

## **The complaint**

S – a limited company – is represented in its complaint by Mr R, the company's sole director.

Mr R has brought S' complaint to our service after Clydesdale Bank Plc trading as Virgin Money (hereafter Virgin) declined to refund S' loss to a scam.

## **What happened**

The background to this complaint is well-known to all parties, and so I'll only summarise key details here.

Mr R received what appeared to him to be a legitimate email and invoice from one of his suppliers. He noted new account details had been provided and so set up a new payee using his banking app. He went on to send £5,826.91 on 18 March 2023 and £9,661.60 on 5 April 2023, as per the emails and invoices he received.

Mr R realised S had been caught up in a scam when the supplier chased for payment. It was revealed that legitimate emails and invoices had been tampered with, and the account details that Mr R had seen had been provided by scammers.

Mr R reported what had happened to Virgin. It investigated but said it wouldn't provide a refund. It said that Mr R had been told the payee name didn't match the destination account when the new payee was being set up. And it said it delivered what it considered to be an effective warning about invoice intercept scams when payments were being made.

Virgin contacted the receiving bank to see if any money could be recovered but, despite chasing, heard little in response.

Mr R brought S' complaint to our service. One of our investigator's considered it and recommended it be upheld. He felt the warnings given by Virgin didn't meet the standards required under the CRM Code. He felt Mr R – acting on behalf of S – had acted reasonably and that S ought to be reimbursed.

Virgin disagreed and so 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.

Having done so, I'm reaching the same outcome as our investigator and for broadly the same reasons.

The starting point at law is that a customer is responsible for payments made from their account which are properly authorised. This is set out in the Payment Service Regulations (2017), and it's confirmed in S' account terms and conditions.

Virgin is, however, a signatory to the Lending Standards Board's Contingent Reimbursement

Model (CRM) Code. The Code is in place to see the victims of scams reimbursed in most circumstances. But there are exceptions to reimbursement that a firm like Virgin can choose to rely on to deny a refund. Virgin has said one or more such exceptions apply here. It's then for me to determine whether those exceptions are being fairly and reasonably relied on.

Virgin argues that S:

- Failed to react appropriately to a negative Confirmation of Payee notification; *and*
- Ignored an effective warning about invoice intercept scams;

But I don't believe either of these exceptions can be fairly relied on to deny S a refund. To give some context to my findings, I'll first explain that I consider the emails and invoices S received as part of this scam to be very convincing. It is true that there are details which have been changed. But, for the most part, the emails and invoices are very convincing replicas.

It would appear from the evidence we have, that the genuine supplier believes legitimate emails and invoices were intercepted and altered. That would offer explanation as to how and why the fraudulent correspondence looked so convincing. Even the difference in email address used is incredibly subtle.

I'm also mindful that Mr R would have been viewing these emails and invoices on his phone. And so the amount of detail and information on display would have been limited. That Mr R might have possibly been able to view the correspondence on a PC or laptop if he'd decided to delay paying the invoices is not particularly relevant to my decision. I am considering the circumstances as they were, and the actions that were taken, and how reasonable they were.

I'm not entirely clear on what message Mr R was presented with when the CoP check was met with a mismatch. Virgin has referred to it, but I can't see that it's provided a screenshot of the message or similar to demonstrate what would have been shown. It has provided the content of its effective warning, and I'll come on to that shortly. It's possible part of the CoP message has been provided with the effective warning in the same screenshot, though it's not clear if that is the case. With that possibility in mind, I've considered the content of all Mr R seems to have been shown, according to Virgin.

I don't find the warnings and messaging ever go far enough in clearly setting out the risks and characteristics of an invoice intercept scam. They talk about fraudsters pretending to be from a known company. But they don't get across the level of sophistication that's frequently involved, as it was here, including the hacking of email accounts and highly convincing alterations of otherwise legitimate emails and invoices.

And the suggested steps to take don't go far enough either. It's not made explicitly clear that any new account details should be questioned by phone and not by email, and the reasons for that being the case.

Without warnings being as strong, direct, and impactful as I've outlined here it will often be the case that such scams aren't avoided. The awareness of the key features of such scams isn't common knowledge, and it's important to consider that many businesses like S will carry out a lot of day to day operations over email. So it's important that any scam warnings bring to life the common features of such scams. As that didn't happen here, I'm satisfied Virgin can't fairly and reasonably rely on the exceptions to reimbursement.

I also can't see that the consequences of proceeding with the payment is highlighted and where that is a requirement of the Code.

It then follows that S ought to have been refunded under the CRM Code. So I find it's fair and reasonable for Virgin to compensate S to that effect now.

### **Putting things right**

On S' acceptance Virgin should:

- Refund the total loss to the scam; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to date of settlement.

### **My final decision**

I uphold this complaint against Clydesdale Bank Plc trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 15 January 2025.

Ben Murray  
**Ombudsman**