

## The complaint

Mrs S complains that Clydesdale Bank Plc (trading as Virgin Money) won't refund her the money she lost in an advance fee scam.

Mrs S is being represented by a third-party, but for ease of reading I'll refer to Mrs S only.

## What happened

I'll summarise what I consider to be the key points.

Mrs S was contacted on or around 27 March 2023, by a company purporting to want to buy shares in a particular communications company as part of an aggressive takeover of that company. Mrs S happened to have shares in the communications company in question, which gave her the impression this was a legitimate call. She provided her email address and says she received an email from the company, which she replied to and then received another call. The caller sounded plausible and professional and Mrs S was told the company would be willing to pay £40,698 for her shares. She says this was based on a price of £17.78 per share. Her shares were actually trading at around £1.50 per share at the time. Mrs S says she was told she needed to buy a bond from the company for £5,831.84, in case she changed her mind about selling the shares.

She told her son about the call and he also believed it was a good opportunity and helped Mrs S with the payment arrangements. She says her son bought shares in the communications company, as he was convinced the proposal was genuine.

Mrs S went to her local Virgin Money branch on 29 March 2023 to make the payment. She says the staff member she spoke to asked her whether she was comfortable making the payment, which was to an account at an overseas bank. Mrs S told the staff member she was comfortable with the payment and that her son was helping her make the transaction. She says she wasn't asked any other questions and was given no warnings. Mrs S made two payments on 29 March 2023, the first for £25 and the second for £5,831.84.

In the following days, Mrs S says she received another call, from another company, which said it was associated with the company proposing to buy her shares. It told her about a related opportunity, which involved Mrs S paying an upfront cost of £44,280 for an additional return of £122,095.26. Mrs S spoke to her son and undertook some research, realised the original payment was a scam and reported the scam to Virgin Money around 6 April 2023. But Virgin Money didn't refund her money.

Mrs S complained to Virgin Money. In summary, she says the conversation in branch was cursory, there were no probing questions asked and no risk warnings were given. She considers that if Virgin Money had checked the FCA website, it would have seen that there was a scam warning in place against this company.

Virgin Money says its staff questioned Mrs S as they were concerned she was sending a large payment overseas. It says Mrs S informed the branch manager and teller that the payment was to *buy* shares, that her son worked in finance, he was experienced in

investments, he had fully researched the company, they were confident it was genuine and she was happy to proceed. She signed the payment form, confirming she had read certain fraud warnings and wanted to make the payment.

Our investigator said the bank staff questioned the payment, established that Mrs S's son was experienced in investments, had researched the investment and he and Mrs S were convinced the payment was genuine and as such it was reasonable for Virgin Money to make the payment. He didn't think stronger warnings would have prevented the loss, given that Mrs S was reliant on her son's advice.

I issued a provisional decision on 4 December 2024 which explained why I didn't intend to uphold Mrs S's complaint. I said:

*I'm satisfied, from the correspondence Mrs S has provided between her and the scammers, that she has been the victim of a cruel scam.*

*There's no dispute that Mrs S authorised the payment. I appreciate she didn't intend her money to go to scammers. But under the Payment Services Regulations 2017, she is liable for the loss in the first instance. However, the matter doesn't end there.*

*In this case, the Contingent Reimbursement Model code doesn't apply because the transaction was an overseas payment. But taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, in some circumstances I would have expected Virgin Money to take additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

*In this case, there was effectively one transaction, in branch, for £5,831.84 with related charges of £25 also being paid. I consider this transaction was out of the ordinary, being a reasonably large payment to an overseas beneficiary from an account that didn't usually make such transactions.*

*A conversation took place between bank staff and the customer and from the recollections of both Mrs S and the bank staff, I consider that the purpose of that conversation was to make additional checks to protect Mrs S from fraud. But there is a dispute about the content of the conversation.*

*Mrs S says she spoke to the teller on the desk only. She says she was asked if she was sure she wanted to make the payment, she advised that her son was helping her make the transaction, he believed it was genuine and that Mrs S was selling shares. She says no risk warnings were given.*

*Virgin Money sought the recollections of its branch staff and received a response within days of the scam, so these recollections were relatively fresh. Virgin Money's staff say the teller and the branch manager spoke to Mrs S. Mrs S said she was sending the money to buy shares. Mrs S said her son had researched the investment and was very experienced in investments generally and Mrs S was happy to proceed.*

*There were some limited fraud warnings on the payment form Mrs S signed and the payment form says the purpose of the transaction was payment for services rendered, which is rather vague. There is little evidence that any specific warnings were provided about investment scams.*

*I consider the dispute about the content of the conversation is important because if it happened as Virgin Money describes, I'm not persuaded there was much more it could have done that would have prevented the fraud. It established the purpose of the payment, that Mrs S was making it of her own free will and had researched the investment with advice from family. Specific warnings about researching the investment and being sure it was a legitimate investment are unlikely to have had any effect because Mrs S indicates that she regarded the confidentiality agreement as preventing her from making further enquiries and in any event, she says both she and her son were convinced it was legitimate.*

*If Mrs S had told Virgin that she was selling shares, I think that might have prompted a different conversation, with questions such as 'why are you making a payment if you are selling your shares?' This might have established that this was an advance fee payment and then tailored risk warnings could have been provided, or further intervention.*

*In this case the evidence is quite limited. What is not in dispute is that Mrs S went into the branch and asked the bank to make the payment and there was a conversation between the teller and the customer in which the teller asked some questions about the payment. While there is a dispute about the substance of that conversation, it is not in dispute that the teller established that Mrs S wanted to make the payment, that the payment was being made in connection with shares and that her son was assisting her and believed the transaction to be genuine too. This suggests to me that the conversation was more than cursory.*

*Mrs S suggests that if Virgin had probed deeper, it would have established the payment was connected to a company associated with unregulated investment and which was listed on the FCA website as one that customers should avoid dealing with. I've checked the FCA website, and it appears a warning was first published by the FCA about this company on 21 March 2023 and the scam took place on 29 March 2023. So there would have been a warning in place at the relevant time. But Virgin Money had no reason to think the ultimate payee was not the payee listed on the payment form, which was not the company Mrs S had been communicating with. If Virgin Money had checked the name on the payment form, it wouldn't have found any warnings against it.*

*I'm not persuaded Mrs S would have revealed the identity of the scam company either. She says she signed a confidentiality agreement, which stated that she was not to reveal the identity of the scam company. She appears to have taken it quite strictly, saying her and her son didn't research the company or make enquiries about its legitimacy before the transaction, due to the confidentiality agreement. Overall, it seems less likely Mrs S would have told Virgin Money the name of the company behind the investment.*

*On balance, I think there was an intervention from Virgin Money, but Mrs S and her son were completely taken in by this scam, told Virgin Money they had researched the matter, were convinced it was legitimate and wanted to go ahead. I'm not persuaded further questions from Virgin Money are likely to have uncovered the scam and overall, its actions were proportionate.'*

I asked both parties to provide me with any further evidence or comments they wanted me to consider.

Virgin Money didn't comment further.

Mrs S responded and said:

- She had always been honest and transparent with Virgin Money. The confidentiality agreement should not be interpreted as an attempt to withhold information from the bank;

- Her son was not an expert, he was merely assisting her with the transaction;
- Virgin Money should have been aware that transactions to certain international destinations carried greater risk and ought to have made sure she understood the potential risks;
- Banks have a duty of care to detect and prevent unusual transactions and prevent scams. Virgin Money should have intervened and provided warnings.

### **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, my conclusions and reasons haven't changed materially from my provisional decision.

Mrs S says Virgin Money ought to have probed deeper and established that the payment was connected to a company listed on the FCA's website as one that customers should avoid dealing with. I remain of the view that Virgin Money had no reason to think the payee Mrs S named on the form wasn't the ultimate payee. That company wasn't mentioned on the FCA website. I also mentioned that Mrs S is unlikely to have revealed the identity of the ultimate payee because of the confidentiality agreement. Mrs S said she didn't research the company because of the confidentiality agreement and I remain of the view that if she didn't even undertake private research due to the confidentiality agreement, this makes it less likely she would have named the investment company to her bank.

I accept Mrs S's son wasn't an expert in investments, but that isn't material to my decision. Both parties agree that he was assisting Mrs S and thought this was a legitimate transaction.

I have considered Mrs S's further comments that Virgin Money should have intervened and given her warnings about the risks involved with this transaction. For the reasons given in my provisional decision, I consider Virgin Money did intervene. It is clear Virgin Money asked some relevant questions to try to establish whether this was a legitimate transaction.

It is less clear that effective fraud warnings were given. I have seen the payment form, which contained some limited fraud warnings. And it's likely, in my view, that some warnings, such as the importance of researching investments, were given. I say this because Virgin Money says Mrs S told it she had researched the investment, while Mrs S says she told Virgin Money that her and her son believed the investment was genuine. This suggests to me that there was at least some discussion on the need to research such investments and whether Mrs S had satisfied herself the investment was genuine.

Even if clearer or better warnings had been given about investment scams, I'm not persuaded that would have changed matters. A warning about investments might have warned, for example, about hearing of an investment opportunity via social media, the importance of research, whether anyone else had access to any investment account or had set it up for the customer, amongst other things. In this instance, few of those features were present. But Mrs S had been contacted about a very specific sale of her own shares. I think the most relevant warning Virgin Money could have given would have been about researching the investment and, as mentioned, I consider it likely there was some discussion about that issue. Mrs S appears to have been convinced the transaction was genuine and I'm not persuaded further warnings would have changed that.

Overall, I consider Virgin Money did ask relevant questions and attempted to ascertain whether this payment was part of a scam. I'm not persuaded that better fraud warnings are likely to have made a difference in this case.

### **My final decision**

I do not uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 30 January 2025.

Greg Barham  
**Ombudsman**