

The complaint

Mr and Mrs G complain that Bank of Scotland plc trading as Intelligent Finance (IF) won't refund them the money they lost after they fell victim to an investment scam.

What happened

The background to this complaint is well known to both parties so I won't repeat it in detail here. But in summary I understand it to be as follows.

In or around February 2023, Mr G was introduced to an investment opportunity. Mr G has said he carried out some research and spoke to an investment manager and he believed the opportunity seemed legitimate. He was told that he could expect returns, on a £5,000 investment, of £15,000 within two weeks and that there would be full legal and loss protection.

Believing everything to be genuine Mr and Mrs G made the following payments from their IF account. But unknown to them at the time, they were dealing with fraudsters and were sending money to accounts the fraudsters controlled;

16 February 2023	£5,000
16 February 2023	£10,000
22 February 2023	£10,000

They realised they had been scammed when the fraudsters started to ask for fees and the expected return wasn't received.

Mr and Mrs G raised a fraud claim with IF. It considered the claim under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and agreed to refund 50% of their loss, being £12,500. In summary, this was because it thought it could have done more to support Mr and Mrs G before they went ahead with the payments. But it also believed there were things Mr and Mrs G could have done to help stop the fraud. So, overall it thought it should share liability.

Unhappy that IF hadn't refunded them in full, Mr and Mrs G referred their complaint to this service. One of our Investigator's looked into things, but didn't think IF should refund the remaining loss. In summary, it was our Investigators view that there was enough going on that ought to have led to Mr and Mrs G having concerns and taking further steps before making the payments.

Mr and Mrs G didn't agree with our Investigator's view. In summary they said;

- The returns promised and the loss reimbursement scheme were believable.
- Significant care was taken when making the transactions and Mr G had conducted a significant amount of background checks.

- IF has already conceded that it could have done more and it didn't meet the relevant standards.
- Mr G was vulnerable at the time the payments were made, due to being stressed at work and having his mind on other things.

As agreement couldn't be reached the complaint 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.

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'm very 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. 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.

Mr and Mrs G have raised some complaint points in their arguments that relate to the receiving bank, which was not IF. At the outset, I should make it clear that this decision solely focuses on IF, in its capacity as the sending bank.

When thinking about what is fair and reasonable in this case, I've considered whether IF should have reimbursed Mr and Mrs G under the provisions of the CRM Code and whether it ought to have done more to protect Mr and Mrs G from the possibility of financial harm from fraud.

I'm persuaded that Mr and Mrs G have fallen victim to a scam. But this isn't enough for them to receive a full refund. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

*There are further exceptions within the CRM code, but these don't apply here.

I recognise that Mr and Mrs G have been the victim of a crime here. They have been deceived by a scam that led them to believe they were investing their money, in the belief that they would make large profits. They have been left out of pocket by a significant sum as a result of this scam.

Mr and Mrs G have said that IF didn't meet its standards. IF accepts it was at fault, at least in part, as it said it could have taken further steps to protect Mr and Mrs G. In consideration of this it refunded Mr and Mrs G 50% of the money lost.

But just because IF has acknowledged that it could have done more, it doesn't automatically follow that Mr and Mrs G are entitled to a full refund. The question for me to decide is whether Mr and Mrs G should fairly be expected to share some responsibility for what happened. I'm sorry to disappoint Mr and Mrs G, but having considered everything I don't find that Mr and Mrs G had a reasonable basis for believing that they were making payments towards a legitimate investment. I'll explain why.

Mr G has said he carried out searches for the investment company he believed he was dealing with, and found a professional looking and high-quality website. He's also said he saw positive reviews, received documentation on official headed paper and checked the FCA register and didn't find any indication that the company might be a scam. So, I do appreciate that there were elements of what was happening that may have looked genuine.

However, Mr G has said he was told he could expect a return of £15,000, from a £5,000 investment, within two weeks and without risk. Alongside this, Mr and Mrs G's son, who had also invested, was promised a return of ten times his investment. I'm mindful that Mr and Mrs G have argued that these levels of returns, alongside 'loss insurance' were believable, but I'm not persuaded they were. This level of return is extraordinarily high, to the point of simply being too good to be true and implausible – especially considering it was supposedly risk free. Mr G has told us he was an experienced investor, given this I think it reasonable to have expected Mr G to have concerns about the promises that were being made to him.

From looking at the evidence of the online chats Mr G had with the fraudsters, it appears that, before making any payments from the IF account, Mr G had already paid a substantial amount for 'fees', from accounts held with other payment providers. Mr G was also told at one point that the investment firm had expected him to pay fees of £300,000 – which was considerably more than the amount being invested. I think this ought to have given Mr G serious cause for concern.

Indeed, it seems Mr G did have his own doubts ahead of making these payments, but still went ahead. I say that as the online chats show that the day before the first payment was made from Mr and Mrs G's IF account, he questioned not receiving a refund he had been promised saying *"how do you expect us to trust anything that is being said when all commitments have been broken"*.

I might understand, when taken in isolation, how any one of these things may not have prevented Mr and Mrs G from proceeding. But when taken collectively I think there were sufficient unusual factors here that they ought to have acted far more cautiously than they did. I'm satisfied, therefore, that on balance Mr and Mrs G didn't have a reasonable basis for believing they were making a payment for a legitimate investment, so IF isn't required to provide them with a full refund under the CRM Code.

Mr G has shared some details of his circumstances and said that he was vulnerable at the time of the scam. I'm grateful for Mr G sharing this with us, I appreciate this may not have been an easy thing to do. He's explained the difficulties that he was facing at work and with his personal circumstances. I don't doubt how challenging a time this must have been for Mr G and I've thought carefully about his submissions on this matter. I've taken what he's said, but on balance, I'm not persuaded, when considering the particular circumstances of this case that Mr G wasn't able to protect himself against the scam. I say that as Mr G has told us that he wasn't an inexperienced investor and the evidence I've seen shows that he was engaged in conversation with the fraudsters and in control of his own finances, which

included him raising his own concerns. So overall, I've not seen any persuasive evidence that Mr G wasn't able to identify the risk.

Finally, I've considered whether IF did all it could to try and recover the money Mr and Mrs G lost once they had reported the scam to it. From the evidence I've seen, I'm satisfied IF did what it could to try and recover the money from the beneficiary bank (the bank to which the payments were made), but unfortunately it was unable to recover all of the money that had been paid. So I think IF has done what could reasonably have been expected of it to try to recover the money.

I don't intend any comments or findings I've made in this decision to downplay or diminish the impact this scam has had on Mr and Mrs G. I have a great deal of sympathy for them being the victims of what was clearly a cruel scam and I am sorry that they have lost money in this way. But in the circumstances, for the reasons explained, it wouldn't be fair or reasonable for me to order IF to refund Mr and Mrs G more than it has already paid.

My final decision

My final decision is that I don't uphold this complaint.

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 1 November 2024.

Stephen Wise
Ombudsman