

## **The complaint**

Mr M, who is represented, complains that Clydesdale Bank Plc, trading as Virgin Money, won't reimburse him money he lost due to an investment fraud.

## **What happened**

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

In January 2023, Mr M was unexpectedly added to a group message on a well-known messaging platform, purporting to be from a trading education group advertising an investment training opportunity.

Mr M, after watching the group chat from afar, began corresponding with other purported investors and, eventually, the education group to learn more. But, unbeknown to Mr M at the time, he was in fact corresponding with persons intent on defrauding him.

Mr M decided to proceed to invest and was provided instruction from the third-party to transfer funds into a cryptocurrency exchange, and then on to a wallet controlled by that third-party. Mr M was also given access to an online platform which showed him, in real-time, the progress of his investments.

Mr M saw that his investment was doing well, so he transferred further funds totalling £131,501 from his Virgin Money account to his crypto wallet, and then on to the third-party. These transfers were carried out over the course of two months.

Once Mr M saw he had made significant profits on his online portal, he decided to withdraw the funds. But each time he attempted to do this he was presented with differing excuses as to why this wasn't possible: including being asked to provide more money for various fees. Eventually, Mr M realised he'd been the victim of fraud and reported the matter to Virgin Money.

Virgin Money looked into Mr M's claim but declined to reimburse him. It said that there was no requirement for it to intervene in the payments. This was because the payments were being made to a trusted, and well established, payee. It also pointed out that Mr M regularly makes high value transfers from his account to other accounts, so these payments were consistent with his usual activity. Lastly, it said that Mr M ought to have selected a more accurate reason for the payment – as this would have allowed better warnings to have been delivered.

Mr M was unhappy with Virgin Money's response, so he brought his complaint to our service, via a representative, for an independent review. An Investigator considered the evidence and testimony in this case and recommended that the complaint be upheld in part. In summary, the Investigator felt that there ought to have been an intervention from Virgin Money at a later point within the payment journey. And they felt that this likely would have prevented Mr M from continuing with the transactions. They did however recommend a 50% reduction to reflect negligence on Mr M's part.

Mr M agreed with the outcome reached by the Investigator, but Virgin Money didn't. It maintained that it wasn't required to intervene in the payments as they weren't out of character for Mr M's account. So, the matter was passed to me for a decision to be made.

On 21 January 2025 I provided my provisional findings to both parties, as I intended to reach a different outcome to that of the Investigator. My provisional findings were as follows:

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

*In deciding what's fair and reasonable in all the circumstances of a complaint, 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 time.*

*There is no dispute here that Mr M authorised the transactions in question. And the starting position in law is that Mr M will be held liable for transactions he authorised in the first instance.*

*However, taking into account the above, Virgin Money ought reasonably to have been on the lookout for any transactions that would indicate Mr M was at risk of financial harm. And where it identifies a risk, it ought reasonably to intervene and provide warnings.*

*Here, Mr M was making payments of a substantial value over a relatively short space of time. But when considering this against Mr M's typical account activity, I don't find these would have appeared unusual. Mr M's accounts show that it was regularly used to make high value payments over short periods of time, for example:*

- In March 2022, Mr M made several transactions from his account ranging from £5,500 to £25,000. Adding these transactions up over the month, they equate to over £100,000 worth of payments.*
- In April 2022, Mr M made several transactions from his account following the same pattern as those from March, again equating to over £100,000.*
- Between May and August 2022, Mr M made payments from his account each month to the values of £10,000, £20,000 and £6,200.*

*This meant that Mr M's account, over a six-month period, was regularly making high value payments: and sometimes in quick succession.*

*I've also noted that the account to which Mr M sent the disputed payments had previously been paid for legitimate purposes. So the beneficiary wasn't a new payee set up on the account, further mitigating the perceived risk associated with the payments.*

*Overall I'm not persuaded that the payments were unusual or out of character enough that Virgin Money ought to have intervened in them.*

*However, even were I to conclude that Virgin Money ought to have intervened, I would have reached the conclusion that this wouldn't have prevented Mr M progressing with the payments, and ultimately wouldn't have prevented his loss.*

*As part of the fraud, Mr M made several payments to his cryptocurrency wallet from other accounts in his name. On 23 March 2023, Mr M attempted to make a £3,000 payment from one of his other accounts, held with another banking provider. That payment was stopped by the banking provider and Mr M was requested to make contact.*

*I've listened to this call carefully and have noted the pertinent points of the conversation:*

- *Mr M confirmed that he'd put the payment purpose as 'friends and family' as he was paying an account held in his name.*
- *Mr M confirmed the name of the business where he was making the payment to.*
- *When asked why he was making a payment to a cryptocurrency exchange, he told the representative that he was exchanging money to US dollars.*
- *The representative asked Mr M if he was making any cryptocurrency investments. He replied "no".*
- *Mr M was challenged on this as the representative researched the cryptocurrency platform and could see that it could only be used to purchase crypto assets rather than provide a currency exchange service.*
- *Mr M became unhappy with the representative's challenges and asked if they were going to make the payment or not. The representative said he wasn't happy with the responses and would not process the payment.*
- *Mr M told the representative that he would just make the payment via another method and asked them to reverse the payment and raise a complaint.*

*While this conversation didn't take place with Virgin Money, I find it a reliable source of information on what might have happened had Virgin Money contacted Mr M and challenged the payments leaving his account: as they were for the same purpose.*

*Mr M wasn't open with the payment service provider about the purpose of the payments he was making. He denied making crypto investments despite this actually being the reason for those payments. Mr M also confirmed that even had the payment service provider declined to make those payments, he would continue to make them via a different means: and he did.*

*It is therefore reasonable for me to find that had Virgin Money intervened in the payments made, it's likely Mr M would have acted in a similar manner. I find it likely he wouldn't have been open about the payment purpose, which would have thwarted Virgin Money's ability to effectively warn him against the type of fraud he was falling victim to.*

*Furthermore, it is evident that once Mr M's third-party banking provider prevented him from making the payments, Mr M went ahead and made these payments anyway, via different means. So even if Virgin Money had refused to make the payments subject to this complaint, as Mr M's other account provider did, it's likely Mr M would have found other means to release the payments to the fraudsters.*

*For all the above reasons, I don't find it reasonable to hold Virgin Money liable for Mr M's loss."*

Both parties were given until 4 February 2025 to respond. Virgin Money didn't respond to my provisional assessment, but Mr M's representative made several submissions. In summary they argued:

- In the three months leading up to the fraud payments, Mr M sent less than £10,000 from the account each month. This demonstrates the payments were dramatically out of character to the immediate payment history. This is further supported by payments leaving his account quickly to a cryptocurrency payee.
- While Mr M had made legitimate payments to the payee in the past, there were clear differences between those payments and the payments made as part of the fraud, such as value and velocity.
- While the representative had not been provided the call made by the third-party bank—referred to in my provisional assessment—the call was a success: in that it prevented the payment from being made.

- Mr M was vulnerable at the time as his wife had just lost her job and they had recently become parents. Due to this, he was struggling to make ends meet and was undergoing psychological treatment.

As Mr M's representative hadn't been given the opportunity to review the call referred to in my provisional assessment, I instructed the Investigator to provide this to the representative and give a further week to provide any comment. In summary, Mr M's representative responded with the following points:

- Any knowledgeable fraud advisor would have known that payments to the beneficiary would have been for cryptocurrency.
- The third-party bank's intervention—referred to in my provisional assessment—was poor. Their representative was unprofessional and frustrated Mr M due to this. They also failed to provide any warnings regarding the fraud Mr M had fallen victim to.

As both parties have now had an opportunity to respond to the provisional assessment, I am now in a position to deliver 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.

*Were the payments out of character, and should Virgin Money have intervened?*

I have carefully considered the submissions made by Mr M's representative regarding the pattern of spending on his account, but I still don't agree these payments ought to have triggered an intervention from Virgin Money.

I acknowledge that there was a period, prior to the payments subject to this dispute, where Mr M didn't make higher value payments in quick succession. But this doesn't detract from the fact that he did make higher value payments—sometimes in quick succession—consistently over a number of months in the year prior.

Furthermore, these prior, higher value payments tended to be transfers to Mr M's own accounts. And as the payments subject to this dispute were also transfers to Mr M's own account—that he had paid previously for a legitimate transaction—not only was this in line with the normal operation of the account, but to a trusted and established payee.

While the payments may have not been in the immediate months prior to the fraudulent transactions, I don't find it reasonable to merely consider activity on the account immediately prior to the payments being made. The account activity should be considered holistically when considering what typical activity looked like. And the fact remains that the account was previously used in a similar manner for legitimate payments over a sustained period of time.

Mr M's representative has also placed weight on the fact the payments were being made to a crypto provider – and that this posed an increased risk to those payments. But I don't agree. While the beneficiary business does provide cryptocurrency conversion services, it is predominantly an e-money wallet and payment service provider. So I don't think it would have been obvious to Virgin Money that Mr M was paying for cryptocurrency services.

Overall, I remain persuaded that the transactions subject to this complaint fell in line with Mr M's usual account activity. I therefore find that an intervention from Virgin Money wasn't proportionate in the circumstances.

### *Would an intervention have prevented the fraud?*

It is important to acknowledge that I am unable to, as part of this decision, assess the strengths or weaknesses of the intervention provided by the third-party bank. I am only able to assess Virgin Money's actions. I will therefore not be commenting on Mr M's representative's submissions about the effectiveness or professionalism of the third-party bank's intervention.

What I can draw from this evidence is what likely would have happened had Virgin Money intervened, as it gives insight into how Mr M responded to such actions.

Mr M's representative has pointed out that any knowledgeable fraud advisor would have known the payments were for the purchase of cryptocurrency, but I don't agree. As I have touched upon in my findings above, Virgin Money wouldn't have known solely from the beneficiary details that Mr M was making a payment for the purchase of cryptocurrency. There was also nothing within the reference of the payment that indicated Mr M was purchasing cryptocurrency, and the reason given for each payment being made was "moving money to another account of mine".

Furthermore, when Mr M was challenged as to the purpose of the payment by the third-party bank during its intervention, he didn't tell it the truth about why he was making the transfer. He told the business he was exchanging money to a foreign currency. And when he was challenged, and asked specifically whether he was purchasing cryptocurrency, he answered "no".

Without evidence to the contrary, I find it likely Mr M would have done the same had an intervention been carried out by Virgin Money. And this likely would have impacted Virgin Money's ability to warn Mr M regarding the fraud he was in fact falling victim to.

Mr M's representative has also argued that the third-party bank's intervention did in fact work—as it refused to make the payment based upon its suspicions Mr M wasn't being entirely honest. But as I have highlighted in my provisional assessment, this didn't prevent Mr M from continuing to make payments to the fraudsters via other means. I therefore find it likely that had Virgin Money taken similar action, Mr M likely would have paid the fraudsters by alternative means.

### *Vulnerabilities*

Mr M's representative has also made submissions that our service hasn't considered the circumstances Mr M was facing at the time, and in turn failed to consider if Mr M was vulnerable to the fraud committed against him.

I have not considered this in my decision as it would not impact the assessment I have made.

While I have a great deal of empathy for the circumstances Mr M faced at the time, Virgin Money weren't aware of Mr M's situation. It would therefore have been unable to consider his susceptibility to fraud when dealing with the processing of his payment.

This would also have no bearing on when Virgin Money ought to have intervened in the payment process. And as I have already touched upon above, I don't find the transactions so unusual or out of character that Virgin Money ought to have intervened.

I suspect Mr M's representative may be alluding to provisions under the Contingent Reimbursement Model (the CRM Code) which directs its signatories to reimburse customers

where they are vulnerable. However, this complaint doesn't fall within the scope of The CRM Code as it was a transaction made to Mr M's own account.

In conclusion, I remain persuaded that Virgin Money acted reasonably in not intervening in the payments made. And even were it to have intervened, I'm not persuaded it would have ultimately prevented the fraud.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 April 2025.

Stephen Westlake  
**Ombudsman**