

The complaint

Mr S complains that Clydesdale Bank Plc trading as Virgin Money unfairly declined his mortgage application. Following a valuation Virgin Money required an ESW1 ("External Wall System") form which it said should be uploaded to the Fire Industry Building Safety Portal. Mr S says that this was unfair, and he has had to remortgage elsewhere at a higher rate of interest. Mr S says that he had to accept a 5-year fixed rate interest rate of 2.97% as opposed to Virgin Money's rate of 2.34%. Mr S calculates he will suffer a loss of £6,500.00.

What happened

Mr S owns a flat in a block of eight purpose-built flats over four floors. Mr S applied for a mortgage of £450,000 based on a value of £615,000 with Virgin Money through a broker in 2022. A valuer inspected the property in June 2022 and provided a report to Virgin Money. The report records that *"It is necessary to provide a completed ESW1 form to the lender...The form must be prepared by a suitably qualified independent professional adviser.."*

Mr S says an ESW1 form has been produced for the building prepared by a qualified fire engineer and dated 20 April 2022. Mr S says that the form confirmed the fire engineer's conclusion that, as regards the external wall system, the fire risk is sufficiently low, and no remedial works are required. This is a "B1" classification. A copy of the form was provided to Virgin Money on 28 June 2022 but wasn't uploaded to the Fire Industry Building Safety Portal. Virgin Money didn't progress the application without this requirement being met. As a result, Mr S has had to return to his existing lender to switch rates. So, an ESW1 form was available but Virgin Money required that it should be uploaded to the Building Safety Portal by the management company of the block. Mr S says that its policy on insisting that this form is uploaded to the portal is unfair.

Virgin Money says that it's entitled to act on the advice of a suitably qualified surveyor and entitled to insist that the form is uploaded to the portal. Our investigator recommended that this complaint should be upheld because of the length of time that Virgin Money took to respond to the complaint. She suggested compensation of £100. Virgin Money accepted this view. Mr S disagreed saying in summary:

- Virgin Money has received a copy of the EWS1 Form.
- The need for an EWS1 Form is not now in keeping with Government guidance.
- The Valuer has not required the EWS1 Form to be uploaded to the Portal and, in any event, such a requirement would not be reasonable.
- The Portal offers no tangible guarantee as to the authenticity of an EWS1 form. Instead, responsibility remains with the Assessor.
- The EWS1 Form invites lenders to contact the signatory's organisation (here the Institution of Fire Engineers) should they wish to rely on the EWS1 Form. Virgin has not done so and are insisting that the EWS1 form is uploaded to the Portal

- Virgin has confirmed that it has no intention of changing its unreasonable approach.

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.

The EWS1 form was introduced in collaboration with the government, the mortgage industry and the surveying industry following the Grenfell Tower tragedy. This led to concerns about combustible cladding and other fire safety issues that might allow a fire to spread quickly through affected buildings. The EWS1 process allows a qualified fire safety inspector to assess a building's external wall system. That assessment will allocate a rating. Obtaining the EWS1 form is the responsibility of the building owner/management company and not individual leaseholders as the form covers the whole building. General guidance to surveyors and valuers from their professional bodies was that an EWS1 was required where there are potential cladding or other issues, and the building is six storeys or higher but that the EWS1 may be required for smaller buildings too if there are grounds for considering there is a risk that needs to be assessed.

The surveyor said specifically in the valuation report that the external wall system of the property required review and that *"It is necessary to provide a completed EWS1 form to confirm the status of the external wall system and any applicable attachments"* It's reasonable for Virgin Money to rely on the opinion of a qualified surveyor. The bank is not an expert in assessing and valuing buildings in order to decide if the property was good security. The valuer required a further check if there were any combustible materials that could affect the property

There seems to be two issues here. Firstly, as to whether it's reasonable for Virgin Money to require the EWS1 form at all and secondly whether it's reasonable to require the form to be uploaded to the Portal. As regards the first issue, the EWS1 form was required by the valuer. The valuer offered a nil valuation without the form and so the form was a necessary requirement for the application to proceed. Mr S tells me that there is such a form so I can't see that this requirement as an unreasonable impediment to the progress of the application.

The other issue is the uploading of the form to the portal. The bank has a lending policy on this, available to broker's processing applications, which is that if a valuer requires an EWS1 form, *"we will only accept EWS1 forms which are completed and held on the (Building Safety) portal. They should not be sent to us. Therefore, please ensure that the organisation appointed to complete the EWS1 form is willing to upload it to the Building Safety Portal or your client may face disappointment"*

Mr S says that this policy is unfair and sets his reasoning out at length particularly in his email to us of 19 May 2023. In summary its policy is unfair because a valid EWS1 form can be produced by fire engineers not authorised by the FIA who curate the portal and whether an EWS1 form is on the portal is purely a matter of chance and not within a customer's or indeed the landlord's control.

Why should Virgin Money require that it be uploaded to this portal? Mr S refers to four grounds that Virgin Money have suggested. But it seems to me that the crux of the matter is what Mr S refers to as ground 4 *"Uploading the EWS1 form to the Portal ensures its authenticity, approved certification and protects Mr S/Virgin from fraudulent forms being completed"*. Mr S suggests it does no such thing. In his letter of complaint, he says that *"The portal offers no guarantee or indemnity as to the veracity of the forms uploaded to it."*

But the guidance for the portal says that manual checks are undertaken at various stages of the process starting from the fire engineer needing to present evidence that they are fully qualified and competent to undertake the inspection up to checking the validity of each form to try to eliminate the problem of fraudulent EWS1 forms being in circulation. Indeed, Mr S's landlord recognises what Virgin is trying to achieve by using the portal.. In its email of 14 July 2022, the landlord says, *"The view from here is that they (Virgin) may be trying to avoid taking a fraudulently signed form (which sadly has been done by some unscrupulous landlords)"*.

As a lender Virgin Money decides what level of risk it wishes to take in different areas, and it decided it was unwilling to accept EWS1 forms as valid unless they were independently verified as valid through the portal. Given that was its stated policy and that policy was available for the broker to inspect, I don't consider that it was unreasonable requirement for a customer such as Mr S to comply with this policy and, if not complied with, I consider that it was a reasonable ground for Virgin Money not proceeding with this application. So, I can't fairly uphold that part of the complaint. But I agree with our investigator that the delay in replying to this complaint was unacceptable and award Mr S £100 a compensation for Mr S's frustration with the delay as a result of this poor service.

Putting things right

Clydesdale Bank Plc trading as virgin Money should pay Mr S £100.

My final decision

I uphold this complaint in part and require Clydesdale Bank Plc trading as Virgin Money to pay Mr S £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 September 2023.

Gerard McManus
Ombudsman