

The complaint

Mr H complains that Clydesdale Bank Plc trading as Virgin Money (Virgin) didn't protect him from a scam.

What happened

What Mr H says:

Mr H is represented by a third-party claims firm, but I will refer to the complainant as Mr H.

Mr H had an account with Virgin. Unfortunately, he had recently become widowed and wanted to find somewhere to live with the money from his late wife's estate. He decided to buy a mobile home for his retirement. He agreed to buy one from a company (who I will call X Ltd). He met a representative of X Ltd, who showed him the mobile home he was due to buy and he explained it would be moved onto a concrete pad, given a garden, and hooked up to mains gas and sewage. Mr H lived near the site.

On 6 November 2021, Mr H wrote a cheque for £8,500 payable to X Ltd – this was for the deposit on the mobile home. It was debited to his account on 9 November 2021. On 18 November 2021, he wrote a cheque for £76,500 payable to X Ltd – this was the balance of the completion monies for the mobile home. It was debited to his account on 19 November 2021.

When Mr H later went to the site, there wasn't a concrete pad, nor a garden, nor mains gas and sewage. The mobile home was sinking. He wasn't prepared to move to the site without those amenities and decided to cut his losses. He sold the mobile home for £20,000 – a loss of £65,000.

Mr H said he had been scammed out of his money, as the salesperson had misrepresented the terms of the purchase. He said he was in a vulnerable position at the time – due to the recent death of his wife and that he had been taken in by a known fraudster who had a history of defrauding people. He wasn't computer savvy – and therefore couldn't have been expected to have done any online research into the operation. He reported it to the police and Action Fraud.

Mr H complained that Virgin should've protected him from the scam. He said that the payments were out of line with his normal account activity and should've been picked up and questioned by Virgin. If that had happened, he said Virgin would've put him on alert that this was a scam, and the payments could've been stopped. He said Virgin should refund the money, plus 8% per annum interest.

What Virgin say:

Virgin said the situation was a buyer/seller dispute, and not a scam. Mr H had bought the mobile home and added services, but that didn't mean to say it was a scam. In their conversations with Mr H, he told Virgin he had viewed the mobile home and agreed to pay the deposit by cheque. He then visited the site to see the work being carried out. Despite

being concerned about the work, he completed the purchase by writing the second cheque for the balance. It was only after the purchase was finalised, and he got the keys, that he became aware of the issues.

Virgin said both cheques were paid to a limited company - which was registered at Companies House. The salesperson named by Mr H wasn't shown as an official of the company. They said that Mr H had written the cheque in favour of X Ltd at a time when he had questioned some points about the purchase but was still happy to go ahead. Therefore, even if Virgin had called Mr H, they felt that he would've gone ahead anyway.

Virgin paid compensation of £100 because they'd taken longer than expected to investigate Mr H's complaint.

Our investigation so far:

Our investigator said that as the cheques were made payable to a legitimate company, it couldn't be considered a scam. A member of the site's staff had misrepresented what he was buying. She considered that even if Virgin had intervened and questioned the cheque payments, he would've gone ahead - as he discovered the problems after he made the payments. She said that a chargeback claim couldn't be pursued – as that only applied to payments by debit card or credit card, and Mr H had made the payments using cheques.

Mr H didn't agree. He said there was clear evidence that the representative at the site had misled many other purchasers, who had also lost money. If Virgin had questioned the payments, and discovered the involvement of the salesperson, they would've uncovered the fraud and advised Mr H not to proceed. He asked that an ombudsman look at his complaint.

What I've decided – and why

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It's not in question that Mr H authorised and consented to the payments in this case. He wrote and signed the cheques. So he is presumed to be liable for the loss in the first instance.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account: relevant law and regulations; regulators' rules, guidance, and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The Lending Standards Board Contingent Reimbursement Model Code doesn't apply in this case. This is because it doesn't apply to payments made by cheque.

Civil dispute or scam

A scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this case, I need to decide whether this was a scam, or a civil dispute. If it was a civil dispute, we wouldn't expect Virgin to have got involved.

Examples of a civil dispute may be where a consumer has paid a legitimate person or business but hasn't received the goods or service they were promised or is unhappy with the goods or service they have received.

And in this case, having considered the circumstances of Mr H's complaint, I consider it is about a civil dispute, and not a scam.

I say this because:

- Mr H said he met the representative of the business, face to face, and was shown the mobile home he was going to buy. He was told that it would be mounted on a concrete pad, have a large garden, and be connected to mains gas and sewage. I haven't seen a contract setting out what was agreed though. Mr H viewed the mobile home in person at the site.
- He then paid the deposit of £8,500 on 6 November 2021 and the balance of the completion monies of £76,500 on 18 November 2021. This was on the assumption that the extra work would be done.
- When he later turned up at the site, he discovered the work hadn't been done. So Mr H didn't get what he expected. But this doesn't mean X Ltd set out with the intention of defrauding Mr H.
- Mr H says he reported the matter to the police, but I haven't seen any evidence from the police that suggests it took further action or reached the conclusion that Mr H was the victim of a scam. And I haven't seen evidence from any other party, like trading standards, to suggest Mr H was the victim of a scam.
- He paid the money to a legitimate business. I looked at Companies House records – and X Ltd was a registered company in November 2021 and had been since December 2019. X Ltd has also filed accounts.
- Mr H has provided information in relation to the representative of X Ltd he met which shows the representative was disqualified from being a director of a company and subsequently acted as a shadow director of another company. The representative had also been convicted of fraud. I've considered this information carefully but don't consider it demonstrates, on the balance of probability, that when X Ltd (not the representative) accepted Mr H's payments the company never intended to complete the work Mr H says was agreed.

Therefore, it's reasonable for me to consider that this is a civil dispute between Mr H and X Ltd – he paid for services and goods which X Ltd didn't complete. And so, I don't think Virgin had any obligation to treat the payments as possible scam payments. And the guidance and rules that Virgin must follow in cases of scams don't apply.

In such civil matters, it is for Mr H to pursue other ways to resolve his dispute, including contacting the police and Action Fraud – which he has done.

I considered whether Mr H could make a chargeback claim – but this would only be possible if the payments had been made by debit or credit card. And because the payments were made by cheque, unfortunately this route isn't open to Mr H.

Given my conclusion that this is a civil dispute, Virgin aren't liable. But for the sake of

completeness I've considered what I think would most likely have happened if Virgin had intervened when the payments were made. I consider Mr H would have said he was buying a mobile home; had met a representative of the company he was buying from at the site and had seen the mobile home. Given this information, and the fact Mr H was paying a company, I don't believe Virgin would have had any concerns. Mr H has suggested that Virgin should have looked up the representative of X Ltd that met Mr H and seen information showing he'd acted dishonestly in the past, but I think this is an unrealistic expectation.

Mr H has lost a lot of money and at a difficult time in his life. I'm sure this must have been upsetting for him. He will therefore be disappointed by my decision, but I'm not going to ask Virgin to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 May 2023.

Martin Lord
Ombudsman