

The complaint

Mr and Mrs R complain that Clydesdale Bank Plc trading as Virgin Money (as the recipient bank) didn't do enough to prevent them losing money to an investment scam.

What happened

Between September and November 2022, Mr and Mrs R made payments totalling £41,352 from their bank account with 'N' to invest in art with company 'S'. In mid-2023 they contacted N as they said S had gone into receivership and made false and exaggerated promises to them regarding their investment. In late 2023, they contacted Clydesdale as one of S's receiving banks and complained to it too.

Clydesdale responded to their complaint and didn't uphold it. It said there'd been no banking error in this case. Mr and Mrs R came to our service, but our Investigator also didn't uphold their complaint, so they asked for an Ombudsman to reconsider it.

I issued a provisional decision on this complaint in early March 2025. My provisional findings were as follows:

Much of the submissions on Mr and Mrs R's complaint centre around whether S was operating a scam or not. This isn't something I need to make a finding on to fairly decide this complaint. Even if it could conclusively be shown that S was operating a scam, for the reasons I'll come to, I don't think this impacts the outcome of this complaint.

In the circumstances here, there is no automatic right to a refund from the recipient bank in relation to payments made as a result of an alleged (or even proven) scam. It would only be fair and reasonable for me to require Clydesdale to pay redress if it's responsible for errors which could fairly be said to have caused the loss. For the reasons I'll explain, I don't think it is.

The account that Mr and Mrs R paid into had been open for over five years before their first payment arrived in it. The evidence supports that Clydesdale appropriately conducted ongoing due diligence in relation to the account, as it is expected to. And at the relevant time, given the information Clydesdale knew about S, I don't think the arrival and spending of Mr and Mrs R's payments (or any other payment within the context of our jurisdiction) would've appeared so unusual, suspicious or indicative of a potential problem such that I'd have expected Clydesdale to have done more.

The established pattern of activity involves what appears as genuine business activity with payments out for utility bills, taxes, what appear to be suppliers and various other businesses. This was in line with what was expected for an account of this type. There wasn't anything I reasonably think Clydesdale should've picked up on or questioned further. Also, at the material time there was nothing in the public domain indicative of a potential issue with S. As is common for many business accounts, occasional disputes were raised and investigated by Clydesdale, but I don't think it was unreasonable for it not to have had further concerns at the time.

It simply wasn't unusual for this account to receive and make payments of similar amounts (and indeed for larger sums) to that of Mr and Mrs R's. And whilst I acknowledge their allegation that the entire account was scam related, against the background of what I've set out above, there wasn't any reasonable basis at the time for Clydesdale to have thought the activity was anything other than genuine.

Mr and Mrs R's payments were spent from the account before Clydesdale were aware of the potential problem with it. So I don't think Clydesdale reasonably could've done more to try to recover these funds.

I also note that at the times of Mr and Mrs R's payments Clydesdale was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). So this is a potentially relevant consideration in this complaint. As both parties are aware, one of the requirements for reimbursement is that the claimant has been the victim of an APP scam. However, at R2(2) it also says in relation to the expectations on a receiving bank:

"In assessing whether a Customer should be reimbursed or not, Firms should consider:

- (a) whether the acts or omissions of Firms involved in trying to meet the Standards for Firms may have impeded the Customer's ability to avoid falling victim to the APP scam."*

So in essence, in the event that it is later shown that S were operating a scam, such that it satisfies the CRM Code's definition of an APP scam, this wouldn't make a difference to the outcome of this complaint about Clydesdale. This is because (for the same reasons as those set out above), I don't think Clydesdale have failed to meet the standards for firms in a way which would have impeded Mr and Mrs R's ability to fall victim at that time (as required under the CRM Code).

I'm of course sorry to hear Mr and Mrs R have lost their money. But as I'm not persuaded this is something Clydesdale is responsible for, there isn't a reasonable basis upon which I can require it to do more to resolve this complaint.

Clydesdale didn't respond to the provisional decision. Mr and Mrs R's representative provided extensive submissions in response and disagreed with the provisional decision. However, the vast majority of these submissions had already been received by our Service and the response very heavily focussed on why they consider this investment was a scam – rather than what I addressed in the provisional decision. As the deadline has passed, the case has now been returned to me to finalise.

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.

As my provisional decision set out, regardless of whether or not S is later found to be operating a scam, I don't think Clydesdale has failed to meet the standards for firms in a way which would have impeded Mr and Mrs R's ability to fall victim at that time (as required under the CRM Code). So Clydesdale is not required to pay redress to Mr and Mrs R as it's not responsible for errors which could fairly be said to have caused the loss.

Mr and Mrs R's response, via their representative, doesn't give any persuasive evidence why Clydesdale has failed to meet the standards expected of it as a receiving bank.

I've considered the comments that S was set up as a fraudulent venture from the start, but I previously addressed this in my provisional decision, and said I couldn't see that the way the account with Clydesdale was run would've suggested this to it. So I maintain that Clydesdale didn't fail to act on concerning information it held at the time. The account activity indicated a genuine business was being run. So for the reasons set out here and in my provisional findings above, I don't uphold this complaint.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 21 April 2025.

Amy Osborne
Ombudsman