

The complaint

Mr A has complained that Clydesdale Bank Plc (trading as Virgin Money) registered a fraud marker against him.

What happened

In spring 2023, Mr A received a credit of £108 into his Virgin account. This was reported by the sending bank as coming from fraud, so Virgin returned the money to the sender.

Virgin blocked Mr A's account, and Mr A called up to ask why. Virgin asked Mr A about the credit, and he explained it was from a friend to help them buy something. Virgin said that the payment had been reported by the sending bank, and that it was closing his account. It brought the call to a close. Virgin then registered a fraud marker against Mr A. There was no further investigation by Virgin.

Mr A came to our service. He explained that his friend told him they didn't have an account, and they needed to receive money in order to carry out their spending. They couldn't receive cash in person as the sender lived across the country. They asked Mr A to receive the money into his account for them. Mr A accepted he'd been naïve, but said he didn't know the funds were fraudulent.

Our Investigator didn't uphold the complaint, as they thought Virgin had a basis on which to be suspicious. Mr A appealed, so the complaint's been passed to me to decide.

I sent Mr A and Virgin a provisional decision on 30 July 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

I need to consider whether this fraud marker was applied fairly. On this point, it was not sufficient for Virgin to merely be suspicious. Virgin needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been knowingly committed or attempted by Mr A, backed up by evidence so rigorous it would support this being reported to the authorities.

I can certainly see why Virgin felt suspicious or concerned. Mr A's account was relatively new and it received fraudulent funds. The problem is that Virgin didn't investigate things properly at the time. It was required to contact Mr A before adding the marker, but it did not. Instead, Mr A was the one who contacted Virgin, and the conversation was only very brief. Essentially, Virgin asked Mr A about the payment, he explained his friend had sent it, Virgin said the payment had been reported by the sending bank and it was closing Mr A's account, and the staff member brought the call to a close.

Virgin did not probe Mr A further, nor ask him for any evidence, nor carry out any investigation which one could class as sufficient. This is concerning. Fraud markers must not be added without serious consideration. Virgin should know that both Cifas and our service expected it to have investigated things with Mr A fully before adding this marker.

As Virgin didn't investigate things properly at the time, I don't have much contemporaneous testimony to compare his current testimony to. And it's difficult to see how Virgin could be satisfied that Mr A intentionally aided in fraud without properly looking into the matter first. So while I accept that Virgin had grounds to be suspicious or concerned, I don't find that it fulfilled the criteria of the evidence being so rigorous that it could confidently report Mr A to the authorities. Further, Virgin has said it's now too late for it to provide relevant technical data or key details about the disputed activity. So Virgin's failure to properly investigate has undermined both its own position and our service's current investigation.

Virgin argued that Mr A breached his account's terms and conditions by agreeing to receive money for someone else. But merely breaching the terms and conditions is not sufficient in and of itself to register a fraud marker. These markers are for people who it can be evidenced were knowingly and willingly attempting fraud or a financial crime.

Mr A's testimony has been broadly consistent – that his friend asked him to receive money for them, in order to fund the friend's spending. And this is supported by screenshots of his conversation with the friend, which he'd saved from the time. In these, both Mr A and the friend refer to the money as belonging to the friend, and the matter is talked about as if Mr A is simply doing them a favour. I can see that this conversation took place on a messaging platform which automatically deletes messages after some time. So it's no longer possible for Mr A to produce further message from that chat. Again, this goes to show how important it was that Virgin investigated properly at the time.

Mr A doesn't appear to have ever claimed entitlement to the money for himself; he said it was his friend's. And he didn't benefit from the matter. The money was simply returned to the sender, and the only spending which took place around the time appears to have come from Mr A's own balance.

I accept that I cannot rule out the possibility that Mr A was a willing participant in the fraud. But I also cannot rule out that he was simply taken advantage of, not least given his young age. Virgin did not have enough evidence to meet the bar of recording this fraud marker, not least given its lack of a proper investigation at the time. The evidence at hand now tends to support Mr A's position more than Virgin's. And the default position is that without rigorous enough evidence, the marker should be removed. So while I am fully conscious of the possibility that Mr A knowingly and willingly tried to aid in crime, I think the risk of Mr A being an innocent party is too great to justify this fraud marker remaining.

It follows that I currently think the marker should now be removed. With that said, I don't think it was unfair for Virgin to close Mr A's account, given he involved himself in fraud – even if unwittingly. Further, I hope Mr A is aware of how close he came to having the marker remain for the full period, and even to ending up in trouble with the authorities. I trust that he will keep this firmly in mind and will avoid any similar situations in future. He should not expect to get the same benefit of the doubt if he does something like this again.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 13 August 2024. Mr A didn't add anything further. Virgin agreed to remove the marker.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct Clydesdale Bank Plc (trading as Virgin Money) to remove any information it's shared with fraud marker databases in relation to this matter. I'm grateful to hear that Virgin have already started the process to do so.

My final decision

I uphold Mr A's complaint, and direct Clydesdale Bank Plc to remove any information it's shared with fraud marker databases in relation to this matter.

If Mr A accepts the final decision, Clydesdale Bank Plc must carry this out within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 September 2024.

Adam Charles
Ombudsman