

## **The complaint**

Mr S complains that Clydesdale Bank Plc trading as Virgin Money (Virgin Money) won't reimburse him after he lost money to an investment – that he now considers to have been a scam.

Mr S is professionally represented in bringing his complaint, but for ease of reading, I'll refer to all submissions as being made by Mr S directly throughout this decision.

## **What happened**

In December 2020 Mr S received a call about buying artwork as an investment. I'll refer to the company offering the investment as P.

Mr S explained that he carried out research into P and reviewed its website. He explained P was operating from a London gallery and was backed by renowned artists which made him think the opportunity was genuine. Mr S was encouraged to purchase various artworks to build up a portfolio as an investment. He expected a return of 20% on his investment.

Mr S has advised he made credit card payments totalling £94,480 to P using another company to process his payments. Mr S had difficulties getting into contact with P. It ultimately went into liquidation. Mr S has explained that he has never seen his prints and is unable to verify if they exist and as a result he believes he has been the victim of a scam.

Mr S raised a complaint with Virgin Money. It didn't think it needed to offer a refund. It acknowledged that there were some delays in dealing with Mr S's complaint and offered £150 compensation for the distress it had caused. Mr S brought his complaint to our service.

An Investigator looked into Mr S's complaint but didn't uphold it. To summarise, she concluded that this was a civil dispute between Mr S and P, rather than a scam.

Mr S disagreed. In summary he explained that the art was worth significantly less than what he paid so this was a misrepresentation and breach of contract.

The complaint has been passed to me for a 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.

Having done so and having thought very carefully about what has happened here, I agree with the findings set out by our Investigator. I do appreciate how disappointing this will be for Mr S but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold Virgin Money liable for his loss.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided,

and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I have not mentioned, it isn't because I have ignored it. I haven't. I'm satisfied that I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Firstly, it isn't in dispute that Mr S authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he is liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam

I've thought about the Contingent Reimbursement Model Code (CRM Code) which can offer a potential means of obtaining a refund following scams like this one. But the CRM Code doesn't cover card payments. I've therefore considered whether the payments Mr S made to P falls under the scope of an APP scam. Having done so, I don't think that it does. I'll explain why in more detail.

To say that Mr S had been the victim of a scam, rather than a failed investment, it must be shown that the purpose for which Mr S made the payments and the purpose for which the recipient procured them were different — and that this difference arose due to dishonesty or deception on the part of the recipient. The key issue, therefore, is the intentions of the recipient at the time the payments were made. While I can't know what their intentions were, I have to look at the other available evidence and attempt to infer what their intentions likely were.

Mr S hasn't evidenced that his funds weren't used to purchase the art he was investing in. He would need to prove that his art wasn't in storage, or that it had been lost and cannot be located – which he hasn't done. And while there are concerns around how P was operating, it is generally accepted that the artwork existed. I say this based on the information from the storage companies confirming the existence of prints. Some potentially dubious business or sales practices aren't enough to persuade me that P's intention when taking the payments was to defraud Mr S.

I also understand there are concerns that the value of the prints is significantly less than what Mr S paid, leading to accusations that this was a scam investment from the outset. Mark ups in the art world are not uncommon. However, ultimately, I have to account for the fact that Mr S made the payments to P on the understanding that it would purchase specific artworks on his behalf for his portfolio, and it appears that this is what happened. So, I don't consider the evidence currently supports a conclusion that these payments were the result of a scam.

I understand there was a recent court case concerning P. However, the case considered in court related to the position of a freezing order that was in place over the company's assets, rather than whether P procured payments for fraudulent purposes. In order for a freezing order to be put in place, the possibility of fraud had to only be arguable, not more than likely on the balance of probabilities. And while the judge did make multiple references to the possibility that P may have had the intention to defraud customers, they were also very clear that this was not within the remit of the court case taking place and that this would need to be considered in a trial.

I also understand there has been a more recent settlement out of court by P. However, the details of the settlement are confidential and there was no admission of liability. I therefore don't consider this is persuasive evidence that investors were scammed – as an out of court

settlement could be for any number of reasons, such as simply not wanting to pay for legal costs.

Based on the evidence I've seen, I'm not persuaded that Mr S has been the victim of a scam because I've not seen enough to show P dishonestly deceived him about the purpose of the payments at the time they were made.

It's possible that new material evidence may become available at a later date, for example, following further investigation by external organisations. If it does, Mr S can ask Virgin Money to reconsider his claim.

Mr S has confirmed Virgin Money has already paid him compensation for the service he received. I agree there has been some delays in dealing with Mr S's complaint but overall I think the offer made is fair in the circumstances of the complaint, so I won't be asking it to do anything further.

For the sake of completeness, I also considered whether Virgin Money could have done anything to prevent the payments at the time it was made. But I'm not persuaded that any intervention at the time would have identified any cause for concern. I say this because all the information available at the time of the payments, suggested that it was a genuine investment. P were a UK incorporated company who had been trading for a number of years by the time Mr S made his payments. They had a London office, and they provided several documents to Mr S which led him to believe this was a genuine investment. He had been making payments to P for a number of years. So I am not satisfied that a proportionate intervention from Virgin Money would have led it to believe this was a scam.

I have also considered whether Virgin Money could've done more to recover the funds Mr S sent to P after he reported he'd been scammed. But I'm not persuaded that it could have recovered anything.

Any claim under Section 75 wouldn't have succeeded. I've not seen any contractual commitments to the value of the art increasing, instead I understand this was stipulated as a possibility. And while the value of the art at the time of purchase may have been misrepresented to Mr S, this matter never went to trial. So, this allegation was never shown to be true, meaning I haven't seen any evidence a Section 75 claim would've succeeded.

In relation to a chargeback claim, Mr S doesn't appear to have paid P directly – so this would have likely impacted any claim for these transactions. But, more importantly, he didn't report he'd been scammed in line with the relevant timescales that apply for most of his payments.

I acknowledge that my findings will be disappointing for Mr S, but I cannot fairly say – based on all the evidence I have seen – that it would be fair to hold Virgin Money liable for his loss.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 January 2026.

Aleya Khanom  
**Ombudsman**