

The complaint

Mr and Mrs B complain that Clydesdale Bank Plc trading as Virgin Money (Virgin Money) won't refund money they sent to an investment opportunity, that they now consider was a scam.

What happened

The background to this complaint is well known to both parties, so, I'll only provide an overview and focus on giving my reasons for my decision.

Mr and Mrs B said they were the victim of an Authorised Push Payment (APP) investment scam involving a company that I'll refer to as P. The proposed investment was to loan funds to P, a lighting technology company based in the UK, for a project in return for shares in the company. The project was to provide lighting for the cultivation of a drug on a site in an overseas jurisdiction that P had leased.

Mr and Mrs B separately entered into loan agreements with P, agreeing to lend them £10,000 each. The loan was paid in one lump sum to P in August 2019 from their Virgin Money account.

Mr and Mrs B said prior to their investment with P they received documentation which included details of the company, their share allocation, potential dividends, and the dates the loan would be paid back to them. They said they became concerned when P missed agreed repayment deadlines, and they ultimately reported the matter to the authorities.

They then complained to Virgin Money, said they'd been the victim of a scam and asked them to reimburse their loss. Mr and Mrs B said Virgin Money had set a precedent by refunding some other customers.

Mr and Mrs B said by not refunding them, Virgin Money was at risk of breaching several laws. They said it, as a signatory of the Contingent Reimbursement Model (CRM) Code, and in accordance with the Payment Services Regulations 2017 and the Financial Conduct Authority (FCA) Consumer Duty, should reimburse them.

Virgin Money didn't refund Mr and Mrs B's losses. It said it couldn't give an answer to Mr and Mrs B as it hadn't concluded its investigation. For the delay and poor communication following the scam claim, Virgin Money paid Mr and Mrs B £100 in compensation.

After Mr and Mrs B referred the complaint to the Financial Ombudsman Service, Virgin Money again said it didn't currently have enough evidence to show that a scam had taken place, but it was monitoring external investigations into P.

Our Investigator looked into the complaint and concluded P was a scam. They said the CRM Code did not apply, but they felt Virgin Money ought to have recognised the payment of £20,000 was out of character and carried a heightened risk of financial harm from fraud or scams. However, the Investigator concluded that even if Virgin Money had intervened in the payment, there was nothing in the public domain at the time Mr and Mrs B made the payment to P, to suggest it was a scam. They didn't think an intervention from Virgin Money would've ultimately stopped Mr and Mrs B from making the payment.

Mr and Mrs B said the conclusion that they would have continued with the payment despite an intervention by Virgin Money, was unfounded and speculative. They pointed to others who had been refunded by their respective banks, or through bringing their cases to the Financial Ombudsman Service.

So, the complaint has been passed to me to decide.

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.

I'd like to reassure the parties that although I've only summarised the background, so not everything that happened or has been argued is mentioned, I have considered everything that has been submitted in its entirety.

I note the Investigator made a finding that Mr and Mrs B did lose their money as a result of fraud. I agree that on the balance of probabilities, P most likely obtained Mr and Mrs B's money fraudulently – that is to say, P scammed Mr and Mrs B.

I don't intend to go into the full reasons for why I think P is a scam, because neither party has disputed this finding since the Investigator's view, and because I don't think it ultimately affects my decision. To summarise though, information suggests P had the dishonest intention of diverting a substantial part of the money to support its director's lifestyle, repay earlier investors, and deceive investors that P was establishing and conducting viable business operations. Despite being satisfied it was a scam, for reasons I'll come on to, I don't think this makes Virgin Money liable to refund Mr and Mrs B.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the customer's account. So, in this case Mr and Mrs B, rather than Virgin Money, are liable for the payment. However, that isn't the end of it.

Mr and Mrs B referred to the CRM Code several times in their submissions, as well as the FCA's Consumer Duty.

The CRM Code provides a greater level of protection to those who have fallen victim to APP scams in some cases. Although Virgin Money later became a signatory, at the point Mr and Mrs B made their payment to P in August 2019, it was not.

The CRM Code isn't retrospective once a firm signs up and so it doesn't apply in Mr and Mrs B's case. The same goes for Consumer Duty - it took effect after Mr and Mrs B made this disputed payment and is not retrospective. So, I haven't taken it into account either.

Outside the provisions mentioned above, I've considered longstanding regulatory expectations and requirements (including some Mr and Mrs B mentioned which do apply),

and what I consider to be good industry practice for firms when processing payments. Based on those, I'm satisfied that Virgin Money ought to have been monitoring accounts to counter various risks including preventing fraud and scams. I've considered what that means in the context of Mr and Mrs B's complaint.

I am in agreement with the Investigator, that the payment in dispute here was unusual for Mr and Mrs B's account. It was to a new payee which unlike paying established, familiar payees, often carries a higher risk of being linked to fraud. Considering their account history, it was also significantly larger than typical payments from their account. So based on these points, I'm satisfied that Virgin Money ought to have taken steps before processing the payment. In this case I think the proportionate intervention would be discussing the payment with Mr and Mrs B.

I could only consider upholding the complaint if I was persuaded that, on balance, Mr and Mrs B's position would be any different, but for Virgin Money intervening.

This requires me to weigh up the evidence to decide, on balance, what is more likely than not to have happened if Virgin Money had intervened in the way I've outlined.

Given Mr and Mrs B were making the payment for an investment opportunity, I would have expected Virgin Money to tailor its questions and warnings accordingly. I wouldn't have expected Virgin Money to interrogate Mr and Mrs B, and the warnings it could provide could only go so far.

Mr and Mrs B said they found the investment opportunity through various good friends.

They said they had carried out research on the people involved with P and some of the other investors, including checking social media. Mr and Mrs B said they had received all the documentation prior to making the payment, which you'd expect from an investment of this type. They had the loan agreement looked over by a friend in the legal profession. None of the above gave Mr and Mrs B cause for concern.

Mr and Mrs B said they carried out checks on the lighting company and its wider business, as well as checking Companies House. They saw photos of the overseas operation to build the site and said a trusted friend had visited the lighting facility and reported back.

I think all these things likely played important parts in Mr and Mrs B's decision to go ahead with the venture. They had, as much as they could, confirmed the opportunity was legitimate, and the site being built was genuine.

While Virgin Money could have encouraged Mr and Mrs B to make sure, they carried out their own due diligence, based on the evidence above, it seems they'd done this already, and found nothing concerning. I don't think there is any suggestion that Mr and Mrs B didn't realise that the investment was overseas or involved the cultivation of a drug that, in the UK, has strict controls. The company P had engaged with to produce the drug, was licensed to do so in that jurisdiction. So, even if Virgin Money had pointed out that it wasn't a regulated investment in the UK, and this was news to Mr and Mrs B, I'm not persuaded it would've given them cause for concern given the checks they'd carried out and the personal recommendation they'd had about P.

I don't think anything Virgin Money would've likely said or warned about would've impacted Mr and Mrs B's decision making. And if anything, I think Virgin Money would've likely been reassured by all the checks Mr and Mrs B had already carried out, and I don't think it would've led it to conclude they were being scammed.

Even if the conversation with Virgin Money would've prompted Mr and Mrs B to carry out further checks, from my own research, there was nothing in the public domain at the time about P from which Mr and Mrs B could have reasonably inferred that a scam was taking place. So again, I don't think it would've caused Mr and Mrs B to reconsider making the payment.

I acknowledge Mr and Mrs B's argument that Virgin Money were paying out others while at the same time not giving them an outcome to their claim. I can only consider the merits of the complaint in front of me though – and for the reasons above, I don't think Virgin Money is liable to refund Mr and Mrs B. Understandably the delay in getting an answer from Virgin Money would've been frustrating. It was up to Virgin Money as to whether it felt it had enough evidence to conclude P was a scam. It paid £100 compensation to Mr and Mrs B, in recognition of the delay and poor communication initially. Given the conclusion I've reached, which doesn't put Mr and Mrs B in any different position in relation to getting their money back, I'm not persuaded that Virgin Money needs to do anything else in respect of the delay here.

I can't consider the final decision that Mr and Mrs B submitted to support their claim – where in a different case, the Ombudsman awarded a full refund to the complainant. I would point out though, having read the decision which has been forwarded, the Ombudsman concluded that the CRM Code applied in that case, which unfortunately for Mr and Mrs B doesn't match their circumstances. The additional protection afforded to those victims from the CRM Code, which I mentioned earlier, means they are naturally more likely to get their funds reimbursed. Outside the provisions of the CRM Code the Ombudsman said they weren't persuaded an intervention at the time of the payment would have led to the parties uncovering cause for concern.

In summary, I know that Mr and Mrs B will be disappointed with this outcome. Not least because the matter has been ongoing for some time and they've lost a large amount of money to this cruel scam. But having considered the matter carefully, I'm not persuaded Virgin Money is liable to refund them.

Recovery

I've not seen any evidence to indicate Virgin Money attempted to recover Mr and Mrs B's funds. As I mentioned earlier, the information suggests a substantial amount invested in P was diverted towards the director's benefits, lifestyle transactions, and repayments of historic investors. This, and given several years had passed from the payment date, to when Mr and Mrs B reported it to Virgin Money, I find it's unlikely any funds would've remained for Virgin Money to recover.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 13 March 2026.

John Ryan
Ombudsman