

The complaint

Mr B, on behalf of his company B, complains that Clydesdale Bank Plc trading as Virgin Money ('Virgin') declined to refund B just over £2,000 which he says it lost as a result of a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, Mr B complains that Virgin declined to refund him just over £2,000 which he says B lost as a result of a scam.

In June 2024 Mr B wanted to rent an industrial unit to use as a storage for B's stock. They found a unit advertised on an online marketplace. Mr B said it was advertised as 10mx10m, which they decided was suitable for their purposes. They went to see the unit in person and agreed to rent it, so they signed a contract and put down a deposit of £2,052.60 which was paid from B's Virgin account. Mr B explained that they were given the keys to the unit.

Mr B said he then realised that everything was false – B had paid a personal account rather than a business account, the name and address of the company were different, and the unit was smaller than advertised. He said he complained to the business, but they would not send him the money back. They offered him another unit that he had originally shown interest in, which was larger and cost more each month. When they were unable to reach an agreement, the company stopped answering his calls. He said that when he sent them a text message demanding his money back, they called back and threatened to sue B for harassment.

Mr B complained to Virgin, who declined to refund the money as they said that this was a private civil dispute rather than a scam. Mr B was unhappy with their response. He said that the company had engaged in false advertising, failure of communication and used a personal rather than a business account. He also said that the contract, company's account, address and unit area were all fake. He said that the company were deceiving HMRC and the council as they do not pay taxes and fees. He said that he never had an invoice for payments made or for the monthly payments which needed to be made. He said they rented the unit to another business a month later. He was adamant this all showed it was a scam.

Unhappy with Virgin's response, Mr B escalated his concerns to our service. One of our investigators looked into what happened and did not recommend that B's complaint be upheld. In summary, they said that they agreed with Virgin that this appeared to amount to a private civil dispute rather than a scam, and so they did not think Virgin needed to refund any of the money.

Mr B remained dissatisfied. He did not agree that the rental of the unit was not a scam and the seller had no intent to deceive B. He said this represented a shallow and erroneous analysis of the evidence. He reiterated that the advert was false, the contract was false, they used a personal account rather than a business account, they did not provide invoices, and they rented the unit out to two companies. He strongly advised our service to look into the seller's building permits.

Our investigator clarified that once the payment was sent, Virgin could not cancel it. Virgin could not recover the funds from the other bank unless there was clear evidence of a scam. They said that whilst there was a dispute over what happened, there was not enough evidence to show that the seller had set out to financially harm B, and therefore not enough evidence of a scam. This could be true even where there was dissatisfaction about the provision of goods or services, even due to misrepresentation.

As no agreement could be reached, the case has been passed to me to decide.

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 have reached the same conclusion as our investigator and for broadly the same reasons. I know this will come as a disappointment to Mr B, but I will explain my reasoning.

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 be good industry practice at the time.

My role is to determine whether Virgin is responsible for refunding the money B has lost. My role is not to determine the liability of the company who he dealt with. Having considered everything that both sides have currently said and provided, I cannot see any basis on which I can fairly instruct Virgin to take further action or to refund the money B has sent. I know this is going to be upsetting news for Mr B so I will explain why.

Did Virgin deal with B's scam claim appropriately?

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 these payments, it was complying with B's instructions.

At the time, Mr B wanted to pay the beneficiary and there was no mistake made as the money was sent to those 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 B 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 Contingent Reimbursement Model, which Virgin has signed up to and was in force for the payment B made.

The CRM Code

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 B made and, in particular, whether Virgin ought to reimburse this because of any obligation under the CRM Code.

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.

Neither ‘scam’ nor ‘civil dispute’ are defined in the CRM Code, but a scam can ordinarily be defined as a dishonest scheme. It suggests criminal wrongdoing intended to result in financial gain. On the other hand, civil disputes are generally those between private individuals about, for example, quality of goods.

Both the bank and our Investigator felt the payments B made formed part of a civil dispute and were not covered by the CRM Code. Mr B’s position is that B has been the victim of a scam because the people he was dealing with had intention from the outset to act dishonestly.

In order to conclude that the payment B made was part of a scam, I’d need to be reasonably satisfied from the available evidence that the industrial unit company was not legitimate and he had set out to defraud him at the time he made the payment. But I don’t think I can fairly conclude that the industrial unit company’s motives were from the information I have been able to obtain. I say this because the purpose of the payment was a deposit to rent an industrial unit, and Mr B was handed the keys to an industrial unit. This tells me that it was more likely than not that the company and B’s purposes aligned – B wanted to rent a unit, and the company wished to rent out a unit to it. Whilst I accept that there were issues in dispute to do with the size of the unit, and details around the business practices of the industrial unit company, these are not matters which would lead me to conclude that the company had intended to scam B from the outset. Lack of invoices or matters of taxation are not matters which would lead me to conclude that there is enough evidence that Virgin ought to have decided that the company were scamming B and provided it a refund.

I’ve not seen enough to be as sure as I would need to be that the company was willingly and intentionally acting fraudulently by deliberately setting out to scam B. I have not seen sufficient evidence to establish that the company never intended to rent an industrial unit to B. Issues relating to size are more about the quality of the goods provided – which is not what the CRM code covers. This kind of scenario is mentioned in the CRM code as an example of a private civil dispute *“such as where a customer has paid a legitimate supplier for goods...but...they are defective in some way”*. So I’m satisfied that the CRM code does not apply to B’s transaction, meaning there is no obligation on Virgin to offer a refund. I understand Mr B thinks that the unit was rented to more than one party – but I’ve seen no evidence to suggest this was the case. Whilst there were items in there sometime later, the company may well have rented the unit out after Mr B made clear that he did not wish to proceed with renting the unit provided.

On balance, I can’t safely say this situation meets the high legal threshold and burden of proof for fraud. Given that the situation doesn’t display the hallmarks most typically associated with a rental scam, I don’t think it was unfair for Virgin to take the view that the situation formed a private civil dispute. And so it follows that it was fair and reasonable for them to decline to refund B the funds he sent to the company.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 16 October 2025.

Katherine Jones
Ombudsman