

## The complaint

Mr F is being represented by solicitors. He's complaining about Clydesdale Bank Plc trading as Virgin Money because it declined to refund money he lost as a result of fraud.

## What happened

Sadly, Mr F was the victim of a cruel cryptocurrency investment scam. He says he was contacted by the scammers after he responded to an advert on social media from a company promoting returns from trading in cryptocurrency. As a result of ongoing contact with the scammers, Mr F made the following payments that were lost to the scam:

No	Date	Type	Amount £	Payee
1	20 Sep 2021	Card	250	Crypto exchange
2	22 Sep 2021	Card	250	Crypto exchange
3	27 Oct 2021	Transfer	10,000	EMI account
4	24 Nov 2021	Transfer	4,000.32	EMI account
5	24 Nov 2021	Transfer	4,000.32	EMI account

Payments 1 and 2 went to a cryptocurrency exchange before being moved onto the scammers. Payments 3 to 5 went to a newly-opened account with an Electronic Money Institution (EMI) before being moved to a cryptocurrency exchange and onto the scammers.

I understand Mr F was directed to download screensharing software that allowed the scammers to help him set up an account with a fake trading website. And that once he was signed up the website, he was able to see a series of fake trades and profits and losses on the account. Mr F says he only realised this was a scam when he tried to withdraw money and wasn't able to.

Mr F has also complained about the EMI that received payments 3 to 5 and I've considered that complaint in a separate decision.

## My provisional decision

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be partly upheld. My reasons were as follows:

*In this case, there's no dispute that Mr F authorised the above payments.*

*In broad terms, the starting position at law is that a bank such as Virgin Money is expected to process payments a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, 'authorised' essentially means the customer gave the business an instruction to make a payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.*

*This notwithstanding, there are some situations where we believe a business, taking into account relevant rules, codes and best practice standards, shouldn't have taken*

*its customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.*

*Virgin Money also has a duty to exercise reasonable skill and care, pay due regard to the interests of its customers and to follow good industry practice to keep customers' accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.*

*Taking these points into account, I need to decide whether Virgin Money acted fairly and reasonably in its dealings with Mr F.*

### *Payments 1 to 2*

*I must take into account that many similar payment instructions received by Virgin Money will be entirely legitimate. Having considered what it knew about the payments at the time it received the payment instruction, I'm not persuaded it ought to have been concerned about them. In particular, I'm conscious the amounts involved were low and a pattern of repeated payments common to many types of scam hadn't been established. So, I can't reasonably say Virgin Money was at fault for processing the payments in line with Mr F's instructions.*

### *Payment 3*

*Payment 3 was much larger and sufficiently unusual compared to previous account activity that I think Virgin Money should have begun to suspect Mr F could be at risk of harm from fraud at this point. The fact the payment was referred for a security check indicates that Virgin Money accepts this conclusion.*

*When the instruction was received, Virgin Money says Mr F was asked to confirm the purpose of the payment and he said he was investing money. I understand he was then shown a written warning and called by the bank before the payment was released. And in the circumstances, I believe a human intervention in the form of a phone call to discuss the payment was a proportionate response to the risks it presented. But after listening to the recording of the call provided by Virgin Money, I don't think it was an effective intervention.*

*The call barely lasted two minutes and the questioning was superficial in my view. Mr F was asked if anyone 'out of the ordinary had asked him to make the payment'. Given he'd already made two investments and had been speaking to the scammers for at least a month by this point, during which time a degree of trust had clearly been established, I think it was reasonable for him (as he did) to answer 'no' and to say he'd been dealing with the investment company for 'a while'.*

*Given Virgin Money clearly had concerns about the payment, otherwise it wouldn't have wanted to speak to Mr F in the first place, I think the agent should have asked a lot more detailed questions about the payment. In my view, it would have been appropriate to have asked how long he'd been dealing with the investment company, how he was introduced, whether he was being guided and whether he'd ever actually met anyone from the company. And to have asked about the returns he'd been told he could achieve, whether he'd actually been able to withdraw any money and whether he'd been asked to download screen-sharing software.*

*I've seen no evidence from the correspondence between Mr F and the scammers to indicate he was being coached to lie to the bank about what he was doing. And if he*

*had been, I think it's unlikely he'd have been told to say he was investing money. If appropriate questions had been asked, I've no reason to believe Mr F wouldn't have given honest answers and I think an appropriately skilled agent would have been able to identify that the circumstances described bore many of the hallmarks of common types of investment scams.*

*Once this had been established, the agent would then have been able to provide a clear and tailored warning about the common features of investment scams, many of which were present in Mr F's situation.*

*As outlined above, payment 3 didn't go directly to Mr F's cryptocurrency account. It was instead transferred via an EMI. Mr F has also complained about the actions of the EMI in making the payment and it's my view that it should also have done more to warn him about the associated scam risks. The reasons for this view are set out in my decision on the complaint about the EMI.*

*I can't say for certain that an appropriately tailored warning from Virgin Money alone would have been enough to stop Mr F's losses. But if he'd received similar warnings from both Virgin Money and the EMI before moving £10,000 into cryptocurrency, I think this would likely have resonated with him such that the scam would have been uncovered. And on balance, that he'd have ultimately decided not to proceed with this course of action.*

*If a combination of proportionate interventions from Virgin Money and the EMI had uncovered the scam and prevented the £10,000 in payment 3 being transferred to a cryptocurrency exchange, I think it follows that the losses from payments 4 and 5 would also have been prevented.*

*As I've explained, I think both Virgin Money and the EMI are partly responsible for the losses from payments 3 to 5 that I believe would most likely have been prevented if they'd both carried out appropriate and proportionate interventions. So it's my current view they should be equally liable for compensating Mr F.*

*Should Mr F bear any responsibility for his losses?*

*In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.*

*I've considered the evidence carefully and, while I accept Mr F believed these payments were being made in connection with a legitimate investment opportunity, I'm not persuaded that belief was a reasonable one throughout the course of the scam.*

*Based on the information he had at the outset, I think Mr F was reasonably entitled to believe he was making a genuine investment. But I'm conscious that by the time of payment 3, his representative has said he believed the value of his investment had grown to £10,000 and later reached a value as high as £40,000. In view of the amounts he'd invested and the short space of time involved, I think Mr F should reasonably have questioned whether these returns were too good to be true. In the circumstances, I think he ought to have proceeded only with great caution. If he'd carried out any further research, for example online searches, I think he'd have quickly discovered his circumstances were similar to those commonly associated with investment fraud. Overall, I think it's fair and reasonable for Virgin Money to make a 50% deduction from the redress payable.*

### *Recovery of funds*

*I've also looked at whether Virgin Money could or should have done more to try and recover Mr F's losses once it was aware that the payments were the result of fraud.*

*I understand Mr F didn't notify Virgin Money of the scam until around May 2024, more than two years after the payments were made. It's a common feature of this type of scam that the fraudster will move money very quickly to other accounts once received to frustrate any attempted recovery and I don't think anything Virgin Money could have done differently would likely to have led to those payments being recovered successfully after this period of time.*

### *In conclusion*

*For the reasons I've explained, I don't think Virgin Money acted fairly and reasonably in its dealings with Mr F and I'm currently proposing to uphold this complaint in part. While I don't think it acted incorrectly in processing payments 1 and 2 in line with Mr F's instructions, if it had carried out an appropriate intervention before payment 3 debited his account, I'm satisfied the loss from payments 3 to 5 would ultimately have been prevented.*

### **The responses to my provisional decision**

Mr F accepted my provisional decision. Virgin Money didn't and made the following key points:

- The content of the call with Mr F demonstrates he wasn't fully transparent when answering the bank's questions.
- He alluded to the investment being in stocks and shares when he was aware he was actually investing in cryptocurrency. By doing so, he denied the agent the opportunity to steer or focus the conversation towards the risk of cryptocurrency investments.
- He also said he'd been dealing with the person for some time and there had been payments backwards and forwards. The agent didn't know the sequence of events and his answers helped reassure them the payment was genuine.
- Mr F was also asked if he'd checked the FCA website to ensure the company he was dealing with was authorised and he said yes. He was also asked if he'd checked for any warnings about the company and he said there weren't any. This contradicts comments made in his initial complaint.
- While I may not deem the agent probed the circumstances of the payment sufficiently, the inconsistencies in the call and other evidence show Mr F was untruthful about what the payments were for. It doesn't believe further probing by its agent would have been able to uncover the whole truth.

Whilst transfers to the EMI carry some additional risk, it's a legitimate payment platform that's not solely for cryptocurrency transactions. The bank has to take a risk-based approach based on what it's told at the time of transactions.

## 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 findings haven't changed from those I set out previously. I haven't necessarily commented on every single point raised. I've concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

In response to the points raised by Virgin Money following my provisional decision:

- Mr F did say he was investing in stocks and shares. But he's a layman and wouldn't necessarily have appreciated the difference between this and cryptocurrency or why that might be relevant to the agent. In the circumstances, I don't think it was necessarily unreasonable for him to use the term '*stocks and shares*' as a catch-all term for investments or that it demonstrates an intent to mislead. If Mr F had wanted to mislead the bank to ensure it processed the payment, particularly if he'd been coached by the scammers, I think it's more likely he'd have avoided saying he was investing at all.

If the agent had taken the time to ask further questions, for example what type of stocks and shares he was buying, I find it likely they'd have been able to establish what investments were proposed and then had the opportunity to provide appropriate warnings. Any conclusion the agent was denied the opportunity to talk about the risks of cryptocurrency was as much down to the failure to ask sufficient questions as it was to the answers given by Mr F in my view.

- Mr F did say he'd been dealing with the investment company for '*a while*'. But as I said in my provisional decision, he'd already made two investments and had been speaking to the scammers for at least a month by the time he made payment 3, during which time a degree of trust had clearly been established. With this in mind I don't think it was unreasonable for him to answer the question in the way he did. It may be the case that the agent took comfort from this answer but that was based on their interpretation of a phrase that can be interpreted in a number of different ways.

I accept the agent didn't know the sequence of events and it's for exactly this reason that I think more questions should have been asked. For example, they could have asked how long was '*a while*' and how Mr F had been introduced to the company in the first place. If Mr F had answered those questions honestly, and I don't think there's sufficient grounds to say he wouldn't have, a skilled agent should have begun to identify a pattern that's familiar to many common types of investment scam.

- The agent didn't actually ever ask whether Mr F had checked the FCA's '*website*'. They instead asked if he'd checked the company was authorized and regulated by the FCA. The website wasn't mentioned so it's not clear Mr F knew to check this if the investment company had otherwise told him it was properly authorised. Further, there's no mention of whether Mr F checked the website or not in his complaint so there's nothing there to contradict what he told the agent on the phone.

Mr F also said he'd checked there were no warnings relating to the firm. Again, the FCA website wasn't specifically mentioned and Mr F's comment that he'd checked

for warnings seems consistent with his complaint where he said he'd searched online and checked Trustpilot Reviews. Right at the end of the call, the agent did mention the FCA 'register', but this was a very brief mention as part of a wider point and the agent didn't check Mr F knew what this is or how to access it. Without having done so, I don't think it was reasonable for the agent to have concluded that Mr F had used the FCA's website to check the register of authorised firms.

- For the reasons I've already explained, it remains my view that the agent should have asked many more probing questions about the purpose of the payment. I don't find there's sufficient evidence Mr F set out to mislead the bank and, if its agent had asked appropriate questions, I think there's every chance they'd have discovered what was going on and been able to provide appropriate warnings.
- I'm not disputing that the EMI was a legitimate payment platform or that the bank has to take a risk-based approach when deciding whether to intervene before processing a payment instruction. But the point here is that Virgin Money did identify there was a risk Mr F was at harm from fraud in this case and felt it was necessary to speak to him before debiting his account.

Once it had made that judgement, it was incumbent on Virgin Money to carry out a proportionate intervention. In this case, I find that the intervention – which amounted to a call that barely lasted two minutes – was superficial and inadequate for the reasons I've explained.

After reviewing the complaint in light of Virgin Money's most recent comments, it remains my view that if both the bank and the EMI had carried out an appropriate intervention in the journey that took payment 3 from Mr F's bank to the scammers - via the EMI and a cryptocurrency exchange - the scam would most likely have been uncovered and stopped before the money from this and the later payments was lost. As I can't say for sure at which point the scam would have been stopped, and as I think both businesses failed to intervene in the manner they should have, I find that it's appropriate to split liability between them equally.

### **Putting things right**

The principal aim of any award I make must be to return Mr F to the position he'd now be in but for the errors or inappropriate actions of Virgin Money, while allowing for any responsibility he should reasonably bear. If Virgin Money had carried out an appropriate intervention as I've described, I'm satisfied the scam would have been stopped and Mr F would have retained the money that was lost from payment 3 onwards. As outlined above, I've applied a 50% deduction to the amounts to be refunded in recognition of Mr F's own contribution towards the loss. I also believe it's fair for the remaining liability to be split equally between Virgin Money and the EMI.

To put things right, Virgin Money should pay Mr F compensation of A + B, where:

- A = a refund of 25% of each of payments 3 to 5 outlined above; and
- B = simple interest on each amount being refunded in A at 8% per year from the date of the corresponding payment to the date compensation is paid.

Interest is intended to compensate Mr F for the period he was unable to use this money. HM Revenue & Customs (HMRC) requires Virgin Money to deduct tax from any interest. It must provide Mr F with a certificate showing how much tax has been deducted if he asks for one. I'm satisfied this represents a fair and reasonable settlement of this complaint.

**My final decision**

My final decision is that I partly uphold this complaint. Subject to Mr F's acceptance, Clydesdale Bank Plc trading as Virgin Money should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 May 2025.

James Biles  
**Ombudsman**