

The complaint

Mr W is unhappy that Clydesdale Bank Plc trading as Virgin Money (Virgin) will not refund the money he paid for a vehicle. He believes he has been scammed.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

In May 2023 Mr W saw an advertisement for a second-hand vehicle for sale on a well-known online marketplace. The seller advised the vehicle would not start due to a broken alternator. Wanting to go ahead with the purchase, Mr W has said he arranged a recovery truck to collect the vehicle, he added that when he got to the address he had been given it wasn't correct, but the vehicle was parked opposite. Mr W met the seller, who he said had a number of other men with him. The seller wouldn't give Mr W the keys until he'd received payment. Mr W went ahead and made a payment for £475 on 30 May 2023, from the account he held with Virgin, and the vehicle was then handed over to Mr W and pushed onto the recovery truck.

Having taken possession of the vehicle, Mr W took it to a garage where it was inspected. But rather than the alternator being broken, Mr W was told that the engine had seized and the cost of repair was estimated at £1,000. Mr W contacted the seller who claimed not to know anything about any other issues with the vehicle, that the money had already been spent and Mr W has said he was then cut off.

Believing he had been the victim of a scam, Mr W raised the matter with Virgin. It looked into Mr W's fraud claim. It considered its obligations under the Contingent Reimbursement Model ("CRM Code"), of which it is a signatory and sent its final response in September 2023, not upholding his complaint. In summary it deemed the matter to be a buyer/seller dispute between Mr W and the seller.

Unhappy with Virgin's response, Mr W then brought his complaint to our service. One of our Investigators looked into things but didn't uphold Mr W's complaint. In summary, he considered this was a dispute between Mr W and the seller, who he had made the payment to, so he didn't think the payment was covered under the CRM Code.

Mr W didn't agree with our Investigators view as he maintained that he believes this was a scam. As agreement couldn't be reached the complaint has now been passed to me for a decision.

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.

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.

Having considered everything, I can see no basis on which I can fairly require Virgin to refund the money Mr W sent. I can appreciate that this outcome is not the one Mr W was hoping for and I can understand why he wants to try and recover this money. But having thought about Virgin's actions, I am unable to say it has responsibility for refunding the money Mr W sent. I will explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Virgin made the payment, it was complying with Mr W's instructions. At the time, Mr W wanted to pay the seller and there was no mistake made as the money was sent to the correct account details. As I don't think Virgin acted incorrectly by making the payment, I've gone on to consider whether it should have refunded Mr W for any other reason.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary CRM Code, which Virgin has signed up to and was in force at the time Mr W made this payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. I've thought about if the CRM code applies in the circumstances of the payment Mr W made and, in particular, whether Virgin ought to reimburse him under the provisions of the CRM Code. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our Investigator felt the payment Mr W made formed part of a buyer/seller dispute and, as such, is not covered by the CRM Code. Mr W strongly disagrees. Mr W feels the seller has scammed him. From what I have seen, although I accept Mr W may not have received a vehicle with the faults he expected, I don't think I can fairly say the situation Mr W finds himself in is a scam. I think the payment Mr W made does form part of a civil dispute and, as such, is not covered by the CRM Code.

In order to conclude that the payment Mr W made was part of a scam, I'd need to be reasonably satisfied from the available evidence that the seller was not legitimate and had set out to defraud him. But based on what I know, I have not seen sufficient evidence to fairly and reasonably establish that the seller set out with the intent to defraud Mr W.

I firstly need to consider the purpose of the payment and whether Mr W thought this purpose was legitimate. I'm satisfied he did; he's explained that he believed the payment he was making was for the purchase of a vehicle. Then I need to consider the purpose the recipient (the seller) had in mind, at the time of the payment, and whether this was broadly in line with what Mr W understood to be the purpose of the payment.

In order for me to be persuaded Mr W has likely fallen victim to a fraud, I'd need to be satisfied the purpose of the seller receiving Mr W's payment differed from his and that the

seller intended, from the outset, to deceive him and likely not provide the goods he'd been asked to pay for. Having considered the evidence from both parties, I'm not persuaded this was the case.

I say this as Mr W did receive the vehicle for the money he paid. So here, there is no dispute the vehicle exists, as Mr W has possession of it, and I've not seen anything that makes me think the seller did not have the right to sell it (i.e. I've not seen anything to suggest the vehicle had been reported as stolen). The problems Mr W has raised stem back to the condition of the vehicle – he said the vehicle was not as described. But this is an issue that's clearly stated as not being catered for within the CRM Code.

There is also insufficient evidence for me to safely conclude that the seller was aware that the reason why the vehicle wouldn't start was because the engine had seized. It's arguable that it's at least as likely that it was the seller's genuinely held belief that it was the alternator that was causing the problem. I've considered what Mr W has said, in that the seller had other men with him and that he wouldn't hand the keys over until payment had been received. But I don't think it's unreasonable for a seller to ask for payment before surrendering the goods and I don't think I can reasonably say that because the seller had other people with him, that it follows there was an intent to defraud.

Alongside this, I'm also mindful that there are some other factors, in the circumstances of this case, which don't carry the typical hallmarks of these particular types of scam or a trader setting out with an intent to defraud. The seller, at least for a time, was still contactable after Mr W had made the payment. This is not typically the case with fraudsters, who more often than not are not able to be contacted after they have taken a victim's money.

As well as this, I've also considered evidence from the beneficiary bank (the bank to which the payment was made). Whilst I am unable to share details about a third party and the nature of their relationship with their bank, there doesn't appear to be any concerns of any other reports of fraud, or concerns that the account is being used for anything but legitimate purposes.

Overall and on balance, based on what I've seen. I'm not persuaded that this situation displays the hallmarks most typically associated with a scam. It follows that, I can't safely say that this would likely meet the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Mr W and the seller, clearly there is. But this type of dispute isn't something that the CRM Code covers. So I don't think it was unfair for Virgin to take the view that it was unable to refund Mr W under the CRM Code.

I don't say any of this to downplay or diminish what Mr W has been through. He has my sympathy, in that it transpired that the fault with the vehicle he bought wasn't as expected. But overall, I don't think Virgin has treated Mr W unfairly when it concluded this was a civil matter.

My final decision

My final decision is that I don't uphold this complaint against Clydesdale Bank Plc trading as Virgin Money (Virgin).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 January 2025.

Stephen Wise
Ombudsman

