

## The complaint

Mr H complains Clydesdale Bank Plc trading as Virgin Money won't refund the money he says he lost to a scam.

## What happened

Mr H started investing with a company, "W", in late 2021. Here is a breakdown of the payments he sent in connection with his dealings with W:

### October 2021: payments one and two

Mr H sent two payments of £200 and £19,000 respectively to an account held by W to buy seven casks of whisky.

### September 2022: payment three

Mr H sent a payment of £20,000 to an account held by W for an investment in the form of an ISA. It appears Mr H understood he was effectively lending the money to W in exchange for monthly returns plus the repayment of his capital at the end of the term. The ISA appears to have been set up on a platform run by "L", a firm that was FCA-regulated at the time.

### November 2022: payment four

Mr H sent a payment of £28,990 to an account held by W to buy two more casks.

### November 2023: payment five

Mr H sent a payment of £22,800 to an account held by W to buy two more casks.

### January 2024: payment six

Mr H sent a payment of £9,988 to an account held by "K" – who W said was providing an "escrow account" – to buy a further cask. W said they had a foreign buyer lined up for the four casks purchased with payments four and five, but he should buy one more to include in the sale as the pallets used to export them needed five casks minimum in order to be protected during transit. He was told the buyer was already under contract with W, so the sale was guaranteed to go ahead and would result in a 22% return.

### March 2024: payment seven

Mr H sent a payment of £2,500 to an account held by "M" to pay fees in relation to the sale W said they had lined up. He was told M's account was being used to pool and then disperse funds from the sale. Mr H was initially quoted a higher fee, but after he challenged this W told him they had agreed a lower flat fee for all clients involved in the sale.

Mr H was told the sale was going ahead shortly after this final payment. But he didn't receive the proceeds he was expecting. His ISA returns also stopped. After failing to get any further responses from W, Mr H complained to Virgin Money (via a representative). He said he had been scammed so it should refund him under the terms of the Contingent Reimbursement Model (CRM) code – under which signatories (such as Virgin Money) are generally expected to refund victims of Authorised Push Payment (APP) fraud.

Virgin Money didn't agree to refund Mr H. It said the matter was a civil dispute between him and W and therefore wasn't covered by the CRM code. Unhappy with this response, Mr H referred the matter to our service. Our investigator didn't uphold it. She noted Mr H had received confirmation from a distillery that it held some of the casks he purchased, and so agreed with Virgin Money that this was a civil matter rather than a scam.

Mr H appealed the investigator's outcome. I've summarised the main points raised by his representative about why it thinks W were operating fraudulently:

- L, who operated the investment platform used to set up the ISA, had restrictions placed on it by the FCA from December 2019 onwards. It says W continued soliciting funds after L's authorisation was suspended – which is characteristic of fraud.
- It says there is a pattern of W selling casks that never existed or were grossly overvalued – as reported by the media and backed up by reviews of W. It says the directors "vanished" and have subsequently been arrested, further supporting that they were acting fraudulently.
- The returns promised in relation to the casks were unrealistic. And those paid, supposedly in relation to the ISA/bond, don't offset the deception or resulting loss. It suggests these were paid to create an illusion of legitimacy.
- The way W suddenly cut off contact – and then went into liquidation – is consistent with fraudulent behaviour.

I started reviewing Mr H's complaint and got in touch with his representative for some further information. It provided an email exchange with a distillery company, "S", saying they hold the casks purchased with payments one and two – but not those meant to be purchased with payment four. Whereas the documentation Mr H received from W at the time of these payments said S would hold all these casks until maturity. I've also seen another distillery, "B", have said they hold the casks purchased with payment five.

I then issued my provisional decision explaining I thought payments four, six and seven met the definition of an APP scam under the CRM code – as well as the criteria for full reimbursement. Whereas I wasn't persuaded payments one, two three and five could fairly be deemed a scam. I therefore proposed Virgin Money should refund Mr H payments four, six and seven.

Mr H's representative has responded to my provisional findings confirming he accepts this outcome. Virgin Money has responded that there is a risk of double enrichment if it refunds Mr H now, so we should wait on the outcome of the ongoing investigations into W before proceeding.

### **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 I did in my provisional decision – and largely for the same reasons, which I've set out below. While Virgin Money said it is

concerned about the risk of double recovery, my provisional decision already explained it could take an assignment of rights to prevent this risk.

I'd also point out that, while there is a clause under the CRM code which allows firms to hold off on answering a CRM code claim in certain limited circumstances, Virgin Money didn't apply that when Mr H claimed; instead, it proceeded to give an answer declining his claim. I therefore don't think this clause can be applied now. I'm also persuaded we already have sufficient evidence to show the payments I'm upholding should fairly be refunded without waiting on the outcome of the ongoing investigations.

I've therefore decided Virgin Money should refund payments four, six and seven – but not the other payments. Given all the payments relate to Mr H's dealings with the same company (W), I appreciate this is an unusual outcome to reach. But each payment must be looked at separately. And, for the reasons I'll go onto explain, I'm persuaded some payments meet the definition of an APP scam under the CRM code – whereas others don't.

Mr H authorised the payments he is now disputing. In broad terms, the starting position in law is that firms are expected to process their customers' authorised payment instructions without undue delay – meaning Mr H is presumed liable for his payments in the first instance. However, as he says he made the payments due to falling victim to a scam, there are some further considerations relevant to whether it would be fair to expect Virgin Money to refund him.

The key consideration here is the CRM code, which Virgin Money was signatory to at the time of these payments. This code requires firms to reimburse APP scam payments in all but a limited number of circumstances. But it doesn't cover private civil disputes – such as where a customer pays a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

Virgin Money says Mr H's dispute with W is a private civil dispute rather than a scam. I therefore need to consider, on balance, whether the payments in question meet the CRM code's definition of an APP scam:

*“Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:*

- i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

I consider it clear Mr H paid the intended persons; he was given payment details by W on each occasion and knew who held the accounts. I also consider it clear that Mr H was making the transfers for what he believed were legitimate purposes. So, I've considered whether W's purpose for each payment was broadly aligned with Mr H's – and, if not, whether this was a result of a dishonest deception by W.

#### Payments one, two and five

Each of these payments was to purchase specific casks of alcohol. I've seen Mr H received a certificate from W saying the seven casks purchased with payments one and two would be stored with a particular distillery, “S”. And I've also seen from Mr H's contact with S that they do indeed hold these casks – as he has been in touch making enquiries about selling them.

Similarly, I've seen another distillery (B) confirm they hold the two casks purchased with payment five. They've confirmed the storage fees have been paid up until October 2026, matching what W told Mr H at the point of purchase. And they've told Mr H he can visit to view the casks.

Mr H's representative has raised concerns about the contact with B. For example it has shown they got Mr H's name wrong in an email, and point out he was initially told the casks would be held with a different distillery (which isn't B or S). But B's email says they obtained the casks from that other distillery. And I don't think the nature of the correspondence renders it completely unreliable. Based on what B have said, and without any evidence to contradict this, it seems likely they do hold the casks.

The representative has also suggested W were selling "grossly overvalued" casks. But it hasn't produced any evidence of concerns with the valuation of these particular casks. In any event, as the evidence supports that the specific casks Mr H understood he was purchasing were bought for him by W in exchange for his payments, I'm persuaded the payment purpose was aligned. I therefore don't think these payments meet the CRM code's definition of an APP scam.

### Payment three

Mr H understood this was an investment with W, packaged as an "ISA". I've seen the ISA was set up on L's platform and that Mr H received monthly returns until March 2024 – as you'd expect for a genuine investment. I do appreciate the returns then stopped, and that his capital hasn't been repaid. But we know both L and W went into liquidation. So, that leaves open the possibility that the investment simply failed.

L were FCA regulated at the time of this payment. While there was a restriction on them regarding promotion of investments, I haven't seen much suggesting they were promoting the ISA; it seems Mr H was introduced to it through another company.

Furthermore, failing to adhere to regulatory requirements and/or mismanagement wouldn't be sufficient to show no genuine investment was provided/intended to be provided. Our service has seen records of an account held by W which shows significant payments to known distilleries and whisky storage facilities. This supports that they were at least attempting to invest in whisky, as their investors (including Mr H) understood they would be.

All of that said, and as I'll cover further below, I do understand the concerns about W's conduct. But the picture is mixed; it's clear they were completing some activity that broadly matched the purpose of investors' payments. And I have to consider what can be deduced about W's intentions at the point of each payment.

Overall, I've not seen enough to persuade me it's more likely W had no intention of honouring this investment at the time it was made – as opposed to managing funds poorly, running into financial issues, and/or later engaging in fraudulent activity. I appreciate there are some ongoing investigations into both W and L. If further evidence comes to light to support that the ISA was actually a scam, Mr H may be able to ask Virgin Money to reconsider his claim for this payment.

### Payment four

Mr H understood this payment was to be used to purchase two specific casks. I've seen a certificate he was issued by W at the time, providing details of the purchase – including a reference for it, and stating it would mature in a warehouse of S. However, when Mr H followed up with S, it couldn't trace any casks matching those details.

By contrast, S has confirmed it holds the seven casks purchased by Mr H's first and second payments. There is also a clear distinction between the certificates provided in relation to the first cask purchase; in-bond certificates were issued by S directly for these. Whereas the certificate for the casks intended to be purchased by payment four was issued by W. The format and the details given (such as the format of the references) also differs.

I'm therefore persuaded W didn't use this payment in line with Mr H's purpose. But for this to be an APP scam payment, I'd need to be satisfied the misalignment was the result of a dishonest deception by W. And the fact other casks were purchased for Mr H could be an indication this was an oversight rather than a deliberate attempt to misappropriate funds.

However, this isn't the first instance our service has seen of W claiming to have purchased casks which the relevant distilleries can't find any record of. While a one-off may appear more likely an oversight, the overall pattern we have seen makes me think this is more likely to have been intentional. It seems unlikely W would repeatedly fail to make expected purchases. Particularly as there is a distinct change in the documentation issued in relation to casks allegedly being stored with S; W would have known they were issuing the certificate directly, rather than obtaining one from S as they had done previously.

I've also seen Mr H was told the certificate would be sent on to him "*after the cask filling stage*". He then received an email from W in December 2022 confirming this had been posted. So, it appears the certificate was only meant to be sent once the purchase had been completed. But, despite there being no trace of the purchase going ahead, W sent him this certificate. I consider this a strong indication that W deceived Mr H into making this payment and then issued their own certificate to cover this up.

As mentioned, I must look at each payment separately. It appears to me W were likely fulfilling (or at least intending to fulfil) some investments/purchases but not others. On balance, I do think it's likely W tricked Mr H into making this particular payment with no intention of enacting the specific purchase agreed – meaning the payment is covered by the CRM code.

### Payments six and seven

While the specific purpose of these payments differ, both were connected to an alleged sale. W said they had a "*pre-arranged contract with [a] buyer*" lined up to go ahead on a specific date in March 2024. It was discussed that the casks purchased with payments four and five would be included in this sale. Already, I have a concern about this due to there being no record of the casks connected to payment four being purchased – meaning they weren't available to be sold. Yet in the messages, W claimed "*All stock we propose is primed and ready for sale immediately*".

W also told Mr H to buy a further cask to put towards the sale, saying "*the pallets need to have 5 casks minimum for shipping purposes*". They said they could purchase one more cask for Mr H to include in the sale, and this would result in a "*22% tax-free profit*". But unlike the other casks purchased, Mr H wasn't issued with any documentation in relation to this alleged purchase.

W told Mr H to send payment to K's account. When he queried this, they claimed this was "*a third party escrow account as this is the company who will be facilitating the sale, once the stock lands with the buyer the escrow account will release all money from clients and the buyer to us*". Having seen K's statements, I can't see any indication the payment was used to purchase a cask – nor of any transactions consistent with them organising a sale of various whisky casks as claimed.

It was only after Mr H made this payment that W notified him that he would need to pay almost £9,000 for “*legal and transportation fees*”. When Mr H queried the addition of this fee and its value, W said it had managed to make a better arrangement and he would instead need to pay a flat fee of £2,500 – to cover “*the removal from bond, insurance, transportation, shipping and finally the customers charges we incurred for exporting abroad*”.

I find the addition of an unexpected fee at this stage suspicious. I’m not persuaded by the explanation given for what fees Mr H (rather than W or the buyer) would need to cover, especially when those costs hadn’t been mentioned as part of the original sale proposal. Furthermore, the significant drop in the fee when faced with pushback appears to me a tactic to persuade Mr H to make the payment when he was unhappy with the value.

Mr H was then told to send the payment to M. Again, he queried the change in account details. W said M would be disbursing the funds from the sale. That calls into question the explanation given about K previously – it doesn’t make sense both would be responsible for distributing funds. And again, having seen M’s statements, their account activity around the time of Mr H’s payment isn’t consistent with them acting in the way W described.

I understand contact from W stopped after the final payment was made, and the alleged proceeds from the sale were never paid out. Overall, I think there is good reason to doubt that a sale was lined up. There are no concrete details to verify this – such as contracts or any trace of the alleged buyer. It doesn’t appear to me that W were in a position to make or fulfil such an arrangement by this point. I’m not persuaded W ever intended to purchase a further cask in exchange for Mr H sending payment six. Nor am I persuaded that payment seven was intended to cover the types of fees/costs W claimed they had incurred.

From what I have seen of K and M’s account activity, I’m persuaded the payment journey is covered by the CRM code. The payments were made to another person for what Mr H believed were legitimate purposes – but which I’m persuaded were in fact fraudulent. The funds Mr H paid into these accounts were used in a way contrary to what he had been led to expect.

I appreciate investigations into W are ongoing. However, I think there is enough to show, on balance, that payments four, six and seven (but not the other payments) meet the CRM code’s definition of an APP scam. I’ve therefore gone on to consider whether Virgin Money should refund them – as is the starting position under the CRM code. But there are some exceptions under the code which, if applicable, firms can rely on to decline reimbursement.

Of relevance here is that firms can choose not to reimburse a customer if they ignored an effective warning. Or if they made the payment(s) without having a reasonable basis for believing that the payee was the person they were expecting to pay; the payment was for genuine goods or services; or the person or business with whom they transacted was legitimate. There are further exceptions within the CRM code, but they aren’t relevant here.

Virgin Money’s notes seem to suggest it believes it issued Mr H with effective warnings. I’ve therefore considered the contact between Mr H and Virgin Money about the payments sent to W, consisting of three calls:

- September 2022 (payment three): Mr H explained he was paying for an investment in an ISA. He confirmed he had checked the firm was regulated (as L, who the ISA was set up with, were at the time). Virgin Money told Mr H to bear in mind the risk when investing, and that a genuine firm wouldn’t claim to “*triple your money*”.

I'd point out I've not found this payment to be part of the scam. In any event, I don't think this was an overlooked effective warning. W weren't claiming they would triple Mr H's money, so this warning wasn't relevant.

- November 2023 (payment five): Mr H explained he was purchasing two barrels of whisky. He confirmed he knew the seller as he'd done business with them before and had checked they were genuine. Virgin Money mentioned purchase scams and said it normally suggested seeing the item you're purchasing, but commented that it understood this was a company Mr H had used before and knew to be genuine.

Again, notwithstanding that this payment wasn't an APP scam (as the casks were purchased), I don't think this was an effective warning. While the concept of a purchase scam was touched on, the call handler accepted Mr H had already verified W were genuine and so didn't suggest/warn him of anything likely to affect his decision-making regarding whether to proceed with this payment (or, indeed, his subsequent payments which I think were APP scam payments).

- January 2024 (payment six): Mr H explained he was paying a company he had done business with over several years, including receiving money back. It was discussed that the funds weren't going direct to W, but Mr H explained (as he understood it) that K were an intermediary involved in the sale of the cask he was purchasing – and he'd checked this with W.

I don't think what Virgin Money told Mr H gave him much insight into the possible scam risk. I'd also point out that, to apply this exception, it wouldn't be enough for Virgin Money to show it gave an effective warning; it would also need to show Mr H ignored this - by failing to take appropriate action in response to the warning that would have had a material impact on preventing the scam.

Given Mr H's long-running relationship with W and the professional documentation they had provided over the years, it's difficult to see what action he should have taken in response to his contact with Virgin Money that would likely have uncovered the scam. So, I'm not persuaded the bar has been met for Virgin Money to apply this exception.

I'm also satisfied Mr H had a reasonable basis of belief when he made the scam payments. As above, he had been dealing with W for a number of years. This included receiving returns from his ISA, which he could view on the platform of a regulated firm. I think this association/set up would have offered reassurance about W's legitimacy. And I do think W were completing some genuine activity, making it very difficult for investors to identify instances when they may have been behaving fraudulently.

I have considered whether Mr H should have been concerned about the change in W's operations when he made payments six and seven – such as being directed to pay accounts held in other names. But he did question this, as well as why he should buy another cask and the fees being charged. In the overall context of the relationship and trust he had built up with W by this point, I can see why their responses didn't undermine his belief they were operating genuinely. I think this was reasonable in the circumstances.

I'm therefore persuaded that Virgin Money should refund the payments I've found meet the definition of an APP scam, as I'm not persuaded it has/can fairly show any exceptions to reimbursement apply under the CRM code.

## **Putting things right**

To put things right, I propose Clydesdale Bank Plc trading as Virgin Money should refund Mr H for payments four, six and seven.

Clydesdale Bank Plc trading as Virgin Money should pay 8% simple interest per year on payments six and seven, running from the date it initially declined to refund him to the date of settlement. This is to compensate him for the loss of use of these funds – as I think if Virgin Money had looked into the circumstances fully at the time it could have established these were scam payments (such as by asking for and reviewing Mr H's emails with W). However, Mr H has only very recently provided our service with evidence that payment four was a scam, so I don't think interest needs to be added to this refund from the date of declining the claim.

If Clydesdale Bank Plc trading as Virgin Money considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

In order to avoid the risk of double recovery, Clydesdale Bank Plc trading as Virgin Money is entitled to take (if it wishes) an assignment of the rights to all future distributions in relation to the scam payments we're upholding before paying the award.

## **My final decision**

For the reasons given above, my final decision is that I uphold this complaint about Clydesdale Bank Plc trading as Virgin Money, and direct it to put things right in the way I've set out above.

Clydesdale Bank Plc trading as Virgin Money must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this, it must also pay interest on the portion of the compensation which I haven't already awarded interest on (i.e. the refund of payment four) from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2026.

Rachel Loughlin  
**Ombudsman**