

The complaint

Mr W complains that Clydesdale Bank Plc trading as Virgin Money ('Virgin') won't refund the money he lost when he fell victim to a scam.

What happened

Mr W was looking for an investment opportunity online and came across a company I'll call T. He didn't know at the time, but T was a clone of a genuine company which aimed to take his money fraudulently. T offered fixed rate bonds. Mr W expressed an interest and spoke to a representative of T who sent him information about the bonds offered. He decided to go ahead and attended a branch of Virgin on 16 October 2020 to make a £50,000 payment. The payment went to H and Mr W was advised this was a segregated client account.

Mr W says that in branch he was taken into a private room and asked where he wanted the payment to go. But Mr W says he wasn't provided with any scam education or advice or asked any probing questions.

Soon after he'd made the payment a representative of T told Mr W that H had gone over its deposit limit and his funds would be returned so that he could repurchase the bond. This didn't happen and the genuine company that T cloned has let Mr W know that he's been the victim of a scam.

Mr W brought a claim to Virgin in November 2020. Virgin didn't agree to reimburse Mr W's loss. It said that when the payment was made, he signed a form which confirmed he had read the common red flags associated with fraudsters and scammers, and acknowledged that if the payment turned out to be a scam it was unlikely it could get his money back.

Mr W was unhappy with Virgin's response and brought a complaint to this service. He said Virgin didn't do enough

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He noted that the payment was made before Virgin signed up to the Contingent Reimbursement Model Code ('CRM Code'). While he felt Virgin should have asked Mr W more questions, the investigator said that even if it had the scam would not have been uncovered. This was because T was a clone of a genuine company.

Mr W didn't agree with the investigator's findings, so his complaint has been passed to me to decide. He said the investigator's conclusion that Virgin couldn't have broken the spell and uncovered the scam was unreasonable given the following points:

- he was never able to withdraw funds
- he never met the scammer in person
- he had no documentation
- he believed he was dealing with T but sent funds to H – which should have caused concern

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.

At the time Mr W made the payment to H Virgin wasn't a signatory to the CRM Code, so I can't apply its provisions here.

In broad terms, the starting position at law is that banks are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that when the payment was made Virgin should:

- have been monitoring accounts and any payments made or received to counter various risks, including 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 firms 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, or provided additional warnings, before processing a payment; and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

I'm satisfied that a payment of £50,000 was unusual and out of character given Mr W's usual account activity so Virgin should have had a conversation about it with him and provided scam warnings.

Mr W made the payment in branch. Virgin has provided me with the form that was completed at the time Mr W made the payment. This form shows the beneficiary as H and the payment details as "To Pay Into an Existing Investment A/C". Underneath there is a section headed "Are you sure this payment isn't fraud?" which included red flags to look out for. One such red flag was, "Has an investment firm asked you to send them money? If so, check they are legitimate and regulated by the FCA".

The above information indicates that there was a discussion with Mr W about the reason for his payment. He was also required to sign the form to say that he understood the risks involved in making the payment and that he may not get his money back. It wasn't enough for Virgin to simply ask Mr W to read and sign a form though. The investigator asked Virgin to provide evidence of what was discussed with Mr W when he attended branch.

Virgin has provided a statement from the member of staff who served Mr W. This says:

"As I remember this gentleman advised that funds were going to an investment account he already had and was happy as to where the funds were going. I don't remember advising at any point what interest rate he was going to be getting. I believe I asked him if he had invested in the company before which he advised he already had an account and had invested with them in the past hence the chaps form saying funds into existing investment."

I think Virgin would have been reassured by the fact Mr W had invested with the same company before, but I'd still expect it to ask some questions like what Mr W was investing in,

how he found out about it and whether T was FCA regulated. It's unclear if such questions were asked. But even if they weren't, I agree with the investigator that further intervention by Virgin wouldn't have made a difference here.

I'm mindful that the limited available evidence suggests that Mr W misled Virgin by saying he was paying into an existing investment account with H. He doesn't appear to have mentioned that he was investing through T. But, even if Mr W had told Virgin that he was investing through T, I'm not persuaded Virgin would have had any concerns. T was a clone of a genuine company and, at the time Mr W made the payment, there wasn't an FCA warning relating to it. The FCA published a clone warning shortly afterwards, on 29 October 2020.

There was nothing unusual about T's interactions with Mr W and he was provided with legitimate looking documentation. For example, Mr W received a prospectus, terms and conditions and was required to complete an application form. Mr W was also required to provide relevant anti money laundering documents. T used a genuine FCA reference number and the address of the company it had cloned.

Taking all these factors into account I'm not persuaded that any further intervention by Virgin would have uncovered the scam and prevented Mr W's loss. If Virgin had asked the kind of questions Mr W has suggested (why he was investing, how he found the investment opportunity, whether he'd researched T and whether T was FCA regulated) I don't think it would have raised any concerns. I appreciate Mr W's funds went to H not T, but he was told this was a segregated client account and H was regulated by the FCA as an authorised payment institution.

I'll briefly cover the other points Mr W raised in response to the view. If Mr W was making a first payment to T he wouldn't have made any returns, so I don't agree that Virgin should have picked up on this. And, as Mr W thought he was paying a company I don't find it surprising he hadn't met an agent of the company in person. Mr W's representative also said he didn't receive documentation, but this is not correct – as I have set out above.

I realise how disappointed Mr W will be, as he has lost a substantial amount of money, but I can't fairly ask Virgin to reimburse him.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 January 2025.

Jay Hadfield
Ombudsman