

## The complaint

Miss K complains Clydesdale Bank Plc trading as Virgin Money recorded a marker against her at Cifas, a national fraud database and closed her account. She doesn't think it's treated her fairly.

## What happened

Miss K held a current and savings accounts with Virgin Money. On 6 March 2023, both accounts were credited with four payments totalling £3,749.04 from a third party through bank transfers. The payments into the savings account (£899.64 and £874.32) were then moved into the current account and £250 and £50 withdrawn by Miss K at a cash machine.

The payments 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 restricted the account and after a review, it issued a notice to close the account and loaded a misuse of facility marker at Cifas.

Miss K didn't know about this until an employment screening check was done on her in relation to an internship and she was rejected. She contacted Virgin Money to complain and said she'd not done anything to cause this and was a victim herself. Virgin Money didn't think it had done anything wrong in the steps it had taken on the account and at Cifas but accepted it should have provided better service when handling her complaint and apologised.

Miss K didn't think this was fair and referred her complaint to us. In doing so, she told our Investigator what had happened:

- She and a friend (X) were taking a city break.
- X said that he had friends who owed him money, so to make things easier, they would pay her for what was his share of the cost for an apartment.
- She trusted him, so didn't think anything of this.
- She gave X her account details and received payment.
- X asked her to take money out in cash as he said the apartment owner wanted cash. She withdrew £300.
- When her account got flagged, she realised the payments must have been because of a fraud.
- She asked X to give her supporting evidence that the money genuinely belonged to him, but he stopped responding, and eventually blocked her. This also meant she couldn't take any action.
- All communications about this had taken place over Snapchat and so no details of the interactions were available.
- Without any information she'd understood there was nothing further she could do.
- Virgin Money had never informed her about its decision to close her accounts.
- She only knew about the marker after the employment screening check.

One of our Investigators reviewed matters. She acknowledged what Miss K had said but

didn't think Virgin Money had treated her unfairly on the crux of her complaint. This was based on the evidence it provided. She also considered the account closure had been fair in the circumstances and noted Virgin Money had emailed Miss K about its decision at the time.

However, the Investigator recommended a payment of £100 to reflect the inconvenience caused when handling the complaint.

Virgin Money accepted the Investigator's conclusions, but Miss K didn't. She maintained she'd been betrayed by someone she thought was a friend. And she didn't think Virgin Money had met Cifas's requirements for filing the marker, particularly as it had failed to contact her at the time.

The Investigator thought about what Miss K had said but considered there was enough evidence to support filing the fraud marker and closing the accounts.

Miss K asked that her case be put forward for an ombudsman's 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.

I'm sorry to disappoint Miss K but I'm not upholding her 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 Miss K 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 Miss K's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Miss K 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 Miss K's account and she was complicit. And I'm satisfied that it has. I'll explain why.

- I've seen evidence from Virgin Money that it received a report from a different third-party bank saying that funds which entered Miss K's account was as a result of a fraud. She doesn't dispute this.
- Virgin Money should have contacted Miss K so that she could explain the activity on her account – Cifas's guidance makes that clear. But I'm afraid this isn't the end of

the matter. Because I must also consider what Virgin Money had and what Miss K has said now about what she understood the payments were for as its unwilling to delete the entry. She says X's friends paid her instead, for his share of the cost of the apartment and he convinced her of that. But I don't find the explanations persuasive.

- Firstly, the payments came into two different accounts belonging to Miss K. There's no plausible reason why the details of two separate accounts would have been required if X was simply arranging to pay for an apartment. Miss K says she can't recall what details she gave, but she must have given both in order for the money to be paid in. As our investigator said, this suggests Miss K was expecting other funds.
- I've gone onto review the statements for both accounts. These show Miss K received £1,975.08 into the current account and £1,773.96 into the savings account. All the funds that went into the savings account were then transferred into the current account quickly using mobile banking linked to the accounts. It's of note that both amounts combined were significant and given how the transfers were done between the accounts; I'm satisfied Miss K would have known what money had come in and that the transfers were done with her knowledge given the mobile banking activity. She says X told her to withdraw cash because that's what the apartment owner told him he wanted. But her testimony was she was arranging the apartment. She said, *"I told him to send the apartment money to my Virgin account to keep this separate as I was helping arrange the apartment."* This doesn't make sense. Furthermore, I can see that only £300 was withdrawn, which still left almost £3,500 for what Miss K says she understood to be for X's share of the apartment.
- There's also no tangible evidence to support what Miss K says. I've thought about all of this, and what Virgin Money has provided. Having done so, I think its evidence is robust. Virgin Money has refused to remove the fraud marker and looking at everything, I think it has enough to justify loading and maintaining it. It follows that I'm satisfied that it was also entitled to close the accounts in the circumstances that it did. Miss K says she wasn't notified of the closure, but the evidence shows Virgin Money sent her an email that her account was being closed due to fraudulent activity.
- Virgin Money has already accepted that when Miss K raised a complaint, its customer service fell short. Our investigator recommended £100 was fair in reflecting the impact. Having thought about that, I think that's reasonable. However, given my other findings, I won't be requiring it to take steps to remove the marker or re-open the accounts. I realise Miss K will be disappointed and I understand that she may not have fully appreciated the consequences of this in terms of the marker, but I'd like to re-assure her that I've given careful consideration to what both sides have said and provided.

This now completes our review of her complaint.

### **My final decision**

My final decision is Clydesdale Bank Plc trading as Virgin Money should pay Miss K £100. I make no other award or direction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 February 2025.

Sarita Taylor

**Ombudsman**