

The complaint

Mr K complains that Clydesdale Bank Plc trading as Virgin Money has declined to refund a disputed transaction that was made from his account, and for the way it handled his fraud claim.

What happened

In September 2023, Mr K says he was approached by some people, and his mobile phone was stolen from him. Following this, a £1,500 transaction debited his credit card account.

When Mr K discovered the transaction, he says he called Virgin Money to report it as unauthorised and asked it to refund the money. But Virgin Money didn't think it was liable for his loss. Unhappy with this, and for the way it had handled his fraud claim, Mr K raised a complaint with Virgin Money.

In response, it said:

- The disputed transaction was made using Apple Pay, which Mr K had previously registered on his stolen mobile phone.
- It couldn't establish how someone could have bypassed the security of Mr K's mobile phone to access Apple Pay and make the transaction.
- It was unable to accept Mr K's fraud claim.

Mr K remained unhappy and referred a complaint to this service where it was considered by one of our investigators. She didn't feel that Virgin Money had shown that the disputed transaction was authorised by Mr K. As such, she felt it should refund the £1,500. She also agreed that Virgin Money had caused Mr K trouble and upset for the way it handled his fraud claim. She therefore felt it should pay him £75 compensation.

Mr K thanked the investigator for her findings, but Virgin Money disagreed. It reiterated that it was unable to establish a point of compromise for Mr K's mobile phone security.

As no agreement could be reached, the 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.

The relevant regulations here are the Payment Services Regulations 2017 (PSRs), and the Consumer Credit Act 1974. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So, the issue for me to determine is whether it was more likely than not that Mr K carried out the disputed transaction himself. Or if it was made by an unauthorised individual. Or, if the person making the transaction acquired Mr K's credit token (the Apple Pay device) with his consent.

Virgin Money says the disputed transaction was made using Apple Pay linked to Mr K's mobile phone. I don't have the full evidence report from Virgin Money to evidence this, just a snippet of a report instead. However, in the circumstances, considering Mr K's comments that his mobile phone was taken (which had Apple Pay linked to his credit card), and not the physical credit card itself, I accept that the transaction was made using Apple Pay.

Virgin Money has repeatedly said that it's unable to establish a point of compromise for Mr K's mobile phone security (which would've been required to access Apple Pay). I appreciate that this is relevant here, as Mr K has said he cannot recall his phone being unlocked when it was handed over to the individuals who targeted him. However, it doesn't appear that Virgin Money questioned Mr K about this until very recently, and after our investigator pointed out that it's possible Mr K had been observed entering his phone PIN by these individuals before they targeted him.

I find it more likely than not, that Mr K had been observed entering his PIN to access his mobile phone before he was targeted. After all, an accessible phone would be a lot more beneficial to the individuals who targeted Mr K, rather than one that couldn't be accessed. Mr K has provided evidence that he reported the matter to the Police, as well as evidence that he replaced his mobile phone via his insurance company. So I find that this adds credibility to his version of events, and I don't think anybody else acquired his mobile phone with his consent. Virgin Money hasn't provided any evidence to suggest that the disputed transaction was proceed in any other way other than the phone PIN (for example using Mr K's own biometrics, such as face ID or fingerprint).

I can also see that after the £1,500 transaction was processed a further transaction attempt for £1,000 was made but declined by Virgin Money. Its contact notes suggest that an outbound call, intended for Mr K, was made to discuss the account activity, but the person who answered failed its security questions. This also suggests that someone other than Mr K was in possession of his mobile phone, and strengthens his position once again that the transaction was made by an unauthorised individual.

customer service

Mr K has expressed dissatisfaction with the way Virgin Money handled his fraud claim. He says the experience has been distressing for him. He's told our Service that he has spent many hours on the phone to Virgin Money, trying to find a way forward with his fraud claim. Only to be told each time that its investigation is on-going.

From the evidence I've seen, I don't find that Virgin Money has dealt with Mr K's fraud claim very well. I can appreciate that being targeted for his mobile phone, and the subsequent disputed transactions would've been an upsetting time for Mr K. And this difficult time would've been heightened by Virgin Money's handling of his fraud claim.

Our investigator recommended that Virgin Money pay Mr K £75 compensation. But, in the circumstances, I don't think that's enough to reflect the trouble and upset he's experienced. Instead, I find that Virgin Money should pay £150 to Mr K for the trouble and upset its customer service would've caused to him.

Putting things right

I'm not satisfied that Virgin Money has demonstrated that it's entitled to hold Mr K liable for the £1,500 disputed transaction. So, Virgin Money should:

- Refund the £1,500 to Mr K's credit card account.
- Refund any associated credit card interest for this transaction, from the date it was made to the date of settlement.
- Pay £150 compensation to Mr K.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 April 2025.

Lorna Wall
Ombudsman