

## The complaint

Mr C complains that Clydesdale Bank Plc trading as Virgin Money hasn't reimbursed money he says he lost to an art investment scam.

## What happened

In early 2022, Mr C was contacted by "S" about an art investment opportunity. Mr C has explained that he invested in art through S for around 12 months, buying art prints to form an investment portfolio. He made transfers, debit card payments and credit card payments to S. However, in mid-2023, S went into liquidation and Mr C then said he'd been the victim of a scam.

Mr C contacted Virgin Money about the payments he'd made from his accounts with it to S, but it didn't agree it was liable to refund him. Mr C raised a formal complaint about the payments and submitted further information, but Virgin Money didn't agree to reimburse him any of the funds spent.

Mr C then came to our Service, but we said we hadn't seen evidence to show S was operating a scam, in line with the required definition of the reimbursement code Mr C was relying on. Mr C asked for an Ombudsman to reconsider his complaint.

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

*In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.*

*Virgin Money is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code or "the Code"). This requires firms to reimburse customers of Authorised Push Payment (APP) scams in all but a limited number of circumstances. The Code goes on to define what it means by an APP scam. So if I am not persuaded that there was a scam, in line with the definition, then I will not have a basis under the Code to uphold this complaint.*

*The relevant definition of a scam for this case, in accordance with the CRM Code, is that the customer – Mr C – transferred funds to another person for what he believed were legitimate purposes but were in fact fraudulent.*

*The Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it doesn't cover a genuine investment or a genuine business that subsequently failed. Or a situation involving something that may be considered a*

*“bad bargain”.*

*Therefore, in order to determine whether Mr C has been the victim of a scam as defined by the Code, I need to consider first, whether the purpose he intended for the payment was legitimate. I then need to consider whether the purposes he intended and S intended were broadly aligned. And if I find they weren't, whether this was the result of dishonest deception on the part of S.*

*Mr C has explained he bought 110 pieces of art between 2022 and 2023. He did so with the intention of owning this art as an investment portfolio. And I haven't seen anything to suggest that Mr C didn't think this was a legitimate art investment.*

*After S went into liquidation, Mr C received contact from the Swiss storage unit where his art is being stored, and he hasn't suggested that any pieces are missing from this inventory. So the evidence we hold indicates that Mr C is the owner of all the prints he paid for and so his funds, in this sense, were used for the agreed purpose.*

*We're also aware that S had other key contracts for the steps in the service it said it was providing. For example, it had contracts with printers and contracts with storage firms. And as above, we understand Mr C's art is being stored at one of these facilities. So this is indicative of S setting up and running the business in the way you'd expect.*

*I've then considered whether there is convincing evidence at present to demonstrate that the true purpose of the investment scheme was significantly different to what was understood by Mr C, and so it was a scam rather than a genuine investment. Mr C has provided a judgement handed down in relation to the freezing of accounts linked to S and the alleged scam, and multiple affidavits, including an affidavit from the liquidator which was submitted to the court to evidence it was.*

#### *Value and resale of the art*

*As part of his evidence this was a scam, Mr C has raised concerns with the value of the prints purchased and their actual resale value and potential. However, ultimately, I have to place weight on the fact Mr C made the payments to S on the understanding that it would purchase specific pieces of art to be held on his behalf, and the evidence indicates this is what happened. We also know that there were contracts in place with the artists whose prints were sold. And that, when contacted, some of the newer artists didn't agree their work had been overvalued.*

*The value of art is also a subjective area. And that the nature of this industry means that mark-ups on print values aren't uncommon. Although I do recognise the mark-up indicated here is arguably higher than what is generally seen, this isn't enough in itself to say S was running a scam or fraudulent operation.*

*I accept that in the freezing order, the judge referenced that there was no real secondary art market for what was purchased and I also accept that this would be contrary to what investors were told. It seems that when sales did take place, S was buying back the art itself to enable the investor to make a profit, rather than actually selling it on to a new customer. So this indicates there may not be a genuine increase in market value or a known market for this art.*

*I also accept that who bought the art wasn't disclosed to the investors, and that buying the art back may have been a tactic used to get investors to then buy further prints, as it appeared their investment was running successfully. This does raise*

*some questions around how S was operating and the investment scheme, especially in relation to information being misrepresented. But some potentially dubious business/sales practices aren't enough to persuade me that S's intention when taking the payments was to defraud Mr C. And the judge made it clear that the merits of any fraudulent activity taking place (including findings on the actual value of the art and the existence of the secondary market) were not within the remit of the hearing and instead was something that had to be considered in a trial.*

*A "good arguable case for fraud" and the affidavits*

*Mr C has referenced other comments by the judge including their findings that there was a good arguable case for fraud. However, the judgement also makes it clear the threshold for a 'good arguable' case is low – lower than 50%. Considering this test, I'm not persuaded the judge's finding can equate to it being more likely than not investors have been scammed. As above, the judge makes it clear that these matters will need to be decided at trial.*

*Mr C has provided copies of affidavits which were all signed prior to the freezing order from the judge. In particular, he references the liquidator's first affidavit and has sent images of what he considers are the key sections in it – relating to the director receiving proceeds of fraud; fraudulent trading; and breach of trust/fiduciary duty. I recognise the comments made in this document and the conclusions being drawn by the specific sections. But reading this document in full, following these highlighted sections, the liquidator also then moves to "Full and frank disclosure" and the five pages that follow set out the arguments that could be made by those involved in S to counter these accusations.*

*I recognise the conclusions reached despite the inclusion of the disclosure section – and that this section is part of providing a balanced view. But this does indicate that there could possibly be legitimate reasons or explanations for some, or if not all the concerns raised. And this is just the liquidator's opinion of what could be said in response – it's possible, if not probable, that S would have had more to say on these matters. Had the case gone to trial, S may have expanded on the points raised, with evidence, beyond the liquidator's thoughts. And I note that with sight of this document and the other affidavits, the judge still determined that trial was the place for these matters to be decided.*

*I recognise that no trial did take place, and that S agreed to settle matters outside of court. But it has been confirmed that this was on a no admission of liability/guilt basis and so S did not agree it had acted fraudulently or was guilty of what Mr C is now alleging. The settlement is confidential – including the details of how much was paid and what this was actually paid for, so I don't consider this settlement can fairly be used to evidence the case against S. There are a number of reasons parties may choose to settle outside of court and it can't fairly or reasonably be assumed that S did so because it was guilty.*

*Conclusion*

*Ultimately, it doesn't seem to be in dispute that Mr C bought and now owns actual art. The nature of the alleged scam surrounds the value of this art and its potential as an investment. We hold evidence that S was engaging in practices you'd expect for a genuine business, and I don't hold persuasive evidence that its intention, from the start, was to defraud Mr C.*

*Instead, I consider that Mr C's and S's purpose for him making these payments did*

*broadly align, so I don't consider the evidence currently supports the conclusion that his transfers were made as the result of an APP scam. So then Virgin Money wasn't wrong in declining to refund Mr C under the CRM Code.*

*If new material information does come to light at a later date, then a new complaint can be made by Mr C to Virgin Money. But I'm satisfied, based on the available evidence that I have seen and been presented with at this time, that this is a civil dispute.*

#### *Interventions and recovery*

*As I haven't concluded that these payments were made as the result of a scam, there is no basis upon which Virgin Money ought to have intervened. Virgin Money did ask Mr C questions about some of his payments and has explained he didn't disclose it was an investment. But in any event, even if Virgin Money had decided to question Mr C further about what he was doing and determined he was investing, I don't consider any proportionate questioning, or warnings would've prevented him from going ahead at the time of the payments. At the time he paid the funds, there was nothing in the public domain to suggest a potential problem with S. So even if Virgin Money had directed Mr C to do further research, I don't consider this would've changed his decision to invest at the time.*

*I've then considered whether Virgin Money could've done more to recover the funds Mr C sent to S after he reported he'd been scammed. But I'm not persuaded that it could've recovered anything – both due to the time passed since the payments were made (in relation to both funds being spent by the receiving party and time limits on card claims) and the evidence required to successfully claim funds back. Afterall, it's accepted Mr C does own the art purchased.*

*In relation to the credit card payments evidenced, it's not clear if a claim under Section 75 was considered. But I've not seen any contractual commitments to the value of the art increasing, instead I understand this was stipulated as a potential. And while the value of the art at the time of purchase may have been misrepresented to Mr C, this matter never went to trial. So this allegation was never shown to be true/proved, meaning I haven't seen any evidence a S.75 claim would've succeeded. So, I'm not intending to direct Virgin Money to do anything in this case.*

Virgin Money accepted the provisional decision. Mr C, via his representative, rejected it. It said the true test was whether it was more likely to be a scam or not. And it said S was never going to achieve a return for Mr C and was going to allow the sellers to profiteer to an unreasonable extent.

Mr C also raised questions about S's business model and said I had dismissed the indicators of fraud his representative had provided. These were the opinions of certain parties this was fraud; the fact the court case was settled outside of court; the way money moved within and outside of S when it was trading; S buying back art investors understood was sold; and certain parties' opinion that the art is not worth what investors were told.

As both parties have responded to my provisional decision prior to the deadline, I have reconsidered the case.

#### **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.

While I have reviewed Mr C's response to the provisional decision, it doesn't add any new information to this case. I accept that he and his representative don't agree with my findings, but what has been responded with is a repeat of the submissions already made. So nothing materially new has been provided which would lead me to change my decision.

Having read the response, I cannot agree with how my findings have been interpreted. For example, I did not make any finding on *why* S settled outside of court, as has been alleged. I explained that we do not know why S chose to do this, so we can't take negative inferences from it. We can't fairly make any inferences, positive or negative, without more information and sight of the confidential documents, which we are not and will not be privy to. So I maintain that we can't fairly use this settlement as evidence *against* S.

As no new material evidence was submitted, I see no reason to change my findings. So, for the reasons detailed in my provisional findings, included above, I don't consider Virgin Money was wrong in declining to refund Mr C under the CRM Code.

Since issuing my provisional decision, further information has been provided to me in relation to Mr C's payments and Section 75. This evidences that a claim was made to Virgin Money and was declined. Mr C argued that the value of the art and its investment potential were misrepresented to him. Virgin Money set out that as he paid S via a third-party, not directly, a S.75 claim couldn't be made. Given what Virgin Money has shared with us, it's arguable that Section 75 wouldn't apply to Mr C's payments at all. But in any event, as I set out in my provisional decision, even if it did apply, we still haven't then been provided with evidence a claim should've succeeded – the matter of the value of the art never went to trial. And as neither party disputed this finding, I see no reason to change my outcome on this point.

### **My final decision**

For the reasons set out above, I don't uphold Mr C's complaint against Clydesdale Bank Plc trading as Virgin Money.

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

Amy Osborne  
**Ombudsman**