

The complaint

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

What happened

Mr M found a PC gaming set listed on a well-known online selling platform (that I'll call E). He says he attempted to buy the item via E, but the order was cancelled, and the seller referred him to a different selling platform instead (that I'll call S).

Mr M says he made a bid of £1,250 for the item listed on S, but the seller countered at £1,300, which Mr M accepted. Mr M says the seller insisted he pay by bank transfer and agreed the item would be sent the next day by special delivery. On 24 October 2023, Mr M transferred £1,300 from his Virgin Money account to the seller's account, after which point the seller grew slow to respond. Mr M became suspicious when the seller stopped replying to messages, the delivery date had not been met, and the seller didn't provide any tracking when asked. He reported what happened to Virgin Money on 30 October 2023. And on 2 November 2023, Mr M received a PC keyboard from the seller in the post.

Virgin Money declined to refund Mr M under the Contingent Reimbursement Model (CRM) Code, of which it's a signatory. The CRM Code sets out that Virgin Money should refund victims of authorised push payment (APP) scams, in all but a limited number of circumstances. Virgin Money said it gave Mr M an effective warning when he made the payment, and noted the payment wasn't unusual for Mr M. And had Mr M used S' approved payment method, he would have been able to claim with S.

It also said it did all it could to recover his funds, but the beneficiary bank said that its customer had showed an entitlement to the funds, and therefore deemed Mr M's claim to be a civil dispute between Mr M and the seller.

Mr M complained to our service, but our Investigator did not uphold his complaint. They said Virgin Money had assessed the CRM Code correctly and established that Mr M lacked a reasonable basis for belief, so it was not required to refund him. And as Mr M's funds had been removed from the account he paid, prior to him reporting it, there was nothing more Virgin Money could have done to retrieve his funds.

Mr M didn't agree with this outcome. In summary he said;

- He provided clear evidence he'd been scammed so he should be due a refund under the CRM Code.
- He acknowledged the warning from Virgin Money, and this prompted him to report the scam upon noticing red flags.
- The lack of cooperation from the beneficiary bank, shouldn't absolve Virgin Money of any liability.
- He wants access to the evidence Bank S received from its customer.

- The price of the item was not too good to be true, as he has found similar items sold in the region of £1,300.
- It's common practice for buyers to rely on a seller's reviews to establish legitimacy.
- He didn't have the option to pay via S' platform as the item was listed as 'collection'.

As no agreement could be reached, this case was passed to me to be considered.

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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's 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 be good industry practice at the time.

For the avoidance of doubt, I'm persuaded that on the balance of probabilities Mr M was the victim of an APP scam. I say this because Mr M paid the seller for a gaming set which included a PC with installed software, a monitor, keyboard, a microphone, headphones, and a mouse mat. He received a keyboard – different to the one on the listing. The seller largely stopped corresponding with Mr M once he'd made the payment, and only seemed to engage with Mr M once S restricted the seller's account, and once Virgin Money had contacted the seller's bank. I'm therefore satisfied the CRM Code applies.

However, that doesn't mean Mr M is automatically due a refund from Virgin Money. Mr M acknowledges he carried out the transaction in dispute, albeit he was tricked into doing so. But under the relevant regulations, namely the Payment Services Regulations 2017 (PSR 2017), Mr M is responsible for transactions he has authorised.

Turning to the application of the CRM Code, it too doesn't mean Mr M is automatically due a refund from Virgin Money. Having considered the evidence provided by both parties, I'm in agreement with our Investigator that a valid exception to reimbursement applies under the CRM Code, and therefore Virgin Money is not required to refund him.

Specifically, that Mr M;

- Made the payment without a reasonable basis for believing that the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

I know this will come as a disappointment to Mr M, and I've explained why I've reached this decision below:

- I accept Mr M's comment that this was a custom set, so the exact value of the item might be difficult to gauge. Additionally, whilst the listing describes what's included in the set, it says full specifications are provided in the photos, for the PC for example. It doesn't appear that all the photos have been submitted in evidence. This makes it harder to understand the value of the item in question. However, Mr M says he

thought it was worth between £1,500 to £1,800. Even if I were to accept this, given the seller said he'd paid £3,200 for the item, it remains unclear why he'd agree to sell it for such a heavily discounted price and cover the cost of delivery (as mentioned in the listing). Especially as the condition was stated to be 'like new' and they simply 'no longer needed it'.

- Mr M says the seller insisted he pay via bank transfer. I accept that this alone might not have indicated Mr M was being scammed. But platforms like E and S all strongly encourage making payment via their platform to be eligible for buyer protection. And in his submissions to our service, Mr M said, '*...price adjustments are commonplace on second-hand platforms. I, too, have experienced selling items where I initially set a higher price but later had to reduce it until the item was sold*'. I've taken this to mean Mr M has experience of selling items on platforms like S. Therefore, I think Mr M ought to have appreciated the risk in paying up front for the item, without having viewed it, or verified the seller had it in his possession, via a method of payment with no buyer protection.
- In response to our Investigator's outcome, Mr M says the item was listed as a 'collection' item, and therefore he had no option to pay via S. However, S' terms explain there is no buyer protection with collection deals, and ultimately Mr M was not collecting the item. So, I do think he ought to have queried why the seller insisted on this payment method.
- Whilst I've not seen evidence of this, I accept Mr M says the seller had 100% positive feedback on E. However, I do think it's unusual that when Mr M attempted to purchase initially via E, that order was cancelled, and he was told to purchase via S instead.

In light of the above, I think there was enough going on here to have caused Mr M to question the legitimacy of the sale. Therefore, given an exception to reimbursement applies under the CRM Code, that means Virgin Money is not required to refund him in full.

Is there any other reason why Virgin Money might be liable for Mr M's loss?

Virgin Money also has standards under the CRM Code it's expected to meet. Failure to do so in relation to a particular payment, or series of payments, could mean it's responsible for partially reimbursing its customer.

The CRM Code requires a firm to provide an Effective Warning where it identifies an APP scam risk in a payment journey. However, I'm not persuaded there was enough going on for Virgin Money to have identified a scam risk when Mr M made the payment, given the nature and value of the payment. It therefore was not required to provide an Effective Warning.

Recovery of funds

The CRM Code says that where an APP scam is reported, the sending bank should notify the receiving bank of an APP scam immediately. 'Immediately' isn't defined, but I think up to one hour would be considered reasonable.

Virgin Money contacted the bank Mr M sent his funds to, the same day he reported that he'd been scammed. But the beneficiary bank said that its customer was entitled to those funds and Mr M's claim was the subject of a civil dispute between him and the seller. In this context, Virgin Money acts as an intermediary between Mr M and the beneficiary bank. It is not responsible for the investigation into the beneficiary, or the decision on how to treat any funds that might remain. Nor is it privy to the evidence the beneficiary bank reviewed to reach their outcome. The beneficiary bank is responsible for that investigation and my decision concerns the actions of Virgin Money – not the beneficiary bank.

In any event, Mr M's funds had been removed from the account Mr M paid, prior to him reporting the scam to Virgin Money. So Virgin Money couldn't have done more to recover his funds.

Overall

Whilst I'm sorry to disappoint Mr M, I'm in agreement with our Investigator that Virgin Money has correctly applied the CRM Code and is therefore not required to refund his loss.

My final decision

My final decision is that I do not uphold this complaint about Clydesdale Bank Plc trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 February 2025.

Meghan Gilligan
Ombudsman