

The complaint

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

What happened

In late 2021, Mr F wanted to make an investment to do more with his savings. He saw an advert online for an investment company being recommended by a celebrity, and so followed the link to find out more about them. And after looking into the company, he sent them an email expressing his interest and received a call the same day from someone who said they worked for them.

Mr F was then put in touch with a broker from the investment company who he was told would manage his investments. He was shown how to open an account and log-in to the company's investment platform, as well as how to send money to the platform. And Mr F then made a number of payments from his Virgin Money account to cryptocurrency exchanges to buy cryptocurrency, which was then sent on to the investment platform – as he was instructed to by the broker.

I've set out the payments Mr F made from his Virgin Money account, as well as a credit he received, below:

Date	Details	Amount
2 December 2021	To 1 st cryptocurrency exchange	£500
6 December 2021	To 1 st cryptocurrency exchange	£5,000
13 December 2021	To 1 st cryptocurrency exchange	£4,650
17 December 2021	To 2 nd cryptocurrency exchange	£10
17 December 2021	To 2 nd cryptocurrency exchange	£250
20 December 2021	To 2 nd cryptocurrency exchange	£10
10 January 2022	To 2 nd cryptocurrency exchange	£10,250
14 January 2022	To 2 nd cryptocurrency exchange	£30,000
17 January 2022	To 2 nd cryptocurrency exchange	£5,500
9 February 2022	Credit from 1 st exchange	£49 credit
9 February 2022	To 2 nd cryptocurrency exchange	£250
9 February 2022	To 2 nd cryptocurrency exchange	£13,995.45

Unfortunately, we now know investment company was a scam. The scam was uncovered after Mr F tried to withdraw the money he was told he had made. He was told he needed to pay commission on the profits he had made and that this payment would be returned to him. But after making the commission payment, it wasn't returned to him. Mr F then contacted the second cryptocurrency exchange, who told him he was likely the victim of a scam. Mr F then contacted Virgin Money and asked it to refund the money he had lost.

Virgin Money investigated but said it didn't think the payments Mr F had made were out of character for his account, and that it had shown him a warning before he made two of the payments. So it said it had done all it could reasonably be expected to do to protect him, and

didn't agree to refund the money he had lost. Mr F wasn't satisfied with Virgin Money's response, so referred a complaint to our service.

I sent Mr F and Virgin Money a provisional decision on 19 January 2024, setting out why I was intending to uphold the complaint in part. An extract from my provisional decision is set out below:

"Banks are expected to make payments in line with their customers' instructions. And Mr F accepts he made the payments here. So while I recognise he didn't intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that Virgin Money was obliged to follow his instructions and make the payments. So Mr F isn't automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think Virgin Money should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

And so I've also considered whether Virgin Money should have identified that Mr F was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

Did Virgin Money do enough to protect Mr F?

The first few payments Mr F made from his Virgin Money account as part of this scam weren't for particularly large amounts, and weren't significantly larger than a number of other payments he'd made out of his account in the previous months. They also didn't leave the balance of his account at a particularly unusual level. So I wouldn't have expected Virgin Money to identify that Mr F could be at risk of financial harm as a result of these payments and I don't think it's unreasonable that Virgin Money didn't take any further steps or carry out any additional checks before allowing these payments to go through.

But when Mr F tried to make the seventh payment here, for £10,250 on 10 January 2022, I think Virgin Money should have identified that he could be at risk of financial harm. This payment was for a significantly larger amount, and was significantly larger than most of the other payments Mr F had made out of his account in the previous months. So I think Virgin Money should have intervened and carried out additional checks before allowing this payment to go through.

Virgin Money has argued that Mr F had made a number of other large payments out of his account previously, and so this seventh payment wasn't out of character and it shouldn't have been expected to intervene. But several of the payments it mentioned were for

significantly smaller amounts than this payment. Two of the larger payments Mr F made were on the same day and appear to have been connected to a property purchase, so I don't think they suggest that kind of activity is a regular occurrence for him. And Mr F had either made a number of previous payments to the accounts the other payments Virgin Money mentioned were made to over a significant period of time, or they were to other accounts in his own name – whereas this payment was to a cryptocurrency exchange he had only recently started using. So I still think Virgin Money should have identified the risk of financial harm and intervened here.

Virgin Money has sent us a copy of a written warning Mr F was shown before he made two of the payments. But I don't think this warning went far enough to address the concerns I think Virgin Money should have identified, and I think it should have contacted Mr F to carry out additional checks before allowing the payment to go through.

It's not for our service to dictate the checks Virgin Money should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the size of this payment, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then relevant follow-up questions about how Mr F found out about the investment he was making and what returns he'd been told he was making.

I've not seen anything to suggest Mr F would have lied or tried to mislead Virgin Money if he was asked about the payment. So I think it's likely he would have told it the payment was for an investment he was making using cryptocurrency, he'd found the investment company he was using from an online advert featuring a celebrity and he'd been told he was making significant returns. And as these are all features of common investment scams, I think Virgin Money should then have had significant concerns and warned Mr F that he was likely the victim of a scam.

And as Virgin Money is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr F. I think if Virgin Money had explained that his circumstances matched common investment scams and given him some steps he could take to check whether it was legitimate, the scam would have been uncovered and Mr F wouldn't have made any further payments towards it.

So if Virgin Money had done more to protect Mr F before allowing the seventh payment, as I think it should have, I don't think Mr F would have lost the money from this payment or any of the later payments. And so I think it would be reasonable for Virgin Money to bear some responsibility for the loss Mr F suffered from that point on.

Should Mr F bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr F to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where Mr F was given access to a trading platform which appeared to show profits he was making, I do think there were a number of things about what was happening that should have caused him significant concern.

After seeing an advert for them online, he doesn't appear to have done significant checks into who the investment company was or seen much independent evidence of the returns they had been able to get for other investors. He also doesn't appear to have done any checks into who the people he was speaking to were, or whether they were connected to the investment company. And given the amount of money Mr F was intending to invest, I think it's reasonable to expect him to have done more checks than he did.

Mr F doesn't appear to have been sent any documents or paperwork relating to the investments he was going to be making. And given that he thought he was investing through a professional company and the amount of money he was expecting to invest, I think it would be reasonable to expect at least some documents confirming all this. And so I think this lack of documents should have caused Mr F some concern.

Mr F also appears to have been told he had made very significant returns on the amount he invested in just a few weeks since his first payment to the company. And I think these very high returns should have caused Mr F concern that what he was being told was too good to be true. Mr F also doesn't appear to have made any withdrawals from the investment platform until he had invested a significant amount, and I think it would be reasonable to expect him to have wanted to see some evidence he could access the returns he was being told he was making before investing such large amounts.

From the communication I've seen between Mr F and the investment company, it also appears Mr F had concerns of his own. He asks a number of questions about the activity on his account, how the company deals with commission and the tax he is told he will have to pay. But it doesn't appear he received particularly clear answers in response to these questions, so I don't think the answers he was given should have been enough to satisfy the concerns it appears he had. The communication also shows Mr F's daughters had concerns and wouldn't invest themselves as Mr F couldn't demonstrate actual returns on his investment. And I think this should have caused Mr F significant concern too.

I sympathise with the position Mr F has found himself in. But I think there were a number of things here which should have caused him significant concern. And I don't think the seemingly genuine information he received from the company should have been enough to overcome those concerns. So I think it would be fair for him to bear some responsibility for the loss he suffered.

As I think both Mr F and Virgin Money should bear some responsibility for the loss he suffered, I think it would be fair for Virgin Money to refund 50% of the money Mr F lost – from the seventh payment onwards.

Our investigator felt the payment of £30,000 on 14 January 2022 should be excluded from this refund, as Mr F made the decision to make this payment to purchase cryptocurrency by himself and only told the investment company about it after he had made the payment and received the cryptocurrency. But I disagree and think this payment should be included in the refund.

Mr F had not purchased or traded in cryptocurrency for some time before dealing with this investment company, and had never invested this amount of money in cryptocurrency before. So I think the fake returns the company told him he was making up to that point likely encouraged him to make the payment and I don't think he would have made the payment if this scam hadn't taken place. Mr F also tells the investment company about the payment and the purchase of cryptocurrency on the same day he makes it, and asks it what it can offer for the cryptocurrency. So I think it's likely his intention was always to invest this cryptocurrency with the company – even if the company didn't instruct him to make the initial payment. And so I think this payment should be included in Mr F's losses from the scam, and so the refund I think Virgin Money should make.

Since our investigator's view, we've also discovered that Mr F received a credit from the investment company of £49 on 9 February 2022. So, as Mr F received this money back from the investment company, I think this amount should be deducted from the amount he lost as a result of the scam."

I said I'd consider anything further Mr F and Virgin Money sent in following the provisional decision, provided it was received by the deadline given.

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.

Mr F responded to the provisional decision saying he was happy to accept it. And Virgin Money responded saying it had nothing further to add.

So as neither Mr F nor Virgin Money provided anything further to be considered, I still think the conclusions I set out in the provisional decision are correct, and for the same reasons.

And so I still think both Mr F and Virgin Money should bear some responsibility for the loss Mr F suffered, and that it would be fair for Virgin Money to refund 50% of the money Mr F lost – from the seventh payment onwards.

My final decision

For the reasons set out above, I uphold this complaint in part and require Clydesdale Bank Plc, trading as Virgin Money, to:

- Refund Mr F 50% of the money he lost, from the seventh payment onwards – for a total of £29,973.23
- Pay Mr F 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 March 2024.

Alan Millward
Ombudsman