

The complaint

Mrs R is complaining that Clydesdale Bank Plc trading as Virgin Money ("Virgin") won't refund the payments she made when she fell victim to a scam.

What happened

The circumstances of the scam are well known to both parties, so to avoid causing Mrs R further distress, I won't go into great detail here.

But in summary Mrs R hired a company that I will call B to carry out some building work. Mrs R says that this work was going to take three days. The same day B said it had finished it asked for payment in cash. Mrs R says that she did not want to pay B that day as she wanted to inspect the work that had been done, but B persuaded her to pay that day. B drove Mrs R to a branch of Virgin she withdrew £3,500 in cash and gave it to B.

The following day Mrs R discovered that the work had not been carried out to a good standard and some work had not been done at all.

Mrs R raised a complaint about this as she believes that Virgin should have invoked the banking protocol and called the police. Had this happened she says that she would not have made the payment.

I issued a provisional decision on 25 July 2024 in which I said the following;

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The first thing that I have to consider is whether Mrs R has been scammed at all. Based on the information provided I am satisfied that Mrs R was scammed and that B did not do the job that it was paid for. This is taking into consideration evidence provided about the work done, the messages between B and Mrs R's representative and the information from trading standards. So overall, albeit on balance, I am satisfied that Mrs R was scammed.

Mrs R authorised the withdrawal in question so, the starting point is that she is responsible for withdrawals she authorised.

But this isn't the end of the story. As a matter of good industry practice, Virgin should also have taken steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

Taking into account the above, 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 their 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; and*
- *in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Because Mrs R made the withdrawals in a branch, the Banking Protocol is also relevant here.

The Banking Protocol is an initiative between financial businesses and the police to identify customers, specifically in branch, who are in the process of sending funds to a scammer. It has been fully in force since March 2018 – so before the disputed withdrawals took place.

In summary, financial businesses have committed to:

- *implement the Banking Protocol procedure where the customer is identified as making an unusual or out of character cash withdrawal or payment transfer;*
- *discreetly questioning the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been given a cover story to tell if asked about the transaction consider the responses against what they expect as normal activity on the customer's account – and if they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details (with consideration given to whether a suspect is in the branch, nearby, or has arranged to meet the customer afterwards); and*
- *if the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the police immediately who will attend the branch to speak to the customer.*

In this instance the withdrawal was clearly out of character as Mrs R did not generally withdraw large amounts of cash. This is further supported by Mrs R being asked questions by the member of staff. From the limited evidence that we have it seems that Mrs R was asked what the payment was for, how she was getting back from the branch and if she was happy with the work done.

I have listened to the call between Mrs R and the Virgin's complaint handler and she says that she told the staff member that she was getting a lift home from the builder and she was "not happy with the work it was very untidy but you get what you pay for".

The Banking Protocol Toolkit highlights common scams. One of the scams it highlights is Rogue Traders when work is carried out on a consumer's home where the work being carried out is to a poor standard and possibly being left unfinished. The consumer is then driven to the branch and asked to withdraw cash to pay for the substandard work. Given that based on the questions that were or at the very least should have been asked by the member of staff I think that the Banking Protocol should have been invoked in this instance.

I note Virgin's comments that Mrs R said "you get what you pay for" and this would have reassured the member of staff. But the builder was outside the branch Mrs R had stated that she was not happy with the work, she was relying on the builder to get home and she was paying in cash. This should, in my view, have alerted Virgin that Mrs R may have been the victim of a scam.

Virgin has also said that Mrs R paying in cheques at the same time suggested that Mrs R was not being coerced. But I don't think that this was enough in itself to mitigate the overall circumstances of the transaction.

Had the Banking Protocol been invoked and the Police called I don't think that Mrs R would have made the withdrawal and given the funds to B that day and given the work that was done I don't think any payment would have been made. I also think that it would have been clear to the Police that B were not acting in a normal way and may be Rogue Traders - especially given the person running B had been found guilty of being a rogue trader before and had several complaints with trading standards.

So I think that Virgin not invoking the Banking Protocol caused Mrs R a loss.

Putting things right

Currently I intend to uphold this complaint and I think that Virgin should

1) Refund the £3,500

2) Add interest at 8% on this figure from the date of the transaction to the date of settlement less any applicable tax"

Mrs R via her representative agreed with my provisional decision. Virgin in response raised a number of points these included

- There was no evidence of what was said in branch and that had Mrs R said that she was unhappy with the work done and the builder was outside waiting for cash an intervention would have taken place. They have reiterated that the member of staff in question was experienced and had invoked the banking protocol in the past
- There were no contract of works and therefore how can it be determined that the work was not carried out as expected. What evidence is there that Mrs R was actually scammed.
- The work was carried out in December 2023 and the scam was not reported until several months later.

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 relation to what was said in branch there is evidence of what was said and that is the consumer's testimony. I can't say for certain what was said in branch but I find it unlikely that if asked about the purpose of the large cash withdrawal and the circumstances around it that Mrs R would not have been honest and would not have said that it was for some building works that she was not happy with and that she was relying on the builder for a lift back to her house.

On balance, either Mrs R said the above and the member of staff did not invoke the banking protocol or the member of staff did not ask sufficient questions to establish the circumstances surrounding the payment. Either way Virgin did not likely do what it was supposed to.

This means I am satisfied, albeit on balance, that Virgin should not have just allowed the withdrawal to go through. Had the banking protocol been invoked and I think it should have been I am satisfied that the Police would have discovered what Mrs R was doing. Given the history of the builder, that he had gone to prison for scamming people, and Mrs R was being pressured into paying for a job that she was unhappy with, I think it unlikely the payment would have been made.

In relation to whether the work was carried out as expected again, I am unable to say for certain what happened. But on balance given the photographs of the work, the contact between Mrs R's son and the builder after the work was carried out, the limited information from trading standards and the history of the builder himself I think it more likely than not that the work was not carried out to a sufficient standard.

I note Virgin's comments in relation to the Contingent Reimbursement Model ("CRM") and the difference between a Civil Dispute and a scam but that is not the test in this case as I am not looking at a refund under the CRM as this was a cash withdrawal. I am looking at whether Virgin did something wrong, in this case by either not invoking the banking protocol or failing to ask enough questions to establish that it needed to be invoked and whether this caused Mrs R a loss. In this instance I am satisfied, again on balance, that Virgin did something wrong and had it not done so Mrs R would not have paid the builder. So, Virgins actions caused Mrs R a loss.

In relation to the delay in the scam being reported, I can see that Mrs R's representative initially chased the builder to make the works good, then chased the website he found the builder from and then reported the matter to trading standards and the police. This caused a delay raising the issue with Virgin. I don't think this delay was unreasonable or means that Mrs R was not scammed.

So, I am upholding this complaint for the above reasons including what I outlined in my provisional decision.

Putting things right

I uphold this complaint and I think that Clydesdale Bank Plc trading as Virgin Money should

1) Refund the £3,500

2) Add interest at 8% on this figure from the date of the transaction to the date of settlement less any applicable tax

My final decision

My decision is that Clydesdale Bank Plc trading as Virgin Money should pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 20 September 2024.

Charlie Newton

Ombudsman