

The complaint

Miss Z has complained Clydesdale Bank plc, trading as Virgin Money, won't refund her for two transactions made on 1 October 2023.

What happened

Miss Z suffers from generalised anxiety disorder. Because of her condition, she keeps information on her mobile phone which allows her to know how to access her bank accounts.

In 2023 she lost her mobile phone. She contacted Virgin Money and told them she'd seen two transactions she didn't make. These were for £600 and £900 and were transfers made using her mobile banking service. She asked Virgin Money to refund her.

Virgin Money felt there was insufficient evidence to show what had happened and didn't feel they were required to refund her.

Miss Z brought her complaint to the ombudsman service.

Our investigator reviewed the evidence taking into account Miss Z's testimony. It was difficult to get to the bottom of what had exactly happened, but she felt it was most likely Miss Z had made the disputed payments herself.

Distressed by this outcome, Miss Z has asked an ombudsman to consider her complaint.

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 reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Miss Z's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN – to be used by someone else.

To help me come to a decision, I've reviewed the evidence Virgin Money provided as well as what Miss Z has told us. I've considered all of the information, including about her health, that Miss Z has been able to share with us. She's been brave to do this.

Unfortunately because of her condition (and this has been confirmed by the medical evidence she's shared with us) Miss Z has difficulties with her memory.

I have taken that into account but it means it's been difficult to understand exactly what happened. Miss Z has told us she lost her phone after being out one evening or during the day. So I have tried to balance that information with the factual data Virgin Money has been able to share with us.

I note Virgin Money has provided no evidence to suggest Miss Z acted in a grossly negligent manner. Nor do I think this – because of Miss Z's medical condition – is the case.

I believe Miss Z made or authorised the disputed mobile banking transactions. I say this because:

- The two disputed transactions are payments to two different individuals. These needed confirmation of payee checks to be carried out before the payments went through. I note from Miss Z's account history that she had carried out a previous confirmation of payee check on one of these individuals before. More than once. This leads me to believe this is someone Miss Z may well have known.
- If an unknown third party had got hold of Miss Z's phone and was able to access her mobile banking service, I'd have expected to see a lot more account activity. At the time of the disputed transactions, Miss Z had more than £19,000 in this account but only two payments of £600 and £900 were made. These payments took place more than an hour apart. This is not the behaviour of an unknown third party, even someone who had luckily got hold of Miss Z's phone and been able to access her account.
- There was also a transfer of £900 from Miss Z's current account with Virgin Money to her savings account. This isn't what someone who'd got hold of her phone and was making unauthorised transactions would do.
- Miss Z has told us that there's been other fraud on this account but these haven't been considered by Virgin Money so I can't review these transactions.
- Miss Z also raised fraud on her other bank account (with a bank called R). R refunded Miss Z as a gesture of goodwill in August 2023. I note three weeks before these two disputed payments from Miss Z's Virgin Money account (so in September 2023), two payments were made to the same two individuals from her account with R. These haven't been disputed.

I appreciate Miss Z will be severely disappointed in this outcome but based on the evidence I've seen, I'm not in a position to ask Virgin Money to refund her. I believe there's sufficient evidence to show Miss Z made or authorised these transactions.

My final decision

For the reasons given, my final decision is not to uphold Miss Z's complaint against Clydesdale Bank plc, trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or

reject my decision before 19 February 2025.

Sandra Quinn
Ombudsman