

The complaint

Mr S is unhappy that Clydesdale Bank Plc (trading as “Virgin Money”) removed funds from his bank account after they were reported as fraudulent.

What happened

On 1 April 2023 Mr S opened an account with Virgin Money with the intention of using it to facilitate the trading of cryptocurrency.

Later that month Virgin Money was informed by a third party bank that one of the payments to Mr S’s account had been paid as part of a scam. Virgin Money restricted Mr S’s account and he was unable to access the balance of around £850.

Virgin Money started an investigation into the funds in the account, all of which had been credited from third party accounts. It made the decision to close Mr S’s account as it was against its terms and condition to use the account for the trading of cryptocurrency. It gave him 60 days’ notice of the account closure.

As part of its investigation, Virgin Money wrote to Mr S for further information about one transaction of £400 made on 4 April 2023. Specifically, it asked for evidence of where the funds had come from and Mr S provided evidence relating to this transaction.

On 29 June 2023 Mr S called Virgin Money for an update and was told he’d retain approximately £750 of the funds in his account. This was an error and ultimately only around £100 was returned to Mr S. The other funds were returned to the sender as Virgin Money had received confirmation from the sending banks that they were paid to Mr S as part of a scam.

Mr S was unhappy that Virgin Money hadn’t returned all of the funds to him. He said he had legitimately sold cryptocurrency to the individuals that had sent him money and didn’t know they were the victims of a scam. He said he’d acted in good faith and had lost the cryptocurrency so it wasn’t fair he should also lose the money he’d been paid for it.

He made a complaint about Virgin Money’s decision. It responded on 14 August 2023 but said it was correct to return the funds as it had been confirmed they were part of a scam. It also acknowledged that it had led Mr S to believe he would be able to retain around £750 but this was in error. It paid him £50 for the distress and inconvenience this would’ve caused.

Mr S was unhappy with Virgin Money’s response and brought the complaint to our service to consider. He said that he had evidence that proved the funds were legitimately his and had Virgin Money asked him about this he would’ve been able to provide this evidence.

Our investigator ultimately concluded Virgin Money had acted unfairly. They felt Mr S had provided sufficient evidence of his entitlement to the funds and based on this Virgin Money had acted unfairly by returning the funds to the sending accounts.

Virgin Money didn't accept this. It maintained that as it had been informed the funds were sent to Mr S as part of a scam by third party banks, it was right to return the funds. As Virgin Money didn't accept the investigators findings the complaint has been passed to me to make a decision.

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.

Banks and financial businesses have important legal and regulatory obligations they must meet when providing accounts to customers. They can broadly be summarised as a responsibility to protect persons from financial harm, and to prevent and detect financial crime. It's common industry practice for businesses to restrict access to an account to conduct a review on a customer and/or the activity on an account.

Banks and financial businesses are also entitled to end their business relationship with a customer, as long as this is done fairly, doesn't breach law or regulations and is in keeping with the terms and conditions. Mr S has accepted Virgin Money's decision to close his account in line with the terms and conditions so I won't comment on this issue any further here.

Virgin Money also received information that caused it to suspect Mr S had received fraudulent funds into his account. And having reviewed the information and the terms of the account, as well as other relevant regulations, I'm satisfied it was acting reasonably in restricting the account while it carried out an investigation.

I can see Virgin Money was contacted by a third party bank with reports that a payment Mr S received was fraudulent – the credit of £400 to the account on 4 April 2024. And it's right it should treat that seriously and it's reasonable it carried out a review in response to this. I also think it's reasonable that in the case of this first report it contacted Mr S to ask for further information about the payment in question to find out more about Mr S's involvement.

I can see that Virgin Money then received further contact from other third party banks which reported other credits to the account were fraudulent. But fraud reports or indemnities don't create specific obligations to return any funds. The best practice standards say they should be returned, subject to several caveats such as if the recipient can demonstrate they have a credible claim to the funds. So it would be reasonable for Virgin to discuss that with Mr S first, and if he did have a credible claim then Virgin could reasonably choose not to return the funds, especially if it's likely to leave Mr S in a worse position.

In the case of these transactions Virgin Money didn't discuss them with Mr S to establish his version of events. It's said it doesn't think it had to, but I think it would've been reasonable to do so in this case.

Mr S has provided our service with an explanation for the source of the funds and evidence that he sold cryptocurrency. He's also provided evidence that he communicated with each of the individuals that sent the funds to his account and that the names they were using matched the names on the accounts the funds came from.

Nothing I've seen in the information provided by Virgin Money suggests he was engaging in an investment scam, and I don't think Virgin Money has been able to provide adequate reason for its belief this is the case either. Based on the information available I don't think

there is sufficient evidence in this case to indicate Mr S was likely engaging in fraudulent activity.

Virgin Money's position seems to be that because the funds were fraudulent it's correct that they should be returned to the sending banks. It also seems to believe that if Mr S has lost out as a result of this, this isn't something Virgin Money can assist him with as it hasn't made an error.

But I don't agree. I've reviewed the terms and conditions that were in force at the time of the transactions and I haven't seen any provision that allows it to return funds to source in the circumstances I've outlined here.

There is a provision for returning funds if someone pays in money by "mistake" – but in this case there doesn't appear to have been a mistake. The funds have been paid to Mr S deliberately – the reports received from the third party banks confirm the sending parties intended to send the funds to Mr S, albeit as part of a scam he seemingly wasn't involved in. So I can't see that under the terms of the account Virgin Money can decide to remove funds from his account.

I understand Virgin Money has said it's hasn't seen any evidence that Mr S had a credible claim to the funds. But for the reasons given I believe this service has seen evidence to support this. And when it had the opportunity to request this evidence from Mr S Virgin Money chose not to.

Virgin Money has also said that whilst its terms and conditions don't say that it can return the funds in the circumstances outlined above, this is the bank's policy and is consistent with all banks. But I don't think this is enough. While the bank is entitled to have policies in place, it still needs to consider whether applying any policies in the individual circumstances is appropriate and as I've outlined above, establish whether the recipient has a legitimate claim to the funds. In this case, I don't think it is appropriate that Virgin Money has applied this policy and returned Mr S's money without carrying out a sufficient investigation into his involvement in the fraud it received report of.

I don't believe Virgin Money was acting fairly and reasonably in removing the funds from Mr S's account. It should return the funds to him. In addition, it should pay 8% interest on this amount from the date its investigation concluded to the date of settlement to reflect that he's been deprived of funds that he's entitled to.

I also think it would've been worrying and frustrating for Mr S to have the funds withheld from him and returned without Virgin Money asking him for any further information or even discussing the situation with him. And had it done this, it likely would've been able to bring its investigation to a conclusion sooner than it did. For this reason it should also make a payment of £150 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold the complaint and direct Clydesdale Bank Plc to:

- Refund Mr S the funds it returned to the sending banks (from what I can see this was £827)
- Add 8% simple interest per annum to this amount from the date the review was completed – 2 June 2023 – to the date of settlement

- Pay Mr S £150 compensation for the reasons given

If Clydesdale Bank Plc considers that HM Revenue & Customs require income tax to be deducted from the interest award above, they should tell Mr S how much has been deducted and provide with a certificate showing this, so he can reclaim the tax if eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 December 2024.

Faye Brownhill
Ombudsman