

The complaint

Mr O is complaining about Clydesdale Bank Plc trading as Virgin Money because it declined to refund money he says was lost as a result of fraud.

What happened

In October 2023, Mr O agreed to purchase a number of used solar panels from Company A – I've not used the company's real name here to prevent anyone involved in the complaint being identified. On 5 and 6 October, he made payments of £30 and £7,100. The deal ultimately didn't go ahead and Company A refunded £7,000 on 1 November.

The deal was subsequently revived and Mr O paid an amount of £14,670 to Company A on 5 December 2023. Unfortunately, the goods he paid for weren't supplied. Company A refunded £5,000 but, sadly, I understand Mr O hasn't received the goods or any further refund since.

Virgin Money didn't reimburse any of Mr O's loss because it said this is a private civil dispute between him and Company A. As a result, any requirement to refund payments lost to fraud and scams doesn't apply.

Our investigator also took the view that this is a private civil dispute rather than a scam. He believed the available evidence showed Company A was a legitimate company and didn't set out with the intention of scamming Mr O. He pointed to its active online presence and a lack of negative reviews or other indications the company had a history of scamming customers. He also noted Mr O was able to visit Company A's premises and view examples of the items he was buying before the purchase was agreed. He also noted Company A had refunded the first payment (almost) in full and a substantial part of the second payment and didn't think this was consistent with the behaviour of someone who'd set out to commit a scam.

Mr O didn't accept the investigator's assessment and made the following key points:

- Consistent with many scams, he was lured in by an online presence that made the company appear legitimate.
- The company's eBay account is no longer active.
- The business address he visited is now empty but still used on the company's website and online profiles. Nearby residents have told him that other people have also been visiting the site who were in a similar situation.
- He's found an article from 2012 about a man found guilty of fraud. He believes this man is the owner of Company A who he dealt with.
- He believes Company A never intended to supply the good he paid for and misled him by providing fake documents to make him believe the arrangement was being fulfilled. This is fraudulent behaviour.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Virgin Money was a signatory to the Contingent Reimbursement Model Code (CRM Code) at the time Mr O made the payments to Company A. Under the terms of the code, it was required to refund payments lost to fraud and scams in certain (but not all) circumstances.

Crucially, the CRM Code only requires Virgin Money to pay out if Mr O's money was lost to a scam. It specifically doesn't apply to 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.

The issue of whether or not Virgin Money are required to reimburse Mr O's losses turns on whether the events at the centre of his complaint constitute a scam or a private civil dispute. The key to determining this is whether he was dealing with a company that set out with the intention of defrauding him by not honouring the agreement that was made. Or whether he was dealing with a legitimate company that initially intended to fulfill the order but then failed to do so due to a change in circumstances, most likely some kind of financial difficulty.

On balance, I think the available evidence shows Company A was most likely a legitimate company that didn't set out with the intention of defrauding Mr O. In reaching this conclusion, I've referred to the company's website and social media profiles that appear to be genuine and to have been active around the end of 2023. I think it's also relevant that Mr O was able to visit the site and view examples of the items he was buying, which indicates Company A was genuinely active in this area of business. This is also supported by a lack of negative online reviews or other reports indicating the company was involved in fraud.

I've also been able to review the history of Company A's account into which his money was paid. I'm afraid I can't share this information with Mr O for reasons of confidentiality. But the bank has confirmed there's no history of complaints about scams being upheld and the account activity is consistent with that of a company operating in this area of business. It's also relevant to note that the money Mr O paid wasn't moved out of the account immediately. This is a common tactic employed by scammers to frustrate any attempt by victims to recover their losses and the fact it didn't happen isn't indicative of a scam.

In addition to the above, I'm also conscious Company A refunded a substantial part of the payment made by Mr O when the deal ultimately fell through. I did consider whether this was done with the intention of luring him into paying more money – a common feature of many scams we see – but I'm not persuaded it was. If Company A had truly set out with the

intention of scamming Mr O, it's unclear why it would have then refunded any of the money it had successfully obtained.

The circumstances of this case are extremely unfortunate but, on balance, I don't think the available evidence points to the conclusion that Company A set out to scam Mr O. Rather, I think the weight of evidence shows it was most likely a legitimate company that intended to fulfill the order when it took his money but ultimately didn't due to other circumstances.

I have considered Mr O's comments carefully, but I don't think the points he's raised are sufficient to demonstrate this was more likely to be a scam rather than an initially legitimate business deal that went wrong. I have read the article supplied from 2012, but I'm conscious Mr O isn't certain the person involved was the owner of Company A. And either way, these events significantly pre-date those Mr O is complaining about and the fact the owner may have been involved in fraudulent activity in the past earlier doesn't in itself demonstrate he still was many years later.

I realise this outcome will be disappointing for Mr O and I am sorry he's lost such a large amount of money. But for the reasons I've explained, I don't think the bank is responsible for reimbursing his loss and I'm not upholding his complaint on that basis.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 12 February 2025.

James Biles
Ombudsman