

The complaint

Mr and Mrs G complain that Bank of Scotland plc (BoS) haven't fully refunded them after they fell victim to an investment scam

What happened

The details of this complaint are well known to both parties. And so I've not included exhaustive detail of what happened here. In places I've condensed and/or summarised what happened, focusing on the key developments and details.

Mr and Mrs G were contacted by BoS in 2020 about the possibility of investing the proceeds of a property sale. BoS said it would put Mr and Mrs G in touch with its investment partner and an appointment was arranged.

Mr and Mrs G spoke with the investment partner but didn't proceed with any of the options they were given.

Around a week later, Mr and Mrs G were contacted by someone purporting to be from a company I'll call F. They didn't know at the time, but they were speaking with scammers.

Mr and Mrs G have explained how F knew personal details including name, address, email, and the type of investments they were interested in (fixed rate bonds). F described the services offered, saying they acted as an introducer of parties looking to buy and sell bonds privately. This was the kind of investment Mr and Mrs G were keen on. F directed Mr and Mrs G to its website.

F said that because they weren't directly involved in the sale of bonds, only introducing parties interested in buying and selling, they didn't need to be FCA regulated.

Mr and Mrs G were told F had a client interested in selling a stake in what I'll call Bond A. F said the client was looking to sell as they were experiencing cashflow problems because of the pandemic. Bond A was issued by a high-street bank and offered a 5.375% rate of return.

F told Mr and Mrs G payment would need to go to a different company I'll call N. F said N would handle the payments and the exchange of the bond. There were email exchanges between Mr G and F that followed the call, along with a client on-boarding process requiring the provision of ID documents.

Mr G went on to check several things:

- he checked F and N's details on Companies House and found both were active with up-to-date accounts;
- F was described on Companies House as being engaged in 'Other business support service activities not elsewhere classified';
- N was described on Companies House as being engaged in 'Financial intermediation not elsewhere classified';
- he checked Bond A was legitimately traded and found it listed on the London Stock Exchange (LSE) website, with the details matching what had been presented to him by F;
- he asked for confirmation the bond was FSCS protected and was provided with a

factsheet which appeared to him to confirm it was.

Mr and Mrs G decided to go ahead with the investment and were sent an invoice which included the payee details. They were also sent a breakdown of allocation of the investment which needed to be signed, dated, and returned to F. They went on to send a total of £80,000 to N over five payments, across five days:

£9,600.00	08.12.20
£20,000.00	09.12.20
£25,000.00	10.12.20
£25,000.00	11.12.20
£400.00	15.12.20

Mr and Mrs G were sent receipts for the payments and a bond certificate. Once received, Mr G asked F to confirm if it would be the high street bank that would pay back capital and interest when the bond was sold. F confirmed that was the case.

A month later F contacted Mr and Mrs G again. It said it had another client looking to sell a bond (Bond B).

Bond B was also issued by a high-street bank and had a 9.625% rate attached to it. F said it also had a party interested in buying up part of Bond A and explained the sale could be used to part fund the purchase of Bond B. The same style of FSCS document from the purchase of Bond A was provided, as was a breakdown of allocation of the investment. Mr G checked Bond B was registered on the LSE in the same way Bond A was.

Mr and Mrs G decided to invest again and understood that £50,000 would be raised from the partial sale of Bond A. They went on to send a further £100,000 to N over five payments, across five days. Receipts and a bond certificate were received again.

£14,700.00	12.01.21
£24,300.00	13.01.21
£22,000.00	14.01.21
£19,000.00	15.01.21
£20,000.00	20.01.21

Mr G tried to speak to the issuer of Bond B about the registration of their bond. But he couldn't find anyone that seemed to know the correct department to speak to.

On 25 January 2021 Mr and Mrs G received a payment of £447.90 from N. They understood this to be the interest payable from Bond A, up to the point they'd sold part of it.

F contacted Mr and Mrs G again on 9 February 2021 with a further offer, Bond C. Like the other two, this was issued by a high street bank and had a stated rate of 13.625%. Mr G carried out the same checks as before and received the FSCS confirmation from F.

Mr and Mrs G decided to invest again and withdrew funds held in an investment elsewhere. They were told to make a payment to a different company this time and were given new account details. Mr G checked the details of the new company on Companies House and could see it was registered and listed as active. But when they tried to make a payment of £20,000 it was stopped, and their account was blocked.

Mr and Mrs G called BoS to speak to the fraud department about the attempted payment. After a lengthy wait they got through to someone to discuss what was happening. BoS explained the payment had been stopped due to fraud concerns. The member of staff asked some questions and Mr G confirmed he was investing in a bond by buying it from the company which currently held it. When asked how he'd found out about this bond and his earlier investments he said he'd been put on to it by a financial advisor that he'd been dealing with for about six months. He said he was very happy with it, that he'd done his homework, and was satisfied it wasn't a scam.

The member of bank staff said there were some details about the transaction he was concerned with. He explained the payment seemed to be going to a construction company and that Companies House showed that company as being dormant. As he wasn't comfortable putting the payment through, he referred Mr and Mrs G to branch, requiring them to attend with photo ID. The account would remain blocked until they did so. The member of staff added notes to the bank's systems, including that it appeared as though Mr and Mrs G were caught up in an investment scam.

Mr and Mrs G attended the branch with their ID. But rather than trying to put through the £20,000 to the new payee details, they looked to send the full value of their intended investment. And by this time F had said Mr and Mrs G could pay N directly for the bond purchase.

Mr and Mrs G found they could make payment via CHAPS. That meant they could send two payments (of £130,000 and £180,000) rather than many smaller faster payments.

When making these payments in branch Mr and Mrs G were asked to complete a high-value checklist (a copy of which isn't available). They were also asked to watch a video on scams. The CHAPS payments were then processed on 9 and 12 March 2021. There was no discussion of or reference to the earlier call with the bank, or discussion around why the payee had changes.

Mr and Mrs G realised they'd fallen victim to a scam in April 2021 when they didn't receive expected interest payments. They tried to contact F but received no response and lines of communication appeared to have been closed down. They reported what had happened to BoS and it began to investigate.

BoS attempted to recover the money Mr and Mrs G had sent, but none could be returned as it had all been withdrawn or moved on to different accounts.

BoS is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. And as such it considered whether it ought to refund Mr and Mrs G under the provisions of the Code. In doing so, it found that it hadn't fulfilled its obligations under the Code in that it didn't provide suitable warnings and didn't intervene enough to protect Mr and Mrs G when there were signs they were at risk of financial harm through fraud. On that basis it agreed to refund half of the money lost.

But BoS said that Mr and Mrs G ought to bear responsibility for the other half of the money. It said they'd not carried out sufficient checks and hadn't acted on suspicious features of the scam, meaning they lacked a reasonable basis for believing they were engaged with legitimate parties for legitimate purposes.

Mr and Mrs G weren't happy with BoS' answer and so brought the complaint to our service. One of our investigator's upheld the complaint and recommended a full refund. She felt Mr and Mrs G held a reasonable basis of belief, and so said the exception to reimbursement didn't apply.

She said BoS should:

- refund all the money lost to the scam;
- pay simple interest on the loss at 8% per year from the date of loss to the date of

repayment;

- pay £250 compensation to recognise the distress and inconvenience suffered by Mr and Mrs G, which took account of: BoS' failure to prevent the scam, it's decision to decline the claim when it wasn't fair to do so, and the extensive amount of time Mr and Mrs G spent on the phone and in branch.

As BoS didn't agree the case has been passed to me for a final decision. Its objections can be summarised as:

- Mr and Mrs G ought to have checked the FCA register for the companies they believed they were dealing with;
- Mr and Mrs G knew that neither F nor N were FCA registered;
- F's website related to what was obviously a different company, based in Australia, and so Mr and Mrs G ought to have been concerned;
- The stated purpose of each company on Companies House didn't fit with what Mr and Mrs G ought to have expected;
- there were no agreements or contracts signed;
- the rates of return were too good to be true;
- the second and third bonds were offered in quick succession, which ought to have raised suspicion;
- invoices and payment receipts came from F, despite it saying it wasn't involved in the payment journey;
- the supposed interest payment from Bond A was paid from N's account, despite Mr and Mrs G having been told the issuer would pay the interest;
- the quality of the bond certificates provided to Mr and Mrs G – for Bond B in particular – were of poor quality and featured inconsistent details which ought to have raised suspicions;
- the intended payee for the unsuccessful Bond C payment was clearly a construction company and this was highlighted to Mr and Mrs G when the bank spoke to them;

BoS referred to a phone call where the scam was discussed, and it's said Mr G told it he'd discussed the payments with his financial adviser who said he couldn't deal with F. BoS says this ought to have caused Mr and Mrs G significant concern.

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'm upholding it.

BoS has subscribed to the CRM Code and so ought to refund victims of scams, like Mr and Mrs G in all but limited circumstances. To fairly decline a claim under the Code BoS must be able to show that Mr and Mrs G:

- ignored an effective warning given by BoS at the time a payment was being made; *and/or*
- lacked a reasonable basis for believing they were engaging with legitimate parties for legitimate purposes.

There are other potential exceptions to reimbursement stated in the Code, but they don't apply in this case.

Did Mr and Mrs G ignore an effective warning?

I don't intend to go into great detail about this exception. This is because BoS has already agreed it didn't do enough and so hasn't met the standards for firms under the Code. It's why it has already refunded 50% of the total loss.

All I'll say is that I'm in agreement that BoS failed to deliver effective warnings over the course of the scam.

And it's worth noting that BoS ought to have intervened earlier than it did. I've seen BoS' own notes where it acknowledges it ought to have been questioning the activity on Mr and Mrs G from the second payment made, on 9 December 2020. I'd agree with that position, given the unusual spike in outgoing payments and considering they go in quick succession to a new payee. It's more likely than not that had a suitable level of intervention happened at that time, with the right questions being asked about the nature of the proposed investment, and before Mr and Mrs G had gotten quite so deep into the scam, that it could have been avoided from that point.

Did Mr and Mrs G have a reasonable basis for believing they were engaged with legitimate parties for legitimate purposes?

In considering this question it's important to remember that most people don't go about their lives expecting to be scammed. That's not to say customers ought not take any responsibility for their actions. But it's important to remember we are considering whether Mr and Mrs G's actions at the time they were making payments were reasonable. Rather than looking back on the circumstances with the benefit of hindsight, with all the details regarding the scam gathered together in the cold light of day.

Mr and Mrs G were contacted by F about fixed income bonds at a time when they had been actively discussing them and looking to invest. Discussions had been had with both BoS and its investment partner. It's unclear how exactly F obtained Mr and Mrs G's details. BoS has suggested they might have filled in a form online. Mr and Mrs G have said that isn't the case. I can't know for sure, but ultimately, I don't find it makes a difference. What seems clear, and accepted by all parties, is that Mr and Mrs G had been looking into fixed income bonds at the time. And so the call from F didn't seem out of place or to have come out of the blue. Instead, it seemed very much in keeping with what they had been looking for. I can see why there would have been a degree of trust in F from the outset, especially as F knew personal details about Mr and Mrs G.

Mr G spoke to a representative from F and discussed the services they offered. I find the explanation he was presented around what F offered, and why it wasn't FCA regulated, was reasonable. That doesn't mean it was true of course, but I can appreciate how it would have persuaded Mr G. And I don't find the involvement of N, as the receiver of funds, changes things here.

BoS has said Mr and Mrs G ought to have checked the FCA website to verify F's details. But they had no reason to do so, given they'd already been told F wasn't regulated and why. I don't find this argument from BoS to be persuasive.

That's strengthened by the fact that checking the FCA register would have made no material difference. Mr and Mrs G would have found no reference to F or N on the register. So there was nothing to alert them that something might be wrong. There is now an FCA warning about F, but this was posted after Mr and Mrs G had made all their payments. BoS gave no warning or education, at any stage, about why it was important that any firm dealing with investments needed to be FCA registered.

Mr G did look at F's website and found it professional, convincing, and persuasive. BoS has referred to this in its defence of the complaint. But, somewhat disappointingly, it's been looking at the wrong website. It appears to have found a similarly named website using a search engine, and it's provided this service with the web address it viewed. That address is different to the one Mr G looked at. So the arguments made by BoS in relation to the website, including it being connected to an Australian company, are irrelevant and fall away.

The correct web address had been given by Mr and Mrs G in their evidence. It's now been taken down and so can only be partially viewed through web archive services. Having had a look at what is available, it does appear a convincing looking website was in place. And that website described the exact service F said it was providing.

Mr G didn't stop there in carrying out checks. He looked for both F and N on Companies House. He could see they were both legitimately registered and active companies.

BoS has said the stated business purpose ought to have given concern. But I'm not persuaded it should have. F's stated purpose was somewhat non-descript, but certainly nothing to cause particular alarm. N's referred to being a financial intermediary, which seemed to directly relate to what Mr and Mrs G were getting involved with.

Mr G also went on to check the credentials of the director of F. He saw that he was a banking consultant and had previously been employed at a big high-street bank. I can understand why he took that as a positive sign.

When presented with the Bond A offer Mr G checked the details online. He saw it was genuinely listed on the LSE. He could see he was being offered a genuine investment product, with a verified interest rate attached. I find this lends apparent legitimacy to the scam. And it also means any concerns over an unrealistic or too-good-to-be-true rate of return must fall away, as those returns appeared to be genuinely available. That logic carries through to Bonds B & C, even where the proposed returns were even higher than Bond A.

BoS has said there were no contracts or agreements signed. But that's not true. Mr and Mrs G have provided the documents titled 'Investment Allocation Document'. The document for Bond A is signed and dated before any payments are sent. I'm satisfied this lent further legitimacy to the situation.

With all of this in mind, and considering the reasonable quality of the correspondence and communication Mr and Mrs G were engaged in with F, I'm satisfied the initial payments were made with a reasonable basis of belief.

I've considered all that happens after those first payments for Bond A. And in doing so I've also thought about the other arguments made by BoS which I've not yet covered, where it suggests that Mr and Mrs G didn't have a reasonable basis for belief. Many of BoS' objections relate to developments that took place as the scam went on, after the payments for Bond A. I don't intend to cover all the objections and arguments made by BoS, though I have considered them.

Mr G was in a firm position in terms of his basis of belief when making the payments for Bond A. It's then fair to say that it would take something quite significant to shake that basis of belief over the course of the scam.

I can accept that all the points raised by BoS, when looked at holistically and with the benefit of hindsight, do make the circumstances of what Mr and Mrs G were involved in suspicious to the point where a reasonable person ought to suspect something was wrong. But that's not reflective of how events actually unfolded.

Instead, there was a gradually progressing timeline, where new information was introduced piecemeal. When considered in this way it's understandable, and overall reasonable, that Mr and Mrs G didn't connect all the dots. It's also true that there were factors that would have further persuaded Mr and Mrs G all was well, strengthening their basis of basis rather

than weakening it. I refer in particular to what appeared to be the payment of interest earned on Bond A.

To be clear on this interest payment, I can understand why Mr and Mrs G weren't concerned by the fact this payment was made by N, rather than the issuer of the bond as they'd been informed would happen. Their greatest concern was in receiving the money. They also believed part of the bond had been sold, which might reasonably have been seen as explanation for a different payer to that otherwise expected. Even if Mr G had questioned this point after receiving the money, it seems unlikely the scammers would have failed to provide a reasonable explanation or that it is this point that would have uncovered the whole scam.

I also note that this interest payment came before the issuing of the certificate for Bond B and Bond C. I mention this as BoS has said the quality of the Bond B certificate in particular is very poor. I can see why it's highlighted this as a point of concern; there are some questionable features. But I still have in mind that the scam had been very persuasive up to this point. Mr and Mrs G reasonably believed they'd carried out their due diligence. They were able to discuss options with F whenever they needed to. And they'd received a payment of interest on their initial investment. So I'm not persuaded the certificate was enough to undo their reasonable held belief that this was all legitimate

I've listened to the call BoS has referred to, where the circumstances of the scam are discussed and Mr G mentions discussing F with his financial adviser. BoS has said that the adviser's refusal to deal with F ought to have caused significant concern with Mr and Mrs G. But I don't think BoS has properly considered what is said. Mr G does say that the financial adviser wouldn't deal with F. But he also explains that was because the adviser didn't deal in fixed income bonds. It wasn't because he found them to be too risky or suspicious.

BoS did intervene in some payments, to ask questions and give warnings about proceeding. I'm not going to discuss here the effectiveness of those warnings in respect of standards for firms under the Code. But it is important to consider what Mr and Mrs G were told, and whether that ought to have impacted their basis of belief.

The call in February 2021 rightly highlighted some concerning details about what Mr and Mrs G were trying to do, notably that they were trying to make a payment to a dormant construction company. But the trouble here was that there was little context given as to why BoS was concerned. I know from listening to the call recording that Mr G very much wanted the payment to go ahead. But there were opportunities for the member of staff to further explain what he was concerned about and why. That didn't happen and so there wasn't a significant impact on Mr G's basis of belief. And, somewhat confusingly, the company showed as active on Companies House when looking at the main details. It's only under the filings tab there was reference to the company being dormant.

Mr and Mrs G attended a branch after the call. But the notes from the call weren't looked at or referred to. And so BoS didn't build on trying to get Mr and Mrs G to reevaluate what they were intending to do. Importantly, they were no longer trying to pay a construction company, with the payee instead reverting to N. This means the information they were given about paying a construction company was no longer relevant, and the bank raised no concern with the change in payee or anything else about what Mr and Mrs G were doing.

There is also the scam video Mr and Mrs G were shown. There's a dispute about what the content of the video was. Mr and Mrs G have said from the outset that the video didn't bear any relevance to what they were doing. From what they've described it sounds more like a scam video on doorstep selling. BoS have said it related directly to the type of investment scam Mr and Mrs G fell victim to and have provided a transcript. There's no record to confirm the nature of the video shown in branch. There's very little to show what was discussed or what warnings were given at all.

I've considered the scam script supplied by the bank and thought about, if this was what Mr and Mrs G saw, whether should it have made a difference. It's undeniable that there are features highlighted in the video that match Mr and Mrs G's circumstances: fixed interest bonds, paying a different company to the one being invested with, the involvement of a construction company. The video goes on to say how a customer can protect themselves: by checking on the FCA register and on Companies House. But Mr and Mrs G already knew F and N weren't regulated, and they'd already checked on Companies House. So, if this was the video they saw, they'd already been through the steps suggested to avoid a scam, meaning any impact on their basis of belief would be diminished. And importantly, there appears to have been no further tailored discussion or intervention from bank staff (where there ought to have been) which might have otherwise revealed the scam.

Overall, I'm not persuaded BoS has been able to show that the reasonable basis of belief exception to reimbursement applies.

Putting things right

I'm not persuaded BoS has been able to demonstrate that any of the exceptions to reimbursement under the Code apply. As such Mr and Mrs G's claim has been unfairly declined.

I'm also satisfied BoS ought to have intervened with suitable questions and warnings when the second payment was made.

This means BoS should now:

- refund the remaining loss suffered by Mr and Mrs G;
- pay simple interest on the loss at 8% per year, calculated from the date of loss until the date of repayment;
 - BoS can choose to calculate the interest for the first payment from the date the claim was declined under the Code, given intervention wasn't necessary at that stage;
 - interest on the 50% already refunded ought to have been paid from the date of loss to date of settlement, so BoS should ensure that has happened as part of this settlement.
- pay Mr and Mrs G £250 for the distress and inconvenience suffered. Mr and Mrs G have already accepted this amount, and BoS raised no objection to it, so I see no need to depart from our Investigator's findings here.

My final decision

I uphold this complaint against Bank of Scotland plc

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Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 29 September 2023.

Ben Murray
Ombudsman