

The complaint

Mr O complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") has declined to reimburse payments he made as part of a scam.

What happened

In March 2022, Mr O saw an advertisement on a well-known social media site. The advert featured a prominent British politician who was promoting investments in cryptocurrencies. Mr O registered his interest with the company who were advertising their services, further referred to as "Company A".

Mr O carried out research and found lots of positive reviews online. He also found the website very complex and plausible. The website claimed that the company traded in foreign exchange (forex), commodities and cryptocurrencies.

Mr O spoke with a member of staff (further referred to as "PJ") from Company A and, satisfied with all the information he'd reviewed, decided to invest. Mr O made a payment of £19,000 towards this investment from his Virgin Money account in March 2022. After the payment had been made, Mr O was able to see the investment reflected in his trading account with Company A.

In March 2022, Mr O contacted Virgin Money and alerted them to the fact that this investment wasn't legitimate and that he'd been the victim of a scam. Virgin Money looked into the matter and refunded 50% of his loss in May 2022.

Shortly after this, PJ contacted Mr O again to explain a further investment opportunity in cryptocurrency. Despite initially being reluctant, Mr O was convinced by PJ to invest again and made payments totalling £308,200 between May and September 2022 to various accounts, as requested by PJ from his Virgin Money account. Mr O had made, and unsuccessfully attempted to make, payments from another bank account he owns prior to the payments from his Virgin Money account.

Mr O attempted to withdraw his profits from Company A. In order to do so, it was explained that, due to the significant profit his investments had accumulated, he would be required to pay withdrawal fees, plus tax, in order to receive his funds. Between June and July 2023, Mr O made payments totalling £85,700 to withdraw his funds.

Having still not received his investment returns, Mr O raised a complaint with Virgin Money in November 2023. Virgin Money investigated Mr O's complaint and upheld it, in part. Virgin Money felt that, for the payments between May and September 2022, Mr O didn't have a reasonable basis for believing he was paying money to a legitimate business, or for genuine reasons. Virgin Money also felt that Mr O failed to take appropriate action before making the payments following discussions he'd had with them prior to the release of some of the payments.

For the payments between June and July 2023, Virgin Money still felt that Mr O didn't have a reasonable basis for believing he was paying money to a legitimate business, or for genuine

reasons. But, Virgin Money did accept that they failed to provide sufficient warnings for these payments, as required under the Contingent Reimbursement Model (CRM) Code, and so refunded Mr O 50% of the total loss he incurred as a result of these payments as well as some of the funds they were able to recover from one of the beneficiary companies. In total, this amounted to £42,945.43.

Virgin Money also accepted that they could've provided better service to Mr O, and so paid Mr O £200 in recognition of this. Unhappy with this response, Mr O, via a professional representative, referred his complaint to our service.

An investigator looked into Mr O's complaint but didn't uphold it. The investigator felt that further intervention from Virgin Money was unlikely to have prevented Mr O from making the payments. They also felt that Mr O didn't have a reasonable basis for believing he was paying money towards a legitimate investment and so felt that the refund already provided by Virgin Money was fair.

Mr O disagreed with the investigator's findings. In summary, he felt that Virgin Money failed to intervene appropriately and effectively before releasing such high-risk and high-value payments. Had they done so, they could've prevented the scam from taking place.

As the complaint couldn't be resolved by the investigator it was passed to me for a decision.

Having reviewed the case, I reached a different answer to the investigator. So, I issued a provisional decision and gave both parties the chance to provide any further evidence they wanted to be considered before I issued a final decision.

What I provisionally decided – and why

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our service can only consider complaints regarding payments or services which have already been considered by the respondent business. I understand that during the course of this complaint at our service Mr O has referenced additional payments which he'd like to be considered. But, for the reasons stated above, my decision will only be considering the payments which have been complained about to, and considered by, Virgin Money. For clarity, this means I will only be considering the payments referenced in Virgin Money's final response letter dated 21 February 2024; the payments made between May 2022 and July 2023, totalling £393,900. Should Mr O wish for any additional payments to be considered, he should first raise a formal complaint with Virgin Money.

In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr O's complaint. This is not meant to be a discourtesy to Mr O or Virgin Money, and I want to assure them I have considered everything they've submitted carefully.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's CRM Code, which Virgin Money has signed up to. Under the CRM Code the starting principle is that a business should reimburse a customer who is the victim of an authorised push payment (APP) scam, like Mr O, except in limited circumstances. The circumstances where a business may choose not to reimburse include (so far as they might be relevant to this complaint) where the business can establish that:

- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning; or
- the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay, the payment was for genuine goods or services, and/or that the person or business with whom they transacted with was legitimate.

I have thought about how the CRM Code applies in the circumstances of the payments Mr O made and in particular, whether Virgin Money have established that it may choose not to reimburse him.

Should Virgin Money reimburse Mr O under the CRM Code?

Virgin Money have accepted that they failed to provide Mr O with warnings which meet the standards of the CRM Code for the payments made between June and July 2023. Because of this, they refunded 50% of Mr O's losses for these payments. Virgin Money did, however, state that they provided Mr O with warnings for the payments between May and September 2022 – and that Mr O had selected incorrect payment purposes when processing these payments.

Having reviewed the correspondence between Mr O and the scammer, it's clear that Mr O follows the scammer's instructions to mislead his banks as to the true purpose of the payments he was making. As that's the case, I believe Mr O's actions prevented Virgin Money having the opportunity to supply an effective warning as set out under the Code. Because of this, I don't think it would be fair to ask Virgin Money to refund Mr O on the basis that they failed to provide Mr O with an effective warning, as per the CRM Code.

Virgin Money also declined to reimburse Mr O under the Code as they believe he didn't have a reasonable basis for believing that the investment opportunity was legitimate or to continue working with the scammers. Having asked Mr O why he was persuaded to invest with the scammers again having already raised a claim, his answer didn't provide any explanation as to how or why the scammers were able to convince him they were legitimate. As that's the case, I don't think it is unreasonable for Virgin Money to decline to reimburse Mr O under the CRM Code on the basis that he didn't have a reasonable basis of belief that the investment was genuine.

For the payments made between June and July 2023, I also think that Virgin Money have acted fairly in declining Mr O's request for reimbursement on the basis that he didn't have a reasonable basis for believing that the investment was legitimate. I say this as, further to the reasons above, it's clear from the correspondence between the parties that Mr O had been told that his investments had reached a value of over £2million. Given the amount initially invested, I believe this rate of return too good to be true and ought to have caused Mr O to have significant concerns about the legitimacy of his investment and carry out further checks before parting with any funds.

Based on everything I've seen, I don't think it would be fair to ask Virgin Money to provide any further reimbursement to Mr O under the CRM Code. In summary, I don't believe Mr O had a reasonable basis for believing that the investment was genuine or the payees were

legitimate. I'm also satisfied that Mr O's actions prevented Virgin Money from providing an effective warning as defined by the Code.

Could Virgin Money have prevented the scam at the time of the payments?

I've considered whether Virgin Money could've done any more at the time of the payments in order to prevent Mr O's loss.

There are some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Virgin Money also has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

I've reviewed the genuine activity on Mr O's account, as well as the circumstances surrounding the payments and his account, for the months leading up to the scam in order to determine whether Virgin Money ought to have intervened at the time of the payments.

Having done so, I'm satisfied that the disputed payments are significantly out of character to the genuine use of the account and represent an increased risk of fraud or financial harm to Mr O. As that's the case, I'm satisfied that Virgin Money ought to have identified this risk and asked Mr O additional questions before releasing the payments.

Virgin Money blocked a payment of £10,000 on 25 May 2022 and spoke to Mr O prior to its release. I believe that this is a reasonable point for them to have identified the potential risk Mr O faced, given the value of the payment and the fraud claim previously raised by Mr O.

During this conversation, Mr O explains that he was making the payment in order to purchase foreign currency. Virgin Money did ask some brief questions but, importantly, Mr O is not asked to explain the investment in any further detail. As that's the case, I don't think this call went far enough to understand the circumstances of the payment and I believe that an opportunity was missed to ask additional questions and gain additional information in order to prevent the scam taking place.

Following this, I've gone on to consider what difference any additional intervention would've made at this point in the scam.

I've reviewed all available calls in which Mr O discusses the scam payments, both with Virgin Money and Mr O's other bank, to determine whether better intervention could've identified the scam and prevented further payments.

At no point in these calls does there appear to be an attempt to delve more deeply into the purpose of the payments or gather any detailed information about the investment Mr O believes he is making.

Had relevant and additional questions been asked of Mr O during these calls, I'm not persuaded he'd have been able to give plausible and satisfactory answers to explain that the purpose of the payments was genuine or legitimate. I say this because, based on what Mr O has explained about his personal circumstances, the cover story he used to process the payments wasn't based on any real-life events. Had Virgin Money questioned Mr O further

on the specifics of the purpose of the payments, I'm not persuaded he'd have been able to explain their purpose in such depth that it would've satisfied Virgin Money that the answers he was giving were genuine.

Given Mr O had raised a scam claim with Virgin Money shortly prior to this intervention, I think they ought to have been aware that Mr O was at a heightened risk of falling victim to scams of this type i.e. investment scams. And, given that I don't think he'd have been able to provide satisfactory answers to any further questioning by Virgin Money during a telephone call, I think it would've been appropriate for the banking protocol to have been invoked. Had the banking protocol been invoked, I'm persuaded that the scam could've been prevented.

Virgin Money believe that no intervention would've resulted in the scam being prevented, given that the consumer's previous actions of moving the payments from one bank to another in order to circumvent any friction or intervention while making payments. Though I understand and appreciate Virgin Money's point here, and can see that Mr O did make attempts to circumvent any additional checks on the payments, I'm not persuaded that he'd have continued with the scam had the banking protocol been invoked and relevant warnings and guidance given by the police and Virgin Money at this stage.

I accept that Mr O returns to speak to PJ for advice during the payments in 2022– but having reviewed the correspondence, this appears to have been borne out of frustration that he's been unable to use his account of his own free will, rather than to seek advice on what to say to the banks if questioned about the payments.

Though PJ advised Mr O to mislead his banks if questioned about the payments at this stage, I cannot see that the cover story given was thorough or went into any real depth; other than advising Mr O to tell his other bank that he is purchasing cryptocurrency of his own free will, with little other detail.

Furthermore, had Mr O been questioned by Virgin Money or the police, he wouldn't have been able to have provided any formal documentation or persuasive evidence that the investment was legitimate. This would've enabled both Virgin Money and the police to expose the scam.

The correspondence and calls that have been provided by both parties doesn't show that Mr O received detailed and informative advice on how to avoid future scams following the initial claim he raised in March 2022. So while I appreciate that Virgin Money feel as though Mr O failed to take heed of their advice, without seeing or having access to any such advice, I can't agree that Mr O did fail to take the appropriate action following this.

But, even if Virgin Money could demonstrate that they'd given Mr O relevant advice on how to protect himself from future scams, I don't think that it would mean that they wouldn't have been able to prevent the scam from taking place; or that they should bear no responsibility for Mr O's loss. Ultimately, I'm not persuaded based on the evidence that Mr O would've returned to PJ or Company A following the intervention I feel to be appropriate, as set out above, and the evidence doesn't show that Mr O was so under the spell of the scammers that there's nothing Virgin Money or the police could've done to prevent him from making the payments.

Taking the above into account, I'm persuaded that Virgin Money ought to have uncovered the scam on 25 May 2022 and prevented Mr O from incurring a loss going forward.

Should Mr O share responsibility for his loss with Virgin Money?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint. As stated above, I believe Virgin Money could've prevented Mr O's loss from 25 May 2022 onwards.

But, for the same reasons given when explaining why I'm not satisfied that Mr O had a reasonable basis for believing the person he was paying was legitimate (as per the CRM Code) I'm therefore persuaded that both parties share equal liability for his loss.

Recovery of Mr O's funds

I've considered whether Virgin Money took the appropriate action once they were made aware that Mr O had fallen victim to a scam.

I can see that Virgin Money contacted the companies that operated the beneficiary accounts shortly after Mr O had made them aware he'd fallen victim to a scam. Unfortunately, though, Virgin Money were only able to recover some of Mr O's funds (£95.23). As that's the case, I'm satisfied there's nothing further Virgin Money could've done to recover any more of Mr O's money and that they acted appropriately in the circumstances.

Trouble and upset

Virgin Money paid £200 in recognition of the distress and frustration caused as a result of the time it took them to provide a response to Mr O after he'd approached them about the scams. Having considered the circumstances, I believe this amount to be fair taking into consideration the time it took for Virgin Money to respond to Mr O and the impact the delays had on him.

Overall

Taking everything into account, I'm satisfied that Virgin Money can decline to reimburse Mr O's loss under the CRM Code. But, I do believe that Virgin Money ought to have prevented the scam from continuing following their call with Mr O on 25 May 2022, and that both parties should share equal responsibility for the loss from this date.

Putting things right

To put things right Virgin Money should:

- Refund Mr O 50% of the payments made as part of the scam between May and September 2022 which occurred following the call between Mr O and Virgin Money on 25 May 2022.
- Pay interest on that refund at 8% simple interest from the date of the payments until the date of settlement.
- As Virgin Money ought to have prevented the scam from continuing in 2022, they should also pay interest on the reimbursement provided under the CRM Code for the payments made between June and July 2023 at 8% simple interest from the date of the payments until the date of settlement.

My provisional decision

My provisional decision was that I intended to uphold this complaint, in part, against Clydesdale Bank Plc trading as Virgin Money and required them to reimburse Mr O as set out above.

Responses to my provisional decision

Virgin Money responded in detail to explain why they disagreed with my provisional decision. In summary, they felt it was unlikely any additional questioning would've prevented the scam from continuing. They also felt that Mr O had been dishonest with his banks as to the purpose of the payments and that he would've likely found an alternative way to make the transactions regardless of any additional questioning and warnings.

Mr O responded to my provisional decision to request that I consider additional payments as part of this complaint.

As I've received a response from both parties I'm going to proceed with issuing my final 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.

Virgin Money have explained why they disagree with the outcome I previously reached. But, having considered the additional testimony provided by them, I see no reason to reach a different answer than I did in my provisional decision.

I understand they disagree with my findings, and why, but the additional testimony and arguments put forward by Virgin Money largely relate to points I've considered as part of my provisional decision. Having considered them once again, they do not persuade me to now reach a different outcome; and for the same reasons I previously explained.

I appreciate Virgin Money's concerns regarding Mr O's dishonesty when he was questioned about the payments. But, the point remains that they ought to have identified that Mr O was at risk of fraud and financial harm at the time he was making these payments and therefore should've done more to satisfy themselves that the payments were for legitimate purposes. I'm still not persuaded that Mr O would've been able to have provided any formal documentation or persuasive evidence that the investment was legitimate and so both Virgin Money and the police could've exposed the scam had additional enquiries been made.

Again, I accept that Mr O returns to speak to PJ for advice after a payment was blocked in 2022, but this appears to have been borne out of frustration that he's been unable to use his account of his own free will, rather than to seek advice on what to say to the banks if questioned about the payments.

Further to this, I've not received any evidence to demonstrate that Mr O received any effective warnings at the time of the payments or that he received any guidance or education on how to avoid falling victim to scams following the first scam claim in early 2022. So, while Mr O did speak to the scammer following the initial scam claim, I'm not persuaded that an effective warning and additional intervention wouldn't have prevented his loss or that Mr O would've sought means to process the payments despite this information and assistance.

The Financial Fraud Action UK's Banking Protocol Toolkit explains *'The Banking Protocol is a multi-agency initiative between financial sector organisations including banks and building societies, the Post Office, Trading Standards and police aimed at identifying customers who*

are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds.’ I therefore disagree with Virgin Money’s assertion that the police would not have spoken to the consumer about the validity or authenticity of the investment.

I understand that Mr O would like additional payments to be considered as part of this complaint. But, as stated in my provisional decision, I have only considered the payments referenced in Virgin Money’s final response letter dated 21 February 2024. Should Mr O wish for any additional payments to be considered, he should first raise a formal complaint with Virgin Money.

In summary, I’m persuaded that Virgin Money ought to have identified that Mr O was at risk of fraud and financial harm when making the scam payments in May 2022. Had Virgin Money taken appropriate action at the time, I’m persuaded that the scam could’ve been prevented from continuing. I’m also persuaded that, for the reasons I explained in my provisional decision, Mr O could’ve done more to protect themselves from the scam and so should bear some responsibility for his loss.

Putting things right

To put things right Virgin Money UK Plc should:

- Refund Mr O 50% of the payments made as part of the scam between May and September 2022 which occurred following the call between Mr O and Virgin Money on 25 May 2022.
- Pay interest on that refund at 8% simple interest from the date of the payments until the date of settlement.
- As Virgin Money ought to have prevented the scam from continuing in 2022, they should also pay interest on the reimbursement provided under the CRM Code for the payments made between June and July 2023 at 8% simple interest from the date of the payments until the date of settlement.

If Virgin Money considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr O how much it’s taken off. It should also give Mr O a tax deduction certificate if he asks for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint, in part, against Clydesdale Bank Plc trading as Virgin Money and required them to reimburse Mr O as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 18 December 2025.

Billy Wyatt
Ombudsman