

The complaint

Mr G complains that Clydesdale Bank Plc, trading as Virgin Money ("Virgin"), won't reimburse him with the money he lost as a result of a scam.

Mr G has been represented in this complaint by a firm of solicitors.

What happened

The complaint concerns a payment which Mr G made from his account with Virgin in March 2021. The background to the complaint is well known to the parties, so I'll simply summarise it here. Mr G has held his account with Virgin and its predecessor for many years. He says he saw an advert online for an investment company (which I'll refer to as "N"). Mr G says the advert looked very professional, and contained lots of information about the company.

Mr G entered his details and, having received further information, decided to go ahead and start investing. He was passed to someone who claimed to be an account manager for N (who I'll refer to as "the scammer"). Mr G says he seemed very confident and knowledgeable, and he had a UK phone number, which reassured him. Mr G says the scammer used remote access software to show him N's investment platform. He says it looked genuine, and he could see graphs of the trading market and cryptocurrency investments.

Mr G expressed an interest in investing in cryptocurrency, and the scammer told him N would invest on Mr G's behalf, as they were the experts. As well as opening an account on N's investment platform, the scammer helped Mr G to open an account with a cryptocurrency exchange (which I'll refer to as "J"), using the remote access software. This was to enable him to buy cryptocurrency for investment on N's platform. Mr G says the identity verification checks he had to comply with added to his impression that the investment was genuine.

In March 2021 Mr G made an initial payment of £200 from another bank account. Shortly after that, he made a card payment to J for £5,000 from his account with Virgin. Mr G has confirmed that the scammer helped him with the payment, using the remote access application.

Mr G's told us that he was in constant contact with the scammer, by messages and phone calls, and was reassured that his investments were in good hands. The scammer told him that the more he invested, the more profit he'd make. He says his investments appeared to be growing. But when he wanted to withdraw money, the scammer told him to wait, to allow his profit to increase. When he was subsequently told he'd need to pay more money in and pay a range of fees before he could make a withdrawal, he realised that the investment platform was fake, and that he'd fallen victim to a scam. The scammer then ceased contact with Mr G, and his attempts to get his money back were unsuccessful.

Mr G accepts that he authorised the payment, but he says Virgin should have intervened and asked probing questions about it. He says the pop-up message he received when he made the payment didn't mention scams at all, and simply asked if he was sure he wanted to make the payment. He says that if Virgin had provided an effective warning, it would have affected his decision-making.

Mr G's representatives say that his regular account activity mostly consisted of low-value transactions to established payees. So they maintain that the payment of £5,000 to a new payee was suspicious. They say, in summary, that Virgin's system flagged the payment as unusual, and that shows that it recognised that there was a potential risk. They've commented that Virgin ought to have been particularly alert to this, given Mr G's age and the heightened risk of fraud during the covid 19 pandemic. They say that Virgin should have provided Mr G with the necessary information to make an informed decision about the risks involved. And they say that a more detailed intervention might have uncovered the scam.

Mr G's representatives say that Virgin led him to believe that the £5,000 payment would be refunded if the merchant didn't respond to the chargeback request by a given date. In the event, no refund was provided, causing Mr G considerable distress. And they say that Virgin was slow in communicating with Mr G and providing support, which added further to his distress and frustration.

Mr G believes that Virgin should refund the £5,000, with interest, pay him £500 compensation and reimburse him for any legal costs he incurs as a result of the scam.

Virgin says Mr G gave the scammers his details, and it didn't make any error in processing the payment. They tried to recover the money for Mr G by raising a chargeback request with J, but it was declined on the basis that the £5,000 payment had been used to buy genuine cryptocurrency, which had then been transferred to an external cryptocurrency wallet, in line with Mr G's instructions.

One of our investigators considered the complaint, but didn't think it should be upheld. In summary, he didn't think the payment of £5,000 was particularly unusual or suspicious, in the light of Mr G's normal account activity. Virgin had, in fact, called Mr G, and the investigator thought that it was unlikely that proportionate questions would have resulted in Mr G deciding not to go ahead with the payment. He thought that Virgin had acted reasonably in pursuing the chargeback, and in its communications with Mr G about it. And he didn't think that Virgin should be required to compensate Mr G for the time it had taken to respond to him.

Mr G didn't accept the investigator's view, so the complaint's been passed to me.

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.

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

In broad terms, the starting position in law is that Virgin is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Mr G made and authorised the payment, although I accept that when he did so, he didn't think his funds were at risk.

The payment here wasn't covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Virgin wasn't fully covered by the code until February 2022, and it doesn't cover card payments like these in any event. However, there are circumstances, irrespective of the payment channel used, where it might have been appropriate for Virgin to take additional steps, make additional checks, or provide additional warnings before processing a payment, to help protect its customers from the possibility of financial harm from fraud.

Mr G's loss didn't arise directly from the payment he made from his Virgin account. The payment was for the purchase of genuine cryptocurrency. The loss occurred afterwards, when the money was transferred out of Mr G's cryptocurrency wallet with J to the scammer in accordance with the instructions he gave J, following the scammer's guidance, when he bought the cryptocurrency.

Buying cryptocurrency is a legitimate activity and the payments were made to a genuine cryptocurrency exchange, to an account in Mr G's own name. But even though the loss happened from Mr G's cryptocurrency account, it would have been fair and reasonable to expect Virgin to be alert to fraud and scams. So I need to consider whether it acted fairly and reasonably in its dealings with Mr G when he authorised the payment, or whether it could and should have done more before processing it.

I'm aware that scams involving cryptocurrency had become increasingly prevalent and well known to banks. And I think that by 2021 Virgin ought to have been well aware of how scams like this work. But I think it was reasonable for Virgin to take into account a range of factors when deciding whether to intervene. I'm mindful that banks can't reasonably be involved in every transaction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments. I've also borne in mind that it's not unusual for consumers to make higher payments from time to time.

The scam only involved one payment from Mr G's account with Virgin. I acknowledge that £5,000 isn't a small sum, and that it would have been apparent to Virgin that the payment was going to a cryptocurrency provider. But while a payment to a cryptocurrency exchange might be considered to be higher risk, I don't think it follows that it would be reasonable to expect Virgin to assume that it was automatically suspicious. And I can see from his bank statements that in the year before Mr G made the £5,000 payment, he'd made a number of significant payments, including several that were considerably more than £5,000.

I don't consider that his age alone ought to have prompted Virgin to be concerned that Mr G was vulnerable, or that he'd struggle to make independent financial decisions. And I haven't seen anything else to make me think that Virgin ought to have considered Mr G to be vulnerable when he made the payment.

As it was, Virgin's internal records show that it spoke to Mr G on the phone on the morning of the day he made the payment. Unfortunately, no recording of the call is available, so I haven't been able to listen to it. However, Virgin's system notes mention that Mr G confirmed that it was he who had carried out the card payment for £5,000.

Taking everything into account, particularly given the pattern of payments from Mr G's account, I don't think the payment should have prompted Virgin to consider that Mr G was at heightened risk of financial harm, or that more probing questions about the payment would have been warranted. So, in the overall circumstances, I don't think Virgin needed to do more than it did before it processed the payment.

After the investigator issued his view, Mr G's representatives said that Mr G had told them more than once that he couldn't fully remember what was discussed when he spoke to Virgin, but he's certain that he discussed the investment opportunity with Virgin before going ahead with the payment.

Where the evidence is incomplete, inconclusive or contradictory, I have to make my decision based on what I think's more likely to have happened, in the light of the available evidence and the wider circumstances. While I don't doubt that Mr G has given his genuine recollection of what happened, I'm not convinced that he discussed the investment with Virgin *before* he made the £5,000 payment. I don't doubt that he did so after he realised that he'd been scammed. But I think it more likely than not that the call with Virgin on the morning of the payment was simply to check that it was genuinely Mr G making the payment.

I acknowledge that Mr G has told us that Virgin listened in to one of his calls with the scammer, and commented that it was a "*typical scammer conversation*". But there has been no suggestion that Virgin listened to any calls with the scammer *before* Mr G made the payment. So if it did listen in on a call, it would have been too late to prevent his loss.

Virgin's attempt to recover Mr G's money

Mr G's payment was made using his Mastercard debit card. Mastercard runs a scheme called chargeback, which deals with disputes between card issuers (such as Virgin) and merchants (J in this case).

Chargeback isn't an automatic right, and banks don't have to raise a claim where there isn't a reasonable prospect of success. In this case Virgin did make a chargeback request to J, but the request was turned down. This was, put simply, because Mr G's money was transferred to a cryptocurrency account in his own name, and was used to buy genuine cryptocurrency. So he effectively got what he paid for.

Mr G is dissatisfied that Virgin told him that if J didn't respond to the chargeback claim, his account would be credited with the £5,000 on 2 August 2021. His representatives say this set an expectation. But in late July 2021 Virgin told Mr G that there was nothing it could do, since he'd made the payment. So the expectation wasn't met, and this caused Mr G significant distress. But Virgin's commitment to credit Mr G's account with the money was contingent on it not hearing back from J before 2 August 2021. As it was, J responded before that date, rejecting the chargeback claim. So while I can understand Mr G's disappointment that the money wasn't recredited to his account, I can't say that Virgin did anything wrong by not making the credit.

And unfortunately, I can't see that there'd have been any other way for Virgin to recover the money.

I acknowledge that Mr G was dissatisfied with the time it took Virgin to give its response to his fraud claim, but while I understand that waiting for a response in circumstances such as this is bound to be stressful, I don't consider that the time taken by Virgin to respond to Mr G's claim merits an award of compensation.

I have sympathy with Mr G. It isn't in dispute that he's fallen victim to a cruel scam, and I was sorry to learn of this. But for the reasons I've set out, I can't fairly hold Virgin responsible for his loss, and I don't uphold this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 2 May 2025.

Juliet Collins
Ombudsman