

The complaint

W, a limited company, complains that Clydesdale Bank Plc (trading as Virgin Money) have been unreasonable in declining to refund money lost as the result of a scam. W would like the losses refunded to them.

What happened

W holds accounts with Virgin. In late May 2022 the company accounts manager received an email from a company director asking for a payment of £4,481.27 to be made to an individual. The payment was made at 5pm, and the accounts manager sent an email confirming.

Shortly after this it was discovered that the request for payment wasn't real – a scammer had sent the email. A director of W tried to contact Virgin beginning at 9:00am the next day but had difficulty getting through – eventually they had to attend a branch to report what had happened. Virgin got in touch with the receiving bank, but unfortunately no funds remained to be returned.

W tried to raise a claim for reimbursement under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. W also complained about the delays in getting through to report the fraud. Virgin apologised for the delays in reporting and agreed to pay £200 in compensation. But the bank declined to refund the losses. They said the receiving bank had told them no funds remained.

Unhappy with this W referred the complaint to our service. One of our investigators looked into it, but didn't think Virgin needed to do anything further. They were satisfied that W wasn't covered by the CRM Code because they had too many employees to be considered a microenterprise. The investigator didn't think the payment was unusual or irregular enough to W's usual account activity that Virgin should have stopped the payment or asked further questions. They accepted there had been delays in reporting the fraud caused by Virgin but didn't think this affected the outcome as the funds had been moved on. They thought the £200 already paid was adequate compensation for any inconvenience caused.

W didn't accept this, saying the fraud had had a huge impact on the company. As no agreement could be reached the complaint has been passed to me to decide.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

There doesn't appear to be any dispute that the payment from W's account was authorised, albeit under false pretences. From W's submissions it appears that the regular process for approving payments internally wasn't necessarily followed – but overall, the payment was made by someone with authority to transact on the account. The starting position in the relevant regulations – the Payment Services Regulation 2017 (PSRs) and the terms of W's account is that the payment is authorised, and W are responsible for the losses.

But I've also considered what's fair and reasonable in all circumstances of this complaint, and whether it would be reasonable for Virgin to bear some of the losses.

Is W covered under the CRM Code?

W has asked for reimbursement under the CRM Code, which Virgin are signed up to. But this code doesn't cover every customer of the bank – the losses need to be to specific types of customers. The most relevant in this case are “*microenterprises*”. The code refers to the definition of a *microenterprise* from the PSRs, which in turn refers to Annex to Recommendation 2003/361/EC, of 6 May 2003. Article 2 of this defines a *microenterprise* as an enterprise that employs fewer than 10 people and whose annual turnover and/or balance sheet total does not exceed EUR 2 million.

But from what W has told us about their company there were more than 10 employees at the time of the fraud, and in the two years previous as well. On that basis, I'm afraid W doesn't meet the definition on a *microenterprise*. It follows that it is not eligible for the protections provided by the CRM Code.

Could Virgin have done more to prevent the losses?

Virgin, like all regulated financial firms in the UK, have an obligation to monitor account activity and look for signs that a customer may be falling victim to financial harm. If a transaction looks to be particularly out of place, unusual or high risk, I may expect Virgin to intervene and ask some further questions to find out more about why a transaction is being made. The hope there is that any fraud or deception is uncovered.

But in this case, I'm not persuaded that the transaction was so unusual that Virgin should have intervened. W's account is regularly used, with regular payments made in to and out of the account.

The amount paid is also not out of keeping with the account – for example several days previously there was a payment for approximately £6,000, and another for approximately £4,000. So, I'm not satisfied that a single payment of £4,481.27, even to a new payee, would stand out. The account had a healthy balance at the time, and this amount didn't come close to exhausting the balance.

The beneficiary bank have confirmed to our service that the name of the receiving account is the same as was entered for the payment. So, there would not have been any issue with an account name mismatch.

There weren't any clear indicators at the time that the payment wasn't genuine. As such, I don't see that it's unreasonable that Virgin didn't step in to intervene.

Could Virgin have done more to recover the funds?

The director of W has told us they started attempting to contact Virgin about the payment at 9:00am the day after the payment was made but had difficulty getting through. I've been given no reason by Virgin to doubt this was the case. And it doesn't appear Virgin contacted

the beneficiary bank until 14:16pm – so I consider there was a delay here. When they got a response, it was confirmed no funds remained to be returned to W.

But I also have to consider if this delay makes a difference to the outcome of the case. The beneficiary bank have confirmed to our service that all the funds in the account were moved on the same day the funds were sent. This means even if W had been able to get through, the funds were already gone by this point.

I accept though that it will have inconvenient for the directors to spend time trying to report the fraud, when this should have been a reasonably straightforward process. Virgin have already paid £200 compensation for this. In the circumstances, I consider this appropriate.

Conclusions

I've no doubt here that W has been the victim of a scam, and it will have been an unpleasant experience for the directors and staff members to have to deal with. I'm sorry to hear how it has affected those involved, and I can sympathise with what they've been through.

But my role here is to determine whether Virgin have been fair and reasonable in their dealing with W in regard to this payment and declining to refund it. Having reviewed everything available, I'm satisfied they have been for the reasons given above. As such I'm not asking them to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 11 June 2024.

Thom Bennett
Ombudsman