

The complaint

Ms F complains that Clydesdale Bank Plc trading as Virgin Money (“Virgin”) is refusing to refund her the amount she lost as the result of a scam.

Ms F is being represented by a third party. To keep things simple, I will refer to Ms F throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won’t repeat what happened in detail.

However, in summary, Ms F found an advertisement for a crypto trader that I will call B. Ms F made a number of transactions from her Virgin account to a crypto exchange via bank transfer and then the funds were sent to B. Overall Ms F made payments totalling over £30,000 in May 2021.

However, when Ms F tried to make a withdrawal from B she was unable to do so. At this point Ms F realised that she had been scammed.

Our Investigator considered Ms F’s complaint he didn’t think it should be upheld. Ms F disagreed so this 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.

Ms F has accepted she authorised the payments she made, so the starting point here is that Ms F is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Virgin should have been aware of the scam and stepped in to question the payments Ms F was making.

Virgin intervened when Ms F made a payment of £7,300 on 10 May 2021. As this payment was out of character for Ms F’s account. So, I now need to consider if the intervention went far enough and if not, what would have happened if it had.

Listening to the call between Ms F and Virgin on 10 May 2021, I am satisfied that probing questions were not asked about the payment. So, I need to consider what would have happened if probing question had been asked.

Had Virgin asked probing questions I think it would have found out that Ms F was making a payment for a crypto investment firm that she had found online. From what I can see there were no credible warnings online for B and Ms F had not used remote access software so I think that Virgin would have not known for sure that Ms F was likely being scammed.

Given this, I think the most Virgin could have done is provided a general scam warning and encouraged Ms F to do more research. Had it done this I don't think that Ms F would have stopped the transactions. I say this because she did have her suspicions on 13 May 2021 as she mentioned this during a call with Virgin, yet despite this, she made further transactions.

Additionally, Ms F also made a further payment after the scam was reported. Again this suggests a warning would not have been heeded even if it was given. I note that Ms F now says that this payment was not part of the scam but it was clearly highlighted as such in the complaint letter, so on balance I think that this was part of the same scam. But even if it were not Ms F carrying on after her concerns on 13 May 2021 suggest, albeit on balance, that a warning would not have been heeded.

Overall, I am of the opinion that Virgin should have intervened and asked more question on 10 May 2021 but had it done so I don't think the scam would have been stopped. It therefore follows that I don't think that Virgin should refund the payments that were made.

I've thought about whether Virgin could have recovered the funds via other means however, in this instance as the bank transfers were made to an account in Ms F's own name then the Contingent Reimbursement Model does not apply.

I'm sorry to hear of Ms F's loss but taking into consideration the circumstances of the complaint, I can't reasonably ask Virgin to refund her.

My final decision

For the reasons stated above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 5 April 2024.

Charlie Newton
Ombudsman