

The complaint

T and T, a limited company, has complained Clydesdale Bank plc, trading as Virgin Money, won't refund them for six transactions they didn't authorise.

What happened

T and T is a limited company with two directors, Mr F and Mr H. I shall refer to T and T as T throughout this decision for ease. I shall also be referring to Mr H too.

On a night out in June 2024, Mr H had his personal phone stolen. This phone was subsequently used to log into another business account (with a bank I'll call H) Mr H held with Mr F, to make transfers to T's Virgin Money account. Then six transfers, mostly just under £10,000, were made to a third-party account over a period of a couple of days.

When Mr H noticed his business accounts had been compromised, he notified H and Virgin Money. Virgin Money decided not to refund T as they believed they'd not kept their security details safe and failed to report the device had been stolen in a timely manner.

T brought their complaint to the ombudsman service.

Our investigator confirmed she'd reviewed T's terms and conditions and had also taken note of what the Financial Conduct Authority says about gross negligence. She didn't believe what had happened met this high bar and asked Virgin Money to refund T in full, along with 8% simple interest.

T accepted this outcome. Virgin Money felt that H should be bearing some of the loss. T's complaint has been referred to an ombudsman for 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, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

There's a plethora of detail about this complaint which has been shared with our service. I

hope neither party thinks I am being disrespectful when I don't refer to this. I don't believe Virgin Money disputes Mr H was a victim of phone theft, and that this device was used to make transfers from Mr H's other business account (in a different name) to T's Virgin Money account. There were then six transactions totalling £40,880 made within 48 hours. There's no suggestion these were authorised by T.

Our investigator completed a detailed view on 29 January 2025, and I can't see either party disputed any of the detail in there. I don't feel the need to repeat what was said there and is not in dispute.

The regulations which are relevant to T's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN or online banking details – to be used by someone else.

I note Virgin Money hasn't suggested that T has acted in a grossly negligent manner, rather that the terms and conditions of the business account allow them to decide not to refund businesses if they believe security details haven't been kept safe.

Firstly our service – and Virgin Money – is aware that fraudsters can access banking apps when they have access to a stolen phone. There's clear evidence that Mr H's phone ID was reset soon after the theft, and the find the phone function was disabled. Mr H has been able to show our service how the fraudsters were able to access his personal and password data to enable account takeover to happen.

I've considered whether I believe this constitutes gross negligence as required by the Financial Conduct Authority. But I don't believe it does. This doesn't constitute significant carelessness as required by the FCA guidance. As our investigator stated, this is a high bar and I don't believe Mr H's behaviour counts as gross negligence by T.

Virgin Money is also concerned at Mr H's delay in reporting his phone being stolen. But I'm not convinced that Mr H would necessarily have equated his personal (and not his business) phone being stolen with the theft of his card and account details, which is what Virgin Money's terms and conditions specifically refer to.

My conclusion is that this doesn't amount to gross negligence and as these transactions were clearly not authorised by T, they must be refunded in full.

I have considered Virgin Money's main point in responding to our investigator's view. They have noted that it was transfers from the business account with H that meant there were sufficient funds in T's account to enable the fraudsters to steal over £40,000. They believe that H should share in the liability.

I appreciate why Virgin Money believe this. However, I am considering a complaint from T. T is not the holder of the account with H. That is a separate legal entity.

What I can confirm is that H refused any refund claim so any concerns Virgin Money may have about undue enrichment don't apply I believe.

As stated above, I am satisfied that Virgin Money should refund T.

My final decision

For the reasons given, my final decision is to instruct Clydesdale Bank plc, trading as Virgin

Money, to:

- Refund £40,880 to T and T; and
- Add 8% simple interest from the dates T and T's account was debited in June 2024 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask T and T to accept or reject my decision before 21 November 2025.

Sandra Quinn
Ombudsman