

The complaint

Mr S complains that Clydesdale Bank Plc, trading as Virgin Money, won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In early 2022, Mr S was looking for ways to invest his money and was told about a company offering investments in artwork. He was told the company would help him purchase a piece of artwork, hold it for him and then sell it when the time was right to achieve the best return. And after reviewing the company's brochures and visiting its offices, Mr S decided to purchase a piece of artwork and made a payment of £56,600 from an account he held with another bank to the company's account held with Virgin Money.

Some time later, Mr S says the company stopped communicating with him and he found out it had gone into administration. He then thought he had been the victim of a scam, so reported the payment he had made to Virgin Money and asked it to refund the money he had lost.

Virgin Money investigated but said the company was now in liquidation so it felt it had been a genuine business, rather than a scam. And so it didn't agree to refund the payment Mr S had made. Mr S wasn't satisfied with Virgin Money's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence was enough to say the company had intended to defraud investors from the outset, and so didn't think it would be fair to say Virgin Money could have done more here. Mr S disagreed with our investigator, so the complaint has 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.

Having done so, I don't think it would be fair to require Virgin Money to refund the money Mr S has lost here. I'll explain why below.

In order to fairly and reasonably require Virgin Money to refund the money Mr S has lost here, I'd need to be satisfied that his losses were the result of a fraud or scam. And for a loss to be the result of a scam, it needs to be established that the recipient's purpose in obtaining the payment was fraudulent or that they had criminal intent at the time the payment was made. But, based on the evidence I've seen, I'm not satisfied that the payment Mr S made here can fairly be said to have been made as a result of a scam.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr S has said it was agreed the company would hold on to the art he purchased for him, and then arrange to sell it when the timing was right to achieve the best return. So while Mr S has said he never received the art, him receiving it does not appear to have been part of his original agreement with the company and so I don't think this necessarily suggests the company never intended to act in line with the agreement it made with him.

Mr S has also said he has attempted to recover the art, but was met with delays and excuses and the administrator of the company has said it is not presently in possession of any of the company's digital assets. But the administrator has said they are aware the company did have some digital assets. And I don't think it is necessarily surprising that digital assets would be difficult to locate after the administration of a company. So I don't think this suggests the company never purchased the art, or that Mr S's funds weren't used to purchase the art as he thought they would be.

Mr S has also made a number of arguments about why he believes this was a scam, including highlighting the findings of a recent court judgment in relation to the freezing of accounts connected to the company, a statement from the liquidator of the company, and an ongoing police investigation into the company.

And I appreciate that the recent court judgment provides strong evidence of the investment being misrepresented to investors – specifically that the company gave the impression that they were acting as a broker or intermediary, rather than a retailer of the art, and that the company would manage investors' portfolios and provide advice on what to buy and when to sell. The judge at the hearing also made several references to the possibility of the company intending to defraud customers.

However, the judge was also very clear that any argument about whether the company had intended to defraud investors was to be considered at a trial, and was not something that was within the remit of that hearing. So the judgment made no finding on whether the company had intended to defraud investors.

And so while investors may have a potential claim for misrepresentation and breach of fiduciary duty, I think the investors and the company still had broadly the same understanding of the reason for any payments – which was to purchase artwork. And any management of the investors' portfolio by the company was secondary to this.

The judge also acknowledged that the promotional material investors were given suggested the company made a profit by taking a percentage fee on sales and on any profit made on a sale, and didn't explain that the company was actually purchasing art at wholesale prices and selling on to investors at a significant mark-up – which averaged 495%.

But the value of any piece of artwork is a subjective matter, where artists and dealers will have their own opinions about the value of any particular piece and for which there is no strictly objective test. The judge was also presented with evidence that the company purchased artwork from artists and companies, at least one of which was entirely independent, and that it wasn't unusual for retailers to inflate the cost of art. And they again made it clear that the issue of the value of the artwork was to be considered at a trial, rather than this hearing. So I don't think a mark-up in price, even to this extent, is enough to demonstrate that a scam has taken place.

In the judgment the judge also mentioned that, contrary to what investors were told, there was no real secondary market for the art the company was offering in this investment. The company did not make any genuine re-sales of the art and simply bought back prints from some investors who pushed for them to be sold. So there was no genuine increase in market value of the art. But the judge again made it clear that the merits of whether there had

actually been fraudulent activity was to be considered in a trial. And the standard the judge was applying when deciding that there was a good arguable case for fraud on this basis is a lower standard than the one I must apply here. So I don't think the judge's finding that there was a good arguable case for fraud is the same as a finding that it is more likely than not that the true purpose of the investment was fraudulent or that investors had been scammed.

I'm also aware that the case is no longer going to trial, as a settlement was agreed between the company and the liquidator. And the liquidator has confirmed that the settlement involved no admission of liability by the company and that any amount paid by the company to the liquidator, or what any payment related to, was not disclosed. So, as there can be a variety of reasons for a settlement being reached that do not necessarily mean there was wrongdoing on either side, I don't think this settlement provides sufficient further evidence that the company intended to operate a scam.

I also understand there is an ongoing police investigation into the company. But I don't think this is enough to say a scam has taken place, as I don't think an ongoing investigation can be taken to mean anything more than the police are looking into whether a crime has taken place. The police investigation here has not yet concluded, and so could still find that nothing untoward has happened.

Mr S has also raised that the owners of the company transferred money between connected companies. But while I recognise this could suggest the owners weren't acting as I would usually expect a professional company to do, acting unprofessionally does not mean they intended to operate a scam.

A statement from the liquidators of the company also confirms that artwork was purchased and that there was spending from the company's account for standard business expenses and genuine trading costs were incurred. And while I understand the liquidator is pursuing a claim for fraudulent trading and has stated that the company was being run to defraud creditors, I've not seen the evidence they have relied on so can't agree that it is enough to say on the balance of probabilities, at this stage, that a scam has taken place.

So I don't think I can safely say the circumstances here meet the specific definition of a scam I must apply. I'm not persuaded that the available evidence is sufficient to safely conclude that Mr S's funds weren't used in the way he intended or that the purpose the company intended for this payment was different than the purpose Mr S intended.

As I don't think the circumstances here meet the definition of a scam, I also don't think it would be fair to say that Virgin Money ought to have intervened in the operation of the account or done more once Mr S's funds had credited the account. So I don't think it would be fair to require Virgin Money to refund the money Mr S has lost as a result.

I sympathise with the position Mr S has found himself in and I appreciate that he has lost a significant amount of money. I'm also in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the company. But I can only look at Virgin Money's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to require Virgin Money to refund the money he has lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 December 2025.

Alan Millward
Ombudsman