

The complaint

Mr I has complained that Clydesdale Bank Plc (trading as Virgin Money) won't refund transactions he says he didn't make or otherwise authorise.

What happened

One day in late 2023, Mr I's Virgin account was used for around £19,000 of high-value point-of-sale spending at established merchants, using his Apple Pay facility.

Virgin blocked some of the spending at first, and had calls with Mr I's mobile phone number. They spoke with a man who passed security and was identified as Mr I. He confirmed the spending was genuine and asked Virgin to unblock his account and allow it through.

Just after the spending finished, Mr I called Virgin from that same number and said the payments had been made without his consent.

Virgin held Mr I liable for the payments in dispute. They said the payments were made on an Apple Pay token which had been set up on Mr I's device, at a usual IP address of his, verified with a call with his phone number, and he still had his device with him. And he'd confirmed the spending as genuine during recorded calls.

Our Investigator looked into things independently and didn't uphold the complaint. Mr I didn't agree, so the complaint's 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.

Broadly speaking, Virgin can hold Mr I liable for the payments in dispute if the evidence suggests that he authorised them. This is not a criminal case, so Virgin do not need to prove things beyond all reasonable doubt. Instead, I'm just looking at what's most likely.

I appreciate that Mr I would like to see CCTV footage. Neither our service nor Virgin own the merchants' camera footage, and neither our service nor Virgin had the power to compel the merchants to hand footage over. Moreover, such footage is only kept for about a month, so it will have been deleted some months ago. And even if it were still available after all this time, it would've only shown what the person making the transactions looked like. It would not have shown whether they had Mr I's permission or not – it's perfectly possible for someone to give someone else permission to use their account. So instead, I've focused my decision on the evidence which is available and which better shows what happened here.

I can see from Virgin's technical evidence that the payments in dispute used an Apple Pay token. Mr I normally used Apple Pay for his genuine spending. From what I can see, this token was set up on a device which Mr I used for his own genuine spending, which was accessed using the registered biometrics. No malware or proxies were detected. Mr I's device was protected with a PIN. And I can see that he remained in possession of this device, as he continued to use it for his undisputed activity, so it wasn't stolen by a thief. The token was registered at the same IP address Mr I used for his own genuine activity and spending, such as transfers between his other account. And the token was verified by a security call with Mr I's phone number – the same number he gave us. So there's no likely or plausible way that this was done by an unknown thief. And the only known parties who had access to Mr I's phone were his partner and children, who he did not suspect.

Virgin spoke to Mr I about the disputed spending at the time. In those calls, he confirmed it was him trying to make payments he's since disputed, he expressed his unhappiness with Virgin blocking the payments, and he asked Virgin to unblock his account so he could make the spending he now disputes.

Mr I now says that wasn't him. But I've listened carefully to those calls, as well as recordings of Mr I speaking to our service and of him reporting the disputed payments. I've listened carefully to the voice, including things like the specific way that the same words were pronounced across the calls. I find that the voices are a good match. I also see that the disputed and undisputed calls were all with the same phone number – Mr I's phone number. There is no evidence of any number spoofing, as Mr I suggested.

The man on the disputed calls was able to answer the relevant security questions and be identified as Mr I, including questions which only Mr I would've likely known the answer to. It's also notable that the day before the disputed spending, Mr I spoke to Virgin about some other transactions in a nightclub which had been blocked, which Mr I confirmed to us was him. In that call, Mr I expressed concern about Virgin blocking high-value payments, explaining he was about to carry out further high-value spending. Following this, the high-value disputed transactions were made. And when unblocking the disputed transactions, the caller referred back to the prior call, expressing his unhappiness that Virgin had blocked his account again. So again, this supports that it was the same person in both the disputed and undisputed calls.

I'm reasonably satisfied that it was Mr I who spoke to Virgin about the disputed payments at the time. And so it was Mr I who confirmed that spending as being his own, and Mr I who asked Virgin to let it go through.

Finally, I've not seen any evidence which makes it seem implausible or unlikely that Mr I could've authorised these payments or given someone else permission to make them.

In summary, the evidence at hand strongly supports that the payments were authorised. Whereas I have not found any significant evidence which makes me think they were unauthorised. It follows that it's most likely the payments in question were authorised, and so Virgin do not need to refund them. I appreciate that this may be a difficult message for Mr I to receive, but given the evidence at hand and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

My final decision

For the reasons I've explained, I do not uphold Mr I's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 4 September 2024.

Adam Charles
Ombudsman