin Money (Virgin) hasn't refunded the £40,000 she lost in an authorised push payment ("APP") cloned investment firm scam.

## **What happened**

The detailed view letters of 21 November 2023 and 8 December 2023 set out the detailed background to this complaint, so I won't repeat it here. But briefly In November 2020 Mrs G fell victim to an investment scam, where fraudsters posed as a legitimate European Economic Area (EEA) regulated firm - I will refer to as "C".

The fraudsters operated as what is known as a cloned firm. That is; they copied information and paperwork of a legitimate firm/bank, and posed as employees, in an attempt to trick Mrs G. Mrs G had been looking to invest and had carried out a search online. A couple of days later she was called by C who then sent her details of an investment bond.

On 9 November 2020 Mrs G went into a Clydesdale branch and transferred £40,000 as an international CHAPS payment. Shortly before the investment matured in 2023, Mrs G tried to get in touch with C and it was at this point she realised she had been scammed.

Our investigator upheld the complaint in full.

Clydesdale didn't agree but offered to refund 50% of Mrs G's loss along with interest as a gesture of goodwill. It also paid £150 for the distress and inconvenience caused.

Mrs G did not accept Virgin's offer, so the case 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.

Having done so, I have reached the same outcome as the investigator, broadly for the same reasons.

### *Did Virgin do enough before processing the payment?*

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Virgin 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 made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

For branch transactions, such as this, follow the Banking Protocol where appropriate.

Virgin has offered to refund 50% of Mrs G's transaction. Although I note it says this was on a goodwill basis.

It's clear Virgin had processes in place to help it comply with its obligation to look out for unusual or suspicious transactions, because its staff did in fact intervene on this occasion.

This was a scam that should be well-known to banks — and Mrs G was questioned about the transaction. So staff were sufficiently concerned about the possibility of fraud to ask questions and warn of fraud and scams. The staff were right to question Mrs G about it. It's just a question of whether it did enough in the circumstances.

There is some conflicting testimony and limited records of what was discussed. I note section 8 of the international outward payment form completed at the time - does cover off a number of questions about various potential scam scenarios. Whilst the last question related to investment scams - it advised to check the investment firm is legitimate and regulated by the FCA (Financial Conduct Authority). But this was a clone of a legitimate regulated company and the warning regarding its cloning did not appear on the FCA website until over a week after the investment had been made. So I don't think this was enough in the circumstances.

It seems in agreement that Mrs G was transparent that this was an investment – so it would have been reasonable to home in on this area. But there is nothing within the list of questions that applies to the scenario Mrs G found herself in.

According to branch staff testimony, they asked about whether Mrs G had used the investment firm before, and she said yes. Although Mrs G says this wasn't the case – as she hadn't used this organisation before. It also seems Mrs G had presented branch staff with the paperwork. And Mrs G said branch staff seemed to query the logo. But branch staff testimony does not tally with this either – explaining that they would not be familiar with whether this was the logo of the genuine C or not. I accept that branch staff might not be familiar with the logos of different investment or banking organisations and some of the paperwork is quite convincing. And this did appear to be a regulated bank.

But the beneficiary's name seems odd to me, and it didn't match the business name at all. It was going to a different regulated bank. I would have expected Virgin's questioning to have gone further than it did here. I think it should have asked with more rigour about the purpose of the payment and how Mrs G had come across C. I think if it had done so it would have transpired that C had called Mrs G. Even within the context of her having researched various businesses in the run up to that call – I think it would have been prudent to warn that

scammers can mimic genuine organisations and ask whether she had used the phone number and email address on the FCA Register to independently contact the company so she could be sure she was dealing with the real firm. Guiding her to check some of the finer details (which can differ very slightly in a cloned investment scam) such as the website address – which actually leads to a completely unrelated site – would likely have unveiled the scam.

#### *Could Mrs G have done anything to prevent her losses?*

I've thought carefully about what Virgin's obligations were, as set out above. But another key issue is whether Mrs G acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Mrs G should bear some responsibility by way of contributory negligence.

This was sophisticated fraud which involved a cloned financial services firm. Mrs G found the details online and genuinely believed she was interacting with the genuine firm. From what I have seen, the correspondence Mrs G received is in line with what she would have expected to receive in connection with a genuine investment of this type. Cloning a genuine firm and mirroring its processes gave the interaction legitimacy. I appreciate I have highlighted some red flags above that I'd expect the bank to have spotted, but to the unprofessional eye and without appropriate intervention from Virgin, I think it is reasonable that this went undetected by Mrs G.

Mrs G was in a position where she had no reason to suspect she wasn't engaged in something completely above board – particularly as Virgin did not bring to life what cloned investment scams look and feel like or warn her how to avoid them. I've not seen anything that makes me think Mrs G had any knowledge or awareness that firms could be cloned.

I therefore don't think Mrs G should share in the responsibility for her loss and Virgin should refund Mrs G in full.

#### *Did Virgin do all it could to recover Mrs G's funds*

Given my findings above, it's not necessary for to consider whether Virgin did enough when Mrs G first told it she has been the victim of a scam. But for completeness, in this case the funds were transferred to an international bank account. International banks aren't bound by the same rules and regulations as banks within the UK.

The scam payment was made in November 2020. The scam was reported in May 2023, two and a half years after the payment was made. Virgin contacted the beneficiary bank and asked for the funds to be returned to Mrs G, but it didn't respond.

Virgin is reliant upon the international bank choosing to return funds. It can't require or force them to and unfortunately no funds have been returned. From what I've seen Virgin has done what it could to try and recover the funds for Mrs G, but hasn't been unable to obtain a refund for her. And even if there was a slight delay by Virgin, I don't consider it would make a difference in this case as scammers usually remove funds within hours. I understand that Mrs G didn't know she was the victim of a scam before she reported the disputed transaction, but the delay means any recovery action was most unlikely to be successful.

#### *Distress and inconvenience*

I understand Virgin initially incorrectly told Mrs G it could not consider her disputed transaction as it wasn't made online. I appreciate Mrs G and her daughter had to go to extra effort to rectify the position – but Virgin corrected its error and investigated Mrs G's complaint. I note that it has paid £150 in recognition of this error, and, in the circumstances, I think the sum fairly reflects the distress and inconvenience Virgin caused Mrs G in this case.

### **Putting things right**

In order to put things right for Mrs G Clydesdale Bank plc trading as Virgin Money should:

Refund Mrs G in full - so £40,000

Because Mrs G has been deprived of the use of this money, I consider it fairest that Virgin add 8% simple interest to the above from the date of the transaction to the date of settlement.

If Virgin is legally required to deduct tax from the interest it should send Mrs G a tax deduction certificate so she can claim it back from HMRC if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and Clydesdale Bank plc trading as Virgin Money should put things right for Mrs G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 15 February 2024.

Kathryn Milne  
**Ombudsman**