

The complaint

Mr G complains Clydesdale Bank Plc (trading as Virgin Money) registered a fraud marker at Cifas, the national fraud database. He doesn't think it's done so fairly.

What happened

Mr G opened an account with Virgin Money in August 2023. On 22 September a £70 credit was received, followed by a number of significantly large credits on 3 October from a third party through bank transfers. The funds were quickly removed through transactions at Travelex and at cash machines. The payments into the account were identified as fraudulent because the bank from which the funds had come, notified Virgin Money its customer had been the victim of a fraud and scam.

Virgin Money blocked the account and reviewed the activity. Following which, it issued Mr G with a notice to close the account and loaded a misuse of facility marker at Cifas.

Mr G contacted Virgin Money in 2024 to complain after finding out about the marker when he had trouble opening a bank account. He said he'd not done anything to cause this. Virgin Money reviewed matters. It said it had recorded the marker correctly and declined to remove it.

Mr G didn't think this was fair. He referred his complaint to us. In doing so, he said:

- As far as he knew, the payments were from his friend paying him for arranging a holiday, including spending money they'd need.
- He had screen shots of messages on his phone to this effect.
- He realised afterwards that the payments were fraudulent – and he was no longer friends with the other party.
- The marker was stopping him from getting a bank account and moving on with his life.

One of our investigators reviewed matters. He acknowledged what Mr G had said about the payments being for an accumulation of flights, hotel and spending money. But said the majority of the funds that came in were exchanged at different Travelex branches fairly soon afterwards. £500 had also been withdrawn from cash machines. And he noted that the credits weren't from his friend but someone with a different name and there was no evidence of any bookings. In the circumstances and looking at the overall activity he felt Virgin Money had sufficient evidence to load the marker.

Mr G said his friend had told him that he'd arranged for another person to pay him as he hadn't had the opportunity to deposit the funds. He also provided some additional evidence of the interactions he'd had on the phone where they had discussed a holiday and money.

Our investigator didn't change his mind, so the case was escalated to an ombudsman as the second and final stage in our process.

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.

I'm sorry to disappoint Mr G but I'm not upholding his complaint.

The marker that Virgin Money has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Mr G is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says, there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and the evidence must be clear, relevant, and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr G's account, whether they are retained or pass through the account.

Secondly, the bank will need to have strong evidence to show that Mr G was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity. To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

So, I need to decide whether I think Virgin Money has enough evidence to show fraudulent funds entered Mr G's account and he was complicit. And I'm satisfied it has. I'll explain why below.

- I've seen evidence from Virgin Money that it received reports from a different third-party bank saying that funds which entered Mr G's account were as a result of a fraud. He doesn't dispute this.
- I've considered what Mr G has said about why he was expecting money and the additional information he's now provided. But I'm not persuaded that money was in relation to the holiday that was discussed. Because, of the amounts concerned were significantly more than is referenced and there's no tangible evidence of any arrangements/bookings of the trip. Mr G has an explanation for that but that's all it is. In addition to that, Mr G was paid by someone completely different to his friend. Again, he's explained why that was, but I'm not convinced this amount of money would have been sent when Mr G hadn't actually booked or paid for anything or that he'd hold that as cash in these circumstances. The overall account activity and the transaction in September suggests Mr G was complicit in what was going on.

Having weighed everything, I accept Mr G may not have fully appreciated his involvement in this could result in a marker at Cifas, and his account being closed. I'm also sorry to hear about the difficulties he's facing. But ultimately, the marker that's been loaded relates to a misuse of an account facility which is exactly what's happened here. Looking at the evidence, I think Virgin Money had enough to justify recording the marker. It follows that I'm not going to require it to do anything more.

For completeness, I have also found the bank didn't treat him unfairly when it closed his account immediately, given the account terms and conditions and looking at the circumstances that applied in his case.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 November 2024.

Sarita Taylor
Ombudsman