

The complaint

Mr A and Miss G are unhappy that Clydesdale Bank Plc, trading as Virgin Money ('Virgin'), has decided not to refund money they consider they lost, to what they believed was an Authorised Push Payment ('APP') rogue trader scam.

As Mr A referred the matter to this service, within this decision and for ease, I will solely refer to Mr A. No discourtesy is intended by this.

What happened

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

Mr A was looking to have some renovation work done. He enlisted the services of a building company / builder, whom I'll call 'M', that he had found online. There was some damp proofing work to be done in the living room, dining room and kitchen and a new kitchen was to be installed also. A price of around £8,000 was agreed and payments were to be made over three stages.

Across August and September 2023, Mr A made four payments to M, totalling £6,000 from accounts he held. One of those payments to M came from his account with Virgin. This was for £1,000 and was on 17 September 2023.

Mr A has advised that the damp proofing work on the living room and dining room was completed. The damp proofing work to the kitchen was started but not fully finished with finishing plaster. Mr A advised the original kitchen was cleared out and the old units were removed, but the new kitchen hasn't been installed.

Mr A believes M scammed him and there were reports online about M saying he was a rogue trader. And there were others who had paid M, with M not finishing the work.

Mr A reported the matter to Virgin and also raised a complaint about the receiving bank (the beneficiary bank where M held its account).

Virgin considered the matter was a civil dispute between Mr A and M. So, didn't consider it was liable to reimburse him for his loss. The receiving bank also considered it was a civil dispute. Mr A subsequently referred the matter to our service.

One of our Investigators looked into this complaint and didn't think the complaint should be upheld. In summary, it was our Investigator's view that, based on what he'd seen, he didn't think M had set out with intent to scam Mr A – and it was a civil dispute between the two parties. So, he didn't think he could fairly ask Virgin to provide a refund to Mr A.

Mr A didn't agree with our Investigator's view and requested an ombudsman's review. So, as an agreement hasn't been reached, it has been passed to me for a final 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here, which is whether Virgin was fair in its answering of the complaint that the matter was a civil dispute. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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

The starting position in law is that Mr A will generally be considered liable for authorised payments. It's accepted that he authorised the payment in dispute and so he is liable for it in the first instance. However, Virgin is a signatory to the Lending Standards Board's 'Contingent Reimbursement Model' (the 'CRM Code'). Under the CRM Code, firms are expected to reimburse customers who fall victim to APP scams, subject to a number of exceptions.

However, the CRM Code is only relevant if I'm persuaded Mr A did fall victim to an APP scam. The CRM Code specifically excludes certain types of disputes. 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.

So, taking into consideration the above, I must first decide whether Mr A has likely been the victim of an APP scam or not. And whether Virgin acted fairly, when concluding what had happened in the circumstances of this case amounted to a civil dispute and not an APP scam.

Having thought very carefully about Virgin's actions, I think it did act fairly in reaching this conclusion. I do appreciate how disappointing this will be for Mr A and I don't underestimate his strength of feeling, but I don't think I can fairly say Virgin should reimburse him. I'll explain why.

In order to be persuaded on balance that Mr A has been the victim of an APP scam I need to look to the relevant definitions set out in the CRM code.

Here, that is DS1(2)(a)(ii) which says:

"(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

Looking at the above definition, I firstly need to consider the purpose of the payment and whether Mr A thought this purpose was legitimate. Mr A has explained that he believed the payment he was making was for building work to be carried out by a genuine company / builder. So, I'm satisfied he thought the payment was made for a legitimate purpose. I must also consider the purpose the recipient (here that is M) had in mind, at the time of the payment, and whether this was broadly in line with what Mr A understood to be the purpose of the payment.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties, I can't fairly and reasonably conclude that it was more likely than not that M set out with intent to defraud Mr A. I'm satisfied, on the balance of probabilities, that the intentions and purpose of the payment match here. Mr A intended for work to be done, and M seemingly intended on fulfilling that purpose by carrying out the works – until things sadly went awry.

Obviously, I cannot know for sure what was in the mind of M at the time the payment was received. So as a result, I must infer what M's intentions were, based on the available evidence that I have had access to.

Mr A has advised that the majority of the work was completed. The damp proofing work to the dining room, living room and kitchen had been completed – albeit with the kitchen needing some finishing plaster. And the original kitchen units had been removed and the kitchen cleared, ready for the new installation. Here, I am mindful that the overall price quoted for Mr A was around £8,000, and in total, Mr A had paid £6,000 to M when things seemed to go wrong. So, I don't think I can fairly say there was never an intent by Mr A to carry out the works and defraud Mr A. And I agree with our Investigator here that as there was seemingly an outstanding balance due, and the final stage not being completed seemingly as a result, the circumstances therefore seem to relate to a disagreement or dispute between Mr A and M.

As Mr A has another complaint with our service – about the receiving bank – there is information / comments about M that have been provided by the receiving bank account provider. And this has been provided in confidence – to allow our service to discharge our investigatory functions. The receiving bank has provided this to further assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account.

From reviewing the information, the receiving bank has advised that the account had been opened for a considerable period of time and it had no concerns and there were no other fraud reports. And from reviewing M's statements, the account activity was in line with what you would expect to see from someone carrying out building work in the capacity that M was.

I can appreciate that Mr A has provided evidence that he suggests shows M had previous history of not finishing works. And that M has also had several companies. I accept there maybe questions marks over how M operates, and I also accept M may not have been operating at the standards one might expect. But, while that may speak to poor business practices and unprofessionalism, it doesn't automatically mean that there was an intent by M to defraud Mr A and take his money without having any intention of carrying out the work. Much of the work was completed here. And I can't fairly or reasonably conclude that the work wasn't finished as a result of M acting fraudulently. I have to bear in mind it is also likely there could be other reasons why the work was stopped at its final stage – given how much work had been completed over the timeframe and against what had been paid.

While I know Mr A feels strongly about the matter, I've not seen anything that I can safely say meets the high legal threshold and burden of proof for fraud.

Any dissatisfaction with the lack of completion of the contract or the quality of the work that was carried out – is a civil dispute rather than a scam. This type of dispute isn't something that the CRM Code was designed to cover. The reason being that a dispute like this is more appropriate to be looked at potentially through civil means, such as court. A court would be best placed to determine what materials and labour costs have actually been incurred, the amount of work carried out to date against what has been paid, in order to determine what is still outstanding or what amount is possibly owed – with both Mr A and M having the chance to provide their evidence to support their positions.

I accept Mr A considers he is out of pocket, and has been let down by M. But that in and of itself is not enough to say he's been the victim of an APP scam whereby Virgin would be liable to reimburse him. Overall, I'm satisfied that this scenario doesn't meet the CRM Code's definition of an APP scam.

As Virgin didn't need to consider this as an APP scam, then it didn't need to go on to seek the recovery of any funds from M. I'm also satisfied that there wasn't anything else Virgin could have done to prevent the loss here either, given the value and nature of the payment.

Should any new material evidence or further information come to light, such as a police investigation or charges be brought against M, then Mr A should provide that evidence to Virgin to enable it to reconsider the matter.

Finally, I can see that Virgin money offered and paid £100 as compensation to Mr A for the level of service he received. I am glad to see that Virgin recognised this and has acknowledged its call waiting times and the time Mr A had to spend on the phone and the time it took to provide its answer would have caused an element of inconvenience to Mr A. I think the amount it has offered and paid is fair in the circumstances.

I'm sympathetic to the position Mr A finds himself in and I am sorry to have to deliver this news to him. But, for the reasons I have explained, I cannot fairly say that Virgin should fairly and reasonably be held responsible for refunding Mr A the money he paid. Based on the available evidence I have seen; I consider Virgin were fair in considering the matter a civil dispute which isn't covered by the CRM Code and is therefore something that needs to be resolved between the two parties through alternative methods.

My final decision

For the reasons explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss G to accept or reject my decision before 15 May 2025.

Matthew Horner
Ombudsman