

## The complaint

Mr N complains that Clydesdale Bank Plc, trading as Virgin Money, won't refund all the money he lost when he was the victim of a scam.

## What happened

In May 2023, Mr N received a text message which appeared to be from Virgin Money saying a new standing order had been set up on his account and he should call a phone number if he hadn't authorised it. And as Mr N hadn't authorised the standing order and believed the message was from Virgin Media, he called the number given in the text message.

When he called, Mr N was told his accounts were at risk and so he should move the money in them to new accounts which would be set up for him. The person he was speaking to then guided Mr N to make a number of payments, transferring money from both his personal and business accounts to account details they gave him. I've set out the payments Mr N made below:

Date	Time	Account	Details	Amount
17 May 2023	13:36	Business	To 1 <sup>st</sup> account details	£30,000
<b>17 May 2023</b>	<b>13:58</b>	<b>Business</b>	<b>To 2<sup>nd</sup> account details</b>	<b>£30,000</b>
17 May 2023	14:13	Business	To 3 <sup>rd</sup> account details	£30,000
17 May 2023	14:26	Business	To 4 <sup>th</sup> account details	£25,000
17 May 2023	14:33	Business	To 5 <sup>th</sup> account details	£15,000
17 May 2023	14:40	Business	To 6 <sup>th</sup> account details	£29,999
17 May 2023	14:46	Business	To 7 <sup>th</sup> account details	£29,999
<b>17 May 2023</b>	<b>14:51</b>	<b>Business</b>	<b>To 8<sup>th</sup> account details</b>	<b>£18,997.32</b>
<b>17 May 2023</b>	<b>15:00</b>	<b>Personal</b>	<b>To 2<sup>nd</sup> account details</b>	<b>£10,302.76</b>

Unfortunately, we now know the text messages and the phone call were a scam. After he realised it was a scam, Mr N reported the payments he had made to Virgin Money and asked it to refund the money he had lost.

Virgin Money investigated and accepted that it could have done more to protect Mr N. But it also said he didn't take appropriate steps to check the person he was speaking to worked for Virgin Money and wasn't given a believable explanation for why the account details he entered for the payments didn't match the actual details of the accounts. So it offered to refund 50% of the money Mr N had lost for most of the payments, where it felt it and Mr N were liable, and 67% of the money he had lost for the second, eighth and ninth payments (highlighted in bold in the table above), where it felt it, Mr N and the receiving bank were liable. It also offered to pay Mr N £175 as compensation for errors and poor customer service it had provided him.

Mr N wasn't satisfied with Virgin Money's response, so referred a complaint to our service. One of our investigators looked at the complaint. They thought it was reasonable for Mr N to believe that the call was genuine when he made the first payment, but that he should have had concerns when he was asked to make further payments to different accounts. So they

recommended Virgin Money refund the first payment in full, in addition to what it had already refunded. Mr N disagreed with our investigator, so the complaint has been passed to me.

### **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 broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Virgin Money is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr N fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
  - o the payee was the person the customer was expecting to pay;
  - o the payment was for genuine goods or services; and/or
  - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

#### *Did Mr N have a reasonable basis for belief when making the payments?*

Virgin Money has argued that Mr N didn't have a reasonable basis for belief that the person he was speaking to was legitimate. It's said the caller didn't quote any genuine activity on his account or provide a believable explanation for why the payment details he was given didn't match the actual details on the accounts. It also said Mr N didn't take appropriate steps to validate that the caller was a Virgin Money employee.

But the text message Mr N initially received said it came from Virgin Money, and appeared in a thread of text messages with other messages Mr N had genuinely received from Virgin Money. So I think it's reasonable that Mr N thought this text message was legitimate.

Mr N says the person he spoke to on the phone knew his name and the number on his bank card. He says they also knew that he had a large balance on his account and had been the victim of fraud previously. And they took him through a security procedure, similar to what he would expect from a genuine bank. And I think it's reasonable that this will have all made the call feel genuine to Mr N.

Mr N was also sent a second text message about activity on his account he didn't recognise while he was on the phone, and which also appeared in the thread of genuine text messages from Virgin Money. So I think it's reasonable that he felt he was under time pressure and so had to act quickly to avoid losing money.

I appreciate that there were things about what was happening and what he was told that should have caused Mr N some concern – such as being told to select that the payment was for friends and family, and Virgin Money's check showing him that the name on the bank details he had entered didn't match those on the actual account he was sending money to. But I think it's reasonable that, at the time he was making the first payment here, Mr N either didn't pick up on these things or wasn't caused enough concern to overcome the parts of the scam that felt genuine.

And so I don't think Virgin Money has established that Mr N made the first payment here, for £30,000 at 13:36, without a reasonable basis for belief that it was genuine or the person he was speaking to was legitimate. And as Virgin Money hasn't suggested that any of the other exclusions to reimbursement applies to this payment, I think it should therefore refund this first payment to Mr N, in full.

However, the second payment Mr N made here was made to a second new set of account details.

I appreciate Mr N has said he didn't know the payments were going to different accounts. But Virgin Money's evidence shows new payment beneficiaries were set up on his account with different account details for each payment. So I think Mr N ought reasonably to have realised the payments were going to different accounts.

And while I don't think it's unreasonable that Mr N believed he had to send his money to a new account in order to keep it safe, I think it's significantly less plausible that he would need to send it to a number of different accounts. So I think being asked to do this should have caused him significant concern.

He also then received the warning that the name on the bank details he was sending the payment to didn't match the actual account details for a second time – without being given any explanation for this by the person he was speaking to. And while Mr N has said he doesn't think these checks are reliable and he's made successful payments where the details don't match before, Virgin Money hasn't been able to find any evidence of these payments and I don't think it would be reasonable to disregard these checks on that basis in any event. So I think being shown this warning for a second time should also have caused Mr N significant concern.

Mr N was also again asked to say that the payment was for friends and family, despite this not being the case. And I think being repeatedly asked to mislead his bank and enter incorrect information should also have caused him significant concern.

And so, at the point Mr N made this second payment, I think there were a number of things about what was happening and what he was being told that should have caused him significant concern. And, at this point, I think these things in combination should have been enough to overcome the parts of the scam that appeared genuine and it was no longer reasonable for Mr N to make the payments without asking further questions or carrying out further checks.

I sympathise with the position Mr N has found himself in. And I appreciate that being told his accounts were at risk was very concerning for him, particularly given the significant balance held in them. But I think Virgin Money has established that Mr N made the second payment, and all the later payments, without a reasonable basis for belief that they were genuine. Virgin Money has therefore established that one of the exceptions to reimbursement under the CRM code applies to these payments, and so it does not have to refund Mr N all the money he lost as a result of them.

### *Did Virgin Money meet its obligations under the CRM code?*

Virgin Money has accepted that it should have done more to protect Mr N when he was making all the payment here, and so didn't meet its obligations under the CRM code.

Where one of the exclusions to reimbursement applies, but a firm has also failed to meet its obligations, the CRM sets out the refund that a customer is entitled to. It says that, where one of the exclusions to reimbursement applies and the sending bank failed to meet its obligations but the receiving bank met its obligations, the customer is entitled to a refund of 50% of the money they lost. And it says that, where one of the exclusions applies and both the sending and receiving banks failed to meet their obligations, the customer is entitled to a refund of 67% of the money they lost.

Virgin Money has said the receiving banks here accepted they had not met their obligations under the CRM code for the second, eighth and ninth payments Mr N made here (highlighted in bold in the table above). And it has already refunded Mr N 67% of the money he lost from these payments.

Virgin Money has also said the receiving banks did not accept they hadn't met their obligations for the rest of the payments Mr N made here. And so it has refunded 50% of the money he lost from these payments.

So, as Virgin Money has already refunded the percentage of the money Mr N lost from the second payment onwards that the CRM code says he is entitled to in these circumstances, I don't think it would be fair to require it to refund anything further for these payments.

### *Did Virgin Money do enough to recover the money Mr N lost?*

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Virgin Money contacted the receiving banks the payments were sent to and was able to recover some of the money Mr N lost – which has been returned to him.

But, from what I've seen, the remaining money from the payments Mr N made was immediately removed from the accounts it was sent to. So I don't think anything I would have expected Virgin Money to have done would have led to any more of Mr N's money being recovered.

### *Customer Service*

Mr N also complained about the customer service he received from Virgin Money, both when he was reporting the fraud and during his complaint.

And from what I've seen, there were delays in Virgin Money responding to some of Mr N's correspondence. Some of the information Virgin Money gave Mr N in its correspondence was also unclear and incorrect. And Virgin Money has also accepted that the wait times Mr N experienced on the phone to it were longer than it would like and, at one point, he was transferred to an incorrect department. So I agree that the customer service Mr N received from Virgin Money wasn't of the standard we would expect a business to provide.

But, as I explained above, the remaining money from the payments Mr N made was immediately removed from the accounts it was sent to. So I don't think any of these customer services issues affected the chances of any more of Mr N's money being recovered.

And I think the £175 Virgin Money has offered Mr N is fair and reasonable compensation for the distress and inconvenience its poor customer service caused him. So I don't think it would be fair to require it to pay him anything further.

### *Redress*

Virgin Money has said that £10 was recovered from the account this first payment of £30,000 was sent to. And I understand it has already refunded 50% of the money Mr N lost as a result of this payment. So, for the reasons set out above, I think it would be fair for Virgin Money to refund the remaining money Mr N lost from this payment that has not yet been refunded or returned to him.

### **My final decision**

For the reasons set out above, I uphold this complaint in part and require Clydesdale Bank Plc, trading as Virgin Money, to:

- Refund Mr N the remaining amount of the first payment he made here that has not previously been refunded, as set out above
- Pay Mr N 8% simple interest on this refund, from the date it first responded to his claim until the date of settlement
- Pay Mr N £175 compensation, if it has not already done so

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 21 February 2025.

Alan Millward  
**Ombudsman**