

## The complaint

Mrs H complains that Clydesdale Bank Plc trading as Virgin Money (Virgin) is refusing to refund her the amount she lost as the result of a scam.

Mrs H is being represented by a third party. To keep things simple, I will refer to Mrs H throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs H found an advertisement online for a company specialising in cryptocurrency investment that I will call X. X appeared to be endorsed by a well-known celebrity.

Interested in the potential investment opportunity Mrs H completed an online data capture form with her contact information and received a call from X shortly after.

X explained the investment opportunity in more detail and Mrs H was required to make an initial start-up payment of \$250.

Mrs H was required to download remote access software to her device so that X could help her with the investment process and open an account for her on X's website. Following the account being setup Mrs H was able to access her individual account using the login details that had been provided to her.

As Mrs H could see she was making a return on her investment she continued to make further payments. However, X then advised Mrs H that her account was in jeopardy and that she would have to make further payments to save it.

After making the requested payments Mrs H attempted to make a withdrawal from her account but was told further fees would need to be paid first. Mrs H thought this to be suspicious and when she logged into her account with X she could see her account had been frozen with a nil balance. Mrs H realised at this point she had fallen victim to a scam.

Mrs H made the following payments in relation to the scam:

Payment	Date	Payee	Payment Method	Amount
1	18 January 2022	All Prime Pay	Debit Card	£248.00
2	25 January 2022	Wisenex	Debit Card	£2498.33
3	11 February 2022	Wisenex	Debit Card	£4,221.24
4	11 February 2022	Wisenex	Debit Card	£4222.08
5	16 February 2022	Wisenex	Debit Card	£4,191.75
6	16 February 2022	Wisenex	Debit Card	£4,192.59
7	25 February 2022	Wisenex	Debit Card	£3,497.65
8	25 February 2022	Wisenex	Debit Card	£3,534.41

9	28 February 2022	Wisenex	Debit Card	£2,986.29
10	25 May 2022	Wisenex	Debit Card	£1,084.27
11	25 May 2022	Wisenex	Debit Card	£2,891.39
12	25 May 2022	Wisenex	Debit Card	£2,976.43
13	25 May 2022	Wisenex	Debit Card	£2,976.43

Our Investigator considered Mrs H's complaint and thought it should be upheld in part. Virgin disagreed, so this 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.

It has not been disputed that Mrs H has fallen victim to a cruel scam. The evidence provided by both Mrs H and Virgin sets out what happened. What is in dispute is whether Virgin should refund the money Mrs H lost due to the scam.

#### *Could Virgin have done anything to recover Mrs H's money?*

Mrs H made payments via her debit card to a cryptocurrency exchange that provided cryptocurrency to her that was then forwarded as part of the scam. As the payments made to the cryptocurrency exchange were legitimate payments and Mrs H's dispute is with X, not the cryptocurrency exchange a chargeback attempt would not have had any prospect of success.

So, with the above in mind I don't think Virgin had any reasonable options available to it to recover the payments Mrs H has disputed.

#### *Should Virgin have reasonably prevented the payments Mrs H made?*

It has been accepted that Mrs H authorised the payments that were made from her account with Virgin, albeit on X's instruction. So, the starting point here is that Mrs H is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Virgin should have been aware of the scam and stepped into question Mrs H about the payments she was making. And if it had questioned Mrs H would it have been able to prevent the scam taking place.

The first payments Mrs H made in relation the scam were not so unusual, or of a significant value that I would have expected them to have triggered Virgin's fraud prevention systems, prompting it to intervene.

However, when Mrs H made payment 4 I think Virgin should have had concerns. Mrs H was making a second payment the same day to the same cryptocurrency exchange, that brought the total value of payments for the day to more than £8,000 this was unusual for Mrs H's account, and I think Virgin should have intervened.

I think a proportionate intervention for Virgin to have carried out would have been for it to have discussed the payment with Mrs H and provided a warning to her based on the information it gathered. Virgin didn't do this.

Throughout the scam several calls took place between Mrs H and Virgin but I am only able to see one attempt from Virgin to provide an intervention in the sending of a payment. This took place during a call on 17 May 2022.

During the call Mrs H explained she was trying to make a payment to a cryptocurrency account and confirmed she was making the payment as part of an investment with a broker. Mrs H says she contacted X by phone and email.

Mrs H said she had previously made payments in relation to the investment and when Virgin asked if Mrs H had access to previous funds she said no as they were invested.

Virgin explained that Investment scams had increased and there were many scams at that moment in relation to investment. Mrs H provided X's name and Virgin appeared to do an internet search on the company.

Mrs H confirmed she had gone online and looked at reviews but had not got the broker's licence.

Virgin asked Mrs H if she could do any further due diligence and Mrs H said she wouldn't know where to go. Mrs H also confirmed she could withdraw from the investment but hadn't at the time.

Virgin then agreed with Mrs H that she would do some further research before progressing with the payment. Despite Mrs H previously telling Virgin that she would not know how to do this.

When this call took place Virgin was able to see that Mrs H was making large payments in quick succession to a cryptocurrency exchange, and as Virgin explained during the call, it was seeing an increase in investment scams at the time.

Considering the information available to Virgin at the time of the call I don't think its intervention went far enough. Mrs H was clearly answering Virgin's questions truthfully, so had Virgin asked appropriate questions such as, why was Mrs H not sending payments directly to the investment rather than to a cryptocurrency exchange, had she been asked to download any screensharing applications, or where she had found the investment, I think it is most likely Virgin would have realised Mrs H was falling victim to a scam and have been able to provide her with an appropriate warning.

I think had a proportionate intervention been carried out when Mrs H made payment 4 (as I think it should have), it is most likely Mrs H would have taken notice of a warning provided by Virgin and stopped making payments. Afterall, she had no desire to lose her funds.

So, with the above in mind, I think Virgin is responsible for Mrs H's loss from payment 4 onwards.

*Did Mrs H contribute to her loss?*

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances I don't think it would be fair to say Mrs H contributed to the loss. I say this because Mrs H had no previous experience in this type of investment and was lulled into a false sense of security by a scammer that went to great lengths to appear to be legitimate. Mrs H was also not asked to lie by X when making the payments.

### **Putting things right**

To put things right I require Clydesdale Bank Plc trading as Virgin Money to:

- Refund the payments Mrs H made in relation to the scam from payment 4 onwards.
- Add 8% simple interest to the amount it refunds Mrs H from the date the payments were made to the date of the refund (less any lawfully deductible tax)

### **My final decision**

I uphold this complaint and require Clydesdale Bank Plc trading as Virgin Money to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 7 March 2025.

Terry Woodham  
**Ombudsman**