

The complaint

Ms K and Mr K complain that Clydesdale Bank Plc trading as Virgin Money ('Virgin') won't refund the money they lost to an investment scam.

To keep things simple, and as Mr K was the one involved in the events leading up to this complaint, I'll only refer to Mr K throughout this decision.

What happened

The background is known to both parties. I won't repeat all the details.

In summary, Mr K says that, in October 2023, he watched an advert about cryptocurrency investments which was seemingly endorsed by a well-known celebrity. He contacted the 'company' (I'll call 'F') that the advert was linked to and, after registering his interest, he was contacted by someone (a scammer) claiming to be an 'adviser' at F.

Believing he was dealing with a genuine 'adviser' he made payments for 'investment' and later for 'fees' as instructed. From February 2024, he was repeatedly asked to pay more in 'fees' to release his funds which he was led to believe had grown to £450,000. By the time he realised he'd been scammed, over £123,000 (£50,000 from Virgin) had been sent to the scam from his various accounts with the separate firms used.

The three payments from Virgin, on 29 February 2024, were intended for the payment of 'fees' through the purchase of cryptocurrency from a seller ('J') in the peer-to-peer market. But only the first payment of £15,000 remains outstanding in terms of loss as the next two payments were returned following contact between Mr K and the recipient's bank ('E').

A complaint was made to Virgin and referred to our Service. Our Investigator didn't uphold it. In brief, he thought Virgin should have intervened on some of Mr K's payments. But he thought it was unlikely proportionate interventions would have made a difference to Mr K's losses given also what happened in interventions by other firms in the scam journey.

As the matter couldn't be resolved informally, it's 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.

Having done so, I've decided not to uphold it for similar reasons as the Investigator.

There's no dispute Mr K was scammed and I'm sorry about the impact the whole experience has had on him. It's also not in dispute he authorised the payments from his Virgin account. So, although he didn't intend his money to go to a scammer, under the Payment Services Regulations 2017, Mr K is presumed liable for his losses in the first instance. And, as the Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

There are, however, some situations where I consider that a firm (like Virgin) taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment – if, for example, it's particularly suspicious.

In this case, I don't think there was enough about the first payment to J for Virgin to have gone beyond the automated warnings it provided based on the 'payment purpose' Mr K had selected, taking also into account the account history. I'm satisfied that this is a relevant consideration when thinking whether a payment should have flagged as unusual compared to typical spending. I'm also mindful that while the funds were used to buy cryptocurrency that's not something Virgin would have known given the method used. And I don't think it would be reasonable to expect a firm's automated systems to pick up, outside the more known and commonly used exchanges, on the account details of every person (or entity) that may be selling cryptocurrency.

Like the investigator, I think there was probably enough about the next payments, given the increase in spending and the activity that was starting to develop, for Virgin to have asked Mr K more (as part of a 'live' intervention) about the surrounding circumstances. To be clear, that didn't happen and I agree with Mr K there was arguably a failing here. But it's important to emphasise that for me to uphold this complaint requires more than a finding that Virgin should have done more. I'd need to be satisfied that, but for any failings on its part, Mr K wouldn't have lost his money. With that in mind, on balance, I'm not persuaded proportionate interventions would have made a difference to what happened here such that I can direct Virgin to refund his losses.

I say this because Mr K was provided with warnings that were relevant to his situation at the time but these didn't stop him from going ahead. I think it's significant the scammer was on the phone to him at the time for hours daily and I don't underestimate the pressure he was under to make payments on the belief he'd then be able to access his money. In particular, I can't overlook that when Mr K was questioned, by other firms from which payments were made (calls were also held), he went on to mislead them about what was really happening at the time. There were several instances of what I consider to have been significant probing – and, crucially, at no point in February 2024 did Mr K share information to indicate he was being instructed by an 'adviser' on the payment of 'fees' required for him to access an earlier 'investment'.

I recognise I can't know for sure how things would have played out if Virgin had intervened and I can understand why Mr K feels the fact "*we'll never know*" should be on Virgin. I've also thought carefully about his comments that his interaction with E was a catalyst for him to re-assess his situation and that, if Virgin had done more to protect him (as it should have), it's possible he wouldn't have lost more money. But, on the evidence, I don't think that's the more likely scenario – especially when Mr K was again being pressured by the scammer when payments were made, and the timing shows he still wasn't upfront when another firm asked about his circumstances in early March 2024 *after* the payments from Virgin.

This isn't a decision I've made lightly. I'm again sorry Mr K was the victim of a cruel scam that's affected him deeply. But, as before, I can only direct Virgin to refund his losses if I'm satisfied any failings on its part made a material difference to what happened. For the reasons I've given, I'm not convinced that they did. In terms of recovery, there was little Virgin could have done. There wouldn't have been a basis for it to have recalled the funds used to purchase cryptocurrency from a seller in the P2P market. There's no dispute the cryptocurrency was provided and nothing to show L was part of the scam itself.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K and Mr K to accept or reject my decision before 15 August 2025.

Thomas Cardia
Ombudsman