

The complaint

Mrs T and Mr T complain that Al Rayan Bank PLC (“Al Rayan”) failed to refund monies they lost as the result of a scam.

What happened

Mr T was the person principally involved with the scammers and Al Rayan, so I’ll mainly refer to him throughout the complaint.

What Mr T says

Mrs T and Mr T had savings in an account with Al Rayan and were seeking other investment opportunities.

Mr T subscribed to various online publications and received an article from one of them (which he later believed wasn’t genuine) about investment opportunities. One of them related to a permanent interest-bearing bond issued by a major high street bank in the UK.

Mr T asked for more information and was later spoken to by a representative of the brokers who were marketing the bond. I’ll refer to this company as B and their representative as M. Mr T described how M spoke with him at length about the bond and the specifics of how it worked on the secondary market. The bond was described as having protection under the financial services compensation scheme (FSCS) and included a “buy-back scheme. Mr T described how the conversation sounded plausible and was later sent correspondence by M confirming the details discussed and more information about B.

Mr T explained that he then carried out research on the bond and the company (M), including an article published on another website that referred to the representative he’d spoken with (M) and how B were operating in the UK market with the bonds they were offering.

Mr T also carried out several checks on B, summarised as:

- Confirming their registration with their host countries regulator and cross referencing their details with the information provided by B in their correspondence (including registration number and FSCS protection.
- Contacting the regulator directly to confirm that B were properly registered.
- Checking the details on B’s website and calling them on their advertised number to confirm that M was their representative.
- Confirming the bond was legitimate and being traded.
- Checking the clearing agent (referred to here as S) used by B to process the payments for the bonds and confirming that they were a UK registered company operating in the financial sector.

- Asking a close family member to double check the information.

After carrying out this research Mr T said he was convinced M were legitimate. B provided details about the bond and the agreement. Mr T arranged to make two payments of £20,000 each to them using his banking app on the Al Rayan account.

Mr T then received a call from Al Rayan about the transactions and answered a series of questions about the payments. At the conclusion of the call, Al Rayan released both the payments to S.

Mr T then went on to explain that a few weeks after making the payments, he saw an article in a newspaper about a scam that sounded similar to Mrs T and Mr T's own investment. Mr T checked with the foreign regulator again and found that there was a warning about a cloned company who were pretending to be B.

Mr T then attempted to contact B on their UK phone number but was unsuccessful as it appeared it no longer worked. Mr T then contacted Al Rayan about the transactions and notified Action Fraud about the situation. Mr T was later visited by police officers investigating the matter.

Mr T sought a refund from Al Rayan, believing that they should have issued better warnings on their banking app about cloned companies and that Al Rayan processed the payment based on the information known to Mrs T and Mr T at the time, which was made in good faith. Al Rayan declined to refund them and Mr T made a complaint to them about the loss.

Mr T also noted that he'd used an account with another bank to make a large payment to B which had already been refunded to him.

What Al Rayan say

Al Rayan first became aware of the payments when Mr T used his banking app to set up the to transactions. They've said they were carrying out additional checks at this time on large payments leaving their customer's accounts to new payees.

Al Rayan contacted Mr T about the payments and discussed why he was making them. A summary of the conversation is set out below and AR is the Al Rayan employee:

- AR tells Mr T that the call is for additional security due to increased scams against their customers and checks the account details which Mr T confirms are correct.
- Mr T confirms that he's aware of the increase in scams.
- AR ask if the funds are being sent to an investment company or a person - Mr T confirms the funds are being sent to B who operate from another country and they're for a fixed rate bond.
- AR ask how Mr T how he knew of B – Mr T explains that he's a new client/ the bond is protected by FSCS and its fixed rate with a capital and interest return. He goes on to say he holds significant funds with (AR) and needs something else. Mr T says he's "more than comfortable" with it as it's a bond issued by a high street bank.
- AR ask how Mr T found out about the payment details – Mr T advised it was by telephone and he'd spoken to B's banking services the day before in significant

details about the payments and he adds that they're (B) are authorised on their website.

- Mr T confirms he's also received emails from B and has verified the beneficiary bank details from a reputable source.
- AR ask Mr T if he's considered if the payments might be fraudulent or might not be genuine – Mr T tells them he can't see how it couldn't be genuine and that he'd gone through it in great detail.
- Mr T confirms he hadn't met any of the investment company face to face or been pressurised into the payments. He also confirms he hasn't been asked to make the payments by any official organisation.
- Mr T tells AR that the financial division of B told him to make the payment and AR agree that this makes sense.
- Mr T tells AR again about the bond and that B have a base in the UK and their host country (in Europe). Mr T offers to give AR more details.
- AR ask Mr T the purpose of the payments and Mr T confirms it's for an investment bond.
- The payments are then processed by Al Rayan.

When Mr T contacted Al Rayan about the scam, they attempted to retrieve the funds from the beneficiary account but were told that the account no longer had any funds in it. Mr T complained to Al Rayan who declined to refund the monies lost by Mrs and Mr T, believing that they'd not made any errors. After Al Rayan turned down their complaint, Mrs and Mr T brought it to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators.

Mr T provided information about the scam including the prospectus for the bonds and various letters and emails he'd received about the investment from the scammers. Mr T described in detail the checks he'd carried out and commented that he thought Al Rayan had let him and his wife down because they'd not been told about the possibility of a "clone" firm being used to scam people. Mr T said this was the first time he'd heard of this type of scam and believed that Al Rayan should have done more, including having better warnings on their banking app.

Al Rayan sent details of their involvement and statements for the account used by Mr T. They believed that Mr T was an experienced investor, and the payments were stopped because of a threshold trigger, rather than any particular suspicious aspect to them. Al Rayan's case was that Mr T was content with the investment and had carried out satisfactory checks about both B & S. Al Rayan didn't think any other questions would have made any difference to the outcome based on Mr T's confidence in his own research. They also believed that the warning on the banking app was sufficient to give people enough information about possible fraud before sending the payments.

Checks were carried out with S's bank who confirmed the account had been closed due to multiple instances of similar fraud allegations involving B.

After considering all the evidence, the investigator upheld Mr T's complaint, in summary she said:

- Because Al Rayan weren't signed up to the Contingent Reimbursement Model (CRM) code – the specific requirements of it couldn't be applied to this complaint.
- It was thought that Al Rayan had considered the payments were unusual – which was why they stopped them.
- No warning about “cloned” investment firms were given.
- There were red flags in the way the payments were structured – specifically to a broker at a different bank than where the bonds were issued from.
- Al Rayan could have directed Mr T to check B's contact details from the regulators site, rather than the website (that was cloned).

A full refund was recommended including simple interest at 8%.

Al Rayan disagreed with the investigator's outcome and responded, in summary they said:

- The payments weren't out of character and were only stopped due to a threshold trigger.
- They believed Mr T was an experienced investor and the use of a third-party account (S) wasn't unusual.
- Their approach to fraud was robust and they asked Mr T appropriate questions. He was confident in his research and more than comfortable with his answers.
- He'd accepted the online warning prior to making the payments.
- They believed it was likely that Mr T would have ignored their advice based on his own research.
- There was no mention of the use of “cloned” firms but they didn't believe this was a standard question when other questions had been asked.
- They believed there was no legal or regulatory requirement to mention “cloned” firms and the FCA provided advice about this threat.
- They didn't believe that Mrs and Mr T were vulnerable.

As no agreement could be reached, the complaint has now been passed to me for a decision.

I issued my provisional findings on the merits of Mrs T and Mr T's complaint on 31 March 2023. In my provisional findings, I explained why I intended not to uphold their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

What I've provisionally 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 be good industry practice at the time.

I was sorry to hear that Mrs T and Mr T were the victims of a cruel scam and they've suffered such a large loss.

Both parties accept that Mr T authorised the transaction himself, so here, the responsibility, in the first instance, lies with Mr T because Al Rayan are required to follow his instructions. Al Rayan are expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations (2017) and the terms and conditions of the customer's account.

But, even though the CRM code doesn't apply to this complaint, Al Rayan also has an obligation to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears unusual and out of character. In situations when potential fraud is identified, I would expect Al Rayan to intervene and attempt to prevent the loss.

Here, Al Rayan identified the large transactions to a new payee and called Mr T about the payments. The crux of Mrs T and Mr T's complaint is that Al Rayan could have done more to prevent their loss.

So, in determining whether I think they did or didn't do enough to prevent the loss, I have to assess the position of both parties and their respective contributions to the payments, remembering that the funds were ultimately stolen by scammers. Mr T has been classed as an experienced investor during this complaint, and considering the lengths he went to, including checking the information about the product he was being sold and the companies involved, I can see why that's the case. I'm not aware of his investment history, but I don't think for the purposes of this complaint he was inexperienced.

I think it's fair to say that the research and checks carried out by Mr T were thorough and substantial, even cross referring the broker he spoke to (M) with an article posted to a different website. Mr T also went directly to the regulator to check that B were a regulated company. At the time, the regulator itself was unaware of a cloned company operating, so I don't think that further checks with them would have shed any further light on the situation. It doesn't appear that the regulator's website carries much detail about those businesses it regulates apart from some very basic details – which at the time of the scam matched those cloned by B.

When Mr T used the banking app to make the two payments, he was faced with a warning about scams. Mr T doesn't think it was particularly useful in his situation and Al Rayan believe it was suitable and that it pointed out that organisations can be impersonated by criminals. Whilst it can be argued that the warning could have been more specific, it wasn't the only check carried out by Al Rayan because they prevented the payments from leaving the account until they'd spoken with Mr T on the phone.

It's not unreasonable to expect Al Rayan to objectively assess the circumstances of payments made from their customer's accounts. Here I think they did, gathering information from Mr T about the circumstances and raising the possibility that the payments might be fraudulent. Mr T's own assessment was that he couldn't see how it couldn't be genuine and had carried out extensive research into the various companies, including checking the results with a close family member.

It's worth noting here that the scam was set up with a high level of sophistication. Including comprehensive paperwork, a website and working phone number. There was also an article seeded on another website to increase the legitimacy of the scam. The scam also included the use of S as a third-party company to act as an "escrow" agent (to receive the funds) and this had a genuine business registration and commercial bank account.

It's been argued that the appearance of this company (S) should have raised concerns with Al Rayan. Considering this company seem to have been specifically set up to receive funds from investments, I don't think it was particularly noteworthy here.

I accept that Al Rayan didn't specifically mention "cloned companies", but they did ask Mr T if the payments might not be genuine. Overall, I think Al Rayan asked relevant questions concerning the transactions. But this scam was sophisticated, and I don't think it was reasonable to expect them to have identified it, considering the depth of checks already carried out by Mr T and his confidence in the arrangement.

Of course, I have sympathy for their loss, but my current thoughts are that Al Rayan couldn't have reasonably been expected to identify the payments as a scam. That's because there was no external reporting identifying a cloned company and the many layers that the scammers had created made it difficult for anyone to identify it was a scam.

My provisional decision

My current thinking is that I won't be upholding this complaint.

Al Rayan didn't respond, and Mrs T and Mr T supplied further information about the situation and their views, in summary they said:

- Al Rayan should have done more to prevent the scam, including more in depth questioning about the company, their contact and the investment.
- Information about cloning should have been discussed which would have provided a red flag for the investment.
- Mr T isn't an experienced investor.
- There's a disagreement about the reason for the intervention call by Al Rayan.
- Mr T believes Al Rayan's approach to the fraud was "generic" and they should have provided more detail about scams.
- He disagrees that he would have ignored any additional advice given by Al Rayan.
- He disagrees with Al Rayan's assessment that they weren't vulnerable.
- Mrs T and Mr T believe they weren't grossly negligent.
- Mrs T and Mr T believe that a fine issued by the FCA against Al Rayan is relevant to their situation.
- Mr T believes Al Rayan should have questioned the reason to suddenly withdraw a large amount of funds.
- Al Rayan should have delayed the payment to allow further checks to be carried out.
- They should have questioned the reason for a payment to a third party.

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 understand the loss of these funds is a great shock to both Mrs T and Mr T. I think it's worth reiterating here that the theft was orchestrated by a group of criminals who put together a

sophisticated scam. There were many layers to the fraud which made it difficult for legitimate investors to realise it was set up purely to steal their funds.

The scam was comprehensively created with a false investment company matching the genuine one. An article about the company and the representative was seeded on the internet to provide a “third party” reference to anyone who looked adding to the legitimacy of the offer. The original information about the investment appeared in an article that Mr T often read (although he feels this was also cloned), but again, this only strengthened the idea that the company he was dealing with were genuine.

The use of a foreign (but respectable) investment company that was properly regulated lent an air of legitimacy to the investment being offered. The use of a UK address and real people made the firm appear to be above board. The product being offered wasn't anything out of the ordinary (in investment terms), Mrs T and Mr T weren't being offered an unrealistic return – which is often a red flag. There didn't appear to be any overt pressure being put on Mrs T and Mr T by the scammers to make the transactions quickly. This scam wasn't the result of a “cold call” which is also often a red flag indicating a possible scam.

There were no obvious flags that I think were missed here. I understand Mrs T and Mr T's point about the specific lack of discussion about cloned firms. But at the time, even if they'd looked, there was no information that even the regulator had that would point to this being anything other than a legitimate offering. Al Rayan raised the possibility of the firm being genuine and Mr T was, at the time, confident they were, based on all the research and checks him and his family had carried out.

I appreciate Mr T will disagree with this conclusion as he makes the point that he would have stopped any payments if additional doubts had been raised. But here, I don't think the picture that Mr T was describing, and the information given to Al Rayan could reasonably have led them to conclude the funds were at risk of a scam.

I understand Mrs T and Mr T now think they were vulnerable through their age, which Al Rayan should have taken into account. Age isn't an automatic vulnerability, but I would expect Al Rayan to be alive to the issue. Reviewing the evidence, I can't see anything that would lead me to think that Al Rayan should have done anything more here, Mr T's interaction with them was as a confident account holder who knew what he wanted (a better return on his money). He told them this and went on to explain (as outlined above) the details about the new investment he was making. I think the reasons he gave were entirely plausible based on their personal situation – so I don't think that Al Rayan had cause to question why he was making the two large payments from the account.

There's some disagreement about Mr T's experience as an investor, he argues that Al Rayan couldn't have concluded he was one because of his history with them. I can see why Al Rayan concluded he was when taking into account their discussions with him at the time. Although, for the purposes of this complaint, I don't think it's particularly relevant to the overall actions of Al Rayan. The conversation they had after preventing the immediate release of the funds explored the reasons for making the investment and how Mr T had interacted with B.

I have a different opinion about the third-party account. The presence of another company involved in the receipt of the investment wouldn't, in my opinion, stand out as a red flag. In this case they were being presented as the “escrow” account holders and they had a commercial bank account held with another UK bank. They also had a legitimate listing with the UK's official companies' registrar, classed as being a company operating in the financial sector. All of which added to their legitimacy and which Mr T checked.

Regarding the issue of gross negligence – this isn't relevant to their complaint as it's the actions of Al Rayan which are being examined in light of the scam. In any event, I don't think that Mrs T and Mr T's conduct could be described as anything other than comprehensive in their approach to the investment.

The issue of an FCA fine was brought up which Mrs T and Mr T believe points towards the overall conduct of Al Rayan in their actions regarding this complaint. Having looked into it, the issue raised was for unrelated activity several years before they opened an account with Al Rayan. So here, I don't think it's relevant to their complaint.

Mrs T and Mr T believe that Al Rayan should have delayed the payments, but here, after the call with Mr T, Al Rayan were satisfied that the payments were to a legitimate investment firm. At that point they had no reason to further delay the payments and Mr T was happy for them to be released.

Overall, I understand that Mrs T and Mr T will remain unhappy, and no doubt disagree with my decision. But, I have to make it based on an objective assessment of the evidence. Given the sophisticated nature of the scam and the depth of checks carried out, I don't think it was reasonable to expect Al Rayan to identify this as a scam based on the facts at the time. I can only instruct Al Rayan to make a refund when I think they've failed to reasonably prevent the loss. But here, I think it wouldn't be fair to instruct them to make a refund based on all the evidence I've considered.

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 Mrs T and Mr T to accept or reject my decision before 11 July 2023.

David Perry
Ombudsman