

## **The complaint**

Mr G complains that The Royal Bank of Scotland Plc (RBS) hasn't refunded him after he reported falling victim to an investment scam.

## **What happened**

In 2017 Mr G was contacted by a company – I'll refer to it as E – offering an investment opportunity in precious metals. Mr G was interested and listened to what E had to say. He's explained how they appeared very professional and knowledgeable. He was told how the investment would work, and that E was connected to other companies as part of its operation.

Mr G carried out some research into E and was encouraged by what he found. Reviews online were positive, E was long-established having been registered on Companies House for years, and he was able to obtain a detailed company credit report on E. And so he was persuaded to invest, starting with a payment of £10,000 on 2 March 2017.

Over the course of just over four years, Mr G went on to make a total of 42 payments to E, totalling £116,923.65. The last payment was made in June 2021. Mr G also made six payments to E from an account held elsewhere.

Mr G has told us that toward the end of 2020 the main person he'd been dealing with at E decided to leave. It appears E was pivoting into cryptocurrency trading and that person hadn't been willing to carry out such investments. Mr G was appointed someone new and continued his investing, including diversification into cryptocurrency.

During the time Mr G was investing he received regular communication from E, including reports of how his portfolio was performing. Mr E has explained how he'd check this performance against information in the public domain and all appeared to tally.

In mid-2021 Mr G was contacted by E to say it was closing down, and that all customers would receive their investments and returns at the winding-up of the company. The reference in this communication had been to the precious metals investments. Mr G said he asked about his cryptocurrency assets and E replied to say it didn't deal in cryptocurrency. Mr G immediately became alarmed and tried to pursue answers, but to no avail.

Mr G checked online again for reviews of E. Unlike before, there were lots of negative reviews now posted. Many customers of E reported similar circumstances as Mr G found himself in, and that they'd been unable to get any (or very little) of their money back from E.

E ultimately entered into voluntary liquidation, with Mr G having received very little of his money back.

Mr G contacted RBS to report what had happened. RBS looked into the matter but said it wouldn't refund Mr G. Unhappy, Mr G brought his complaint to our service.

One of our investigators considered the complaint but didn't believe it should be upheld. He felt there was insufficient evidence to show Mr G had fallen victim to a scam. Instead, he thought it was more likely than not E was a legitimate business that had failed. And he said, because of that, there could be no responsibility for Mr G's loss attributed to RBS.

The case has been passed to me for a decision as Mr G didn't agree

### **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 sorry to disappoint Mr G but, having reviewed everything, I'm not upholding his complaint and for broadly the same reasons as our investigator.

Broadly speaking, the starting position at law is that RBS is expected to process payments authorised by Mr G quickly. And once those payments have been authorised, Mr G is generally deemed responsible for them. This is set out in the Payment Service Regulations (2009 & 2017) and Mr G's account terms and conditions.

However, taking into account the relevant law, regulations, industry guidance, and best practice, firms like RBS ought fairly and reasonably to have systems in place to monitor transactions and accounts for signs that its customer might be at risk of financial harm through fraud. Where such risks are detected, there ought to be action from the bank to intervene through the giving of warnings and scam education. Sometimes, that will mean stopping a payment so that the customer can be questioned directly about it. And there are times when, if a firm fails to protect its customer, it might be fair and reasonable to hold it responsible for losses to a scam.

In determining the outcome of such complaints, it's first necessary to consider whether a scam has taken place. If it hasn't, and the matter being complained about is a civil dispute between the customer and a legitimate supplier of goods or services, then it wouldn't be fair and reasonable for a firm – in this case RBS – to be held responsible for any customer loss.

This is true of all payments made by Mr G, including those that were made following the introduction of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. It specifically states:

*"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."*

I'm not persuaded here that E was operating a scam and instead was a business that ultimately failed, losing its clients' money. The evidence doesn't show with any certainty that E wasn't a legitimate business or that it set out with the intent – or at some stage adopted the intent – to defraud Mr G. There are a number of reasons that have led me to this finding.

E was incorporated in November 2010, although its name had changed over time. In that time, it regularly submitted company accounts and filings to Companies House as it was required to do. That alone doesn't mean E *couldn't* have been operating a scam at some point. But, given the length of time, it does suggest E was operating legitimately.

E is now in liquidation. And it appears clear that Mr G, and indeed other investors, didn't get what he was owed from E and that his contract was not fulfilled. The loss Mr G has suffered is huge. But these facts don't prove that E was operating a scam. And, given E's apparently genuine status, I'd need to see strong evidence to show it was in fact operating as such. That evidence is lacking.

In the time that Mr G was a client of E, a period of over four years, he received regular communications about his investments and these always appeared to be legitimate. That this relationship was maintained for so long, with E able to operate seemingly without any concerns being raised (as far as I can tell from any clients) speaks to the likelihood of it being a legitimate business.

I've been able to consider the account statements of E and examine the movement of funds. Having done so, I'm not persuaded they present evidence of a scam taking place, and it's evident clients were being paid by E throughout the time Mr G was involved with it. I'm afraid I'm unable to divulge any more than that, in terms of the detail contained within those account statements.

There is evidence to suggest that E was perhaps not acting as it ought to have done at all times. There were numerous other companies associated with E, and payments move around between them. But poor practice doesn't mean that a scam has taken place. This is reflected by conversations this service has had with the liquidator of E. It's confirmed evidence of poor practice at E but hasn't been able to say – at least yet – that a scam was being operated. I acknowledge that isn't necessarily the role of the liquidator, but they are in a good position to lend insight. And if there was a scam on the scale that's been suggested, it seems more likely than not it would have been evident.

This service is also aware that law enforcement isn't currently pursuing E or its directors. This isn't absolute confirmation that a scam wasn't in operation, and there could be various reasons for it, but it means there's nothing from the police that suggests E was anything other than a failed legitimate business.

I am also aware that a former director of E has been charged with criminal offences relating to fraud. But I also have to be mindful that he had left E before Mr G ever became involved with it (in 2015). There was no link between the company that director went to work for and E.

I've considered the emails between Mr G and E, particularly those where it says it didn't deal in cryptocurrency assets. And I can certainly understand why these caused Mr G concern. But I don't find them to be persuasive evidence of a scam being in operation. The content of the emails to Mr G redirect him to one of E's linked businesses, advising that he contact them for further information. There isn't an outright denial that he ever held any cryptocurrency investments. I understand Mr G had received correspondence from E directly about those very same assets. But the email suggests the day-to-day operations behind such investments were carried out with the linked business. It might well have been that the same parties worked across more than one of the companies, leading to a lack of clarity and transparency. This might again reflect poor business practice on the part of E and its associated companies, but it doesn't provide strong evidence of a scam taking place.

What I need to decide is whether RBS has responded fairly and reasonably to Mr G's complaint. Given the evidence that was available then and now, I believe it has. Although RBS didn't specifically say it thought Mr G had a civil dispute with E, rather than it being a scam, the ultimate result is the same in that it declined to reimburse him. I find it was fair and reasonable, overall, in the circumstances for it to do so.

It might be that new material evidence and information comes to light in the future. Should that be the case then Mr G might be able to bring a new complaint against RBS. But based on what I have available to me I'm satisfied this is more likely than not a civil dispute rather than a scam.

### **My final decision**

I don't uphold this complaint against The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 December 2024.

Ben Murray  
**Ombudsman**