

The complaint

Mr and Mrs I complain that the Royal Bank of Scotland PLC ('RBS') won't refund a payment they made after falling victim to a 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.

Having received a recommendation from a distant family friend, Mr and Mrs I received contacted from a company, further referred to as Company L, who were offering an investment opportunity. Company L offered to facilitate the use of Mr and Mrs I's funds for FX Trading.

In July 2019, Mr and Mrs I made a payment of £50,000 (plus a £20 fee) to Company L.

In 2023, a complaint was raised on behalf of Mr and Mrs I by their representative. They complained that RBS allowed Mr and Mrs I to transfer their funds to a fraudulent investment without any intervention and that they were vulnerable to such scams. To resolve the complaint, they requested RBS refund Mr and Mrs I's loss.

RBS investigated the matter but declined to reimburse Mr and Mrs I. They did so on the basis that they had no concerns about the payment in question at the time it was being made and, as such, didn't have any reason to intervene before allowing it to debit Mr and Mrs I's account.

Unhappy with this response, Mr and Mrs I's complaint was referred to our service.

In their submission to our service, RBS continued to decline Mr and Mrs I's complaint, further adding that they felt that they were not the victims of a scam and, rather, that this was a civil dispute between them and Company L.

An investigator looked into Mr and Mrs I's complaint but didn't uphold it. The investigator said that they didn't think there was sufficient evidence to demonstrate Mr and Mrs I had fallen victim to a scam and RBS weren't liable to refund them under the CRM Code.

Mr and Mrs I's representative disagreed with the investigator's findings, so 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.

RBS are a signatory of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of

authorised push payment (APP) scams. So, in order for the Code to apply, we first need to be satisfied that Mr and Mrs I were the victims of an APP scam.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *“another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

In order to determine that Mr and Mrs I’s payment meets the CRM Code’s definition of an APP scam, I need to be satisfied that the purpose the recipient had in mind was different to that of Mr and Mrs I, and that the recipient’s purpose was fraudulent.

As part of their submission, Mr and Mrs I’s representative has included a detailed document, referencing many businesses, in an attempt to demonstrate that Company L was involved in defrauding its customers. But, at no point in the submission, does any of this evidence relate directly to the actions of the directors of Company L with respect of Mr and Mrs I’s funds. Conversely, the evidence provided by Mr and Mrs I’s representative appears to demonstrate that their funds were sent from Company L to another third party, further referred to as Company Q.

Though Mr and Mrs I’s representative hasn’t supplied a contract or agreement between Mr and Mrs I and Company L, they have stated that the purpose of the payment was to allow Company L to invest their funds in FX Trading. Further to this, Mr and Mrs I’s representatives have also provided evidence of a contractual agreement between Company L and Company Q which references that funds would be used for FX Trading, and other such investments. This appears to demonstrate that Company L used, or at least attempted to use, Mr and Mrs I’s funds in the agreed manner.

So, when considering the CRM Code’s definition of an APP scam, I can’t see that Mr and Mrs I’s funds were used in a fraudulent way or in a manner which wasn’t agreed to. The evidence suggests that Company L sent Mr and Mrs I’s funds to Company Q in order them to be invested, which appears to be broadly in line with what Mr and Mrs I understood their funds would be used for.

Mr and Mrs I may not have been aware that Company L would send their funds onto Company Q, but this alone doesn’t mean that Mr and Mrs I’s payment meets the definition of an APP scam under per the CRM Code.

It may later transpire that Company L has defrauded Company Q. But, as Mr and Mrs I’s payment was made to Company L, and their funds appear to have been used in the manner agreed with Company L, this wouldn’t change matters to the extent that their payment would meet the CRM Code’s definition of an APP scam. This is because, in order for Mr and Mrs I’s payment to be covered by the CRM Code, we’d need to be satisfied that the company they paid had set out to deliberately deceive them and deprive them of their funds. In this case, Mr and Mrs I’s representatives have failed to demonstrate this.

RBS has confirmed that, though the payment in question was made over the phone, they’ve been unable to locate the call recording. That said, RSB also confirmed that the call was short and so it’s likely there was little to no discussion of scams at the time of the payment. But, as I’m not persuaded that Mr and Mrs I’s payment meets the definition of an APP scam, I can’t say that RBS should bear the responsibility for Mr and Mrs I’s loss despite likely not having a detailed discussion about scams at the time the payment was being made. For completeness, I would add that I think it’s unlikely that if RBS had asked the sort of questions I would’ve expected when Mr and Mrs I made the payment – it’s unlikely their loss would’ve been prevented. I say this because

Mr and Mrs I's representative has also argued that RBS should refund their customer on the basis that they should be considered vulnerable. Having reviewed the circumstances, Mr and Mrs I's representatives haven't sufficiently demonstrated that Mr and Mrs I should be considered vulnerable to this type of scam or unable to protect themselves to such scams. Also, as I'm not persuaded that Mr and Mrs I have been the victims of a scam, a finding in relation to their vulnerability to such scams wouldn't ultimately result in them receiving any recompense for their loss.

Overall, I'm not persuaded that Mr and Mrs I have fallen victim to a scam, based on the evidence available. Should any material new evidence come to light at a later date that would suggest that Mr and Mrs I were a victim of a scam then I would suggest they contact RBS to make them aware of any new evidence.

My final decision

My final decision is that I don't uphold this complaint against Royal Bank of Scotland PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I and Mrs I to accept or reject my decision before 7 March 2025.

Billy Wyatt
Ombudsman