DRN-4792047

The complaint

Mr H complains that Royal Bank of Scotland Plc (RBS) won't refund the money he lost when he was the victim of a scam.

What happened

Mr H came across an advert online about an opportunity to invest in a company which leased cars – I'll call this company B. He was told his investment would be used to buy a vehicle which would then be leased out, but that he would be granted security over the vehicle via a charge registered at Companies House. Mr H was told he'd receive regular returns on his investment, and then an exit payment (the remainder of the invested capital plus interest) when the vehicle was returned by the lessee. Mr H decided to invest and, in September 2020, he made two payments totalling £14,000 from his RBS account to fund the investment.

Mr H received the expected monthly returns until January 2021, but the payments then stopped. Mr H became concerned and so contacted RBS to report the payments he had made to B as a scam and asked it to refund the money he had lost.

RBS investigated but said Mr H had lost his money due to a failed investment, rather than as a result of a scam, so it declined to refund the money he had lost. Mr H wasn't satisfied with RBS' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the evidence showed there was a clear discrepancy between the payment purposes Mr H and B had in mind, so they felt this met the definition of a scam as per the Lending Standards Boards' Contingent Reimbursement Model Code (the Code). They also said they were satisfied Mr H had a reasonable basis for believing the investment was legitimate. So, they recommended RBS refund his losses in full, plus interest.

RBS disagreed, it has said it believes any decision regarding the outcome of Mr H's complaint should be paused under section R3(1) of the Code as it awaits guidance from UK Finance. So, as no agreement could be reached, the complaint has been passed to me.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

RBS is a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (the Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the Code where they have been the victim of a scam – as defined in the Code.

Can RBS delay making a decision under the Code?

The Code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the Code – it can't seek to delay a decision it's already made. And RBS had already reached a decision on Mr H's claim in is final response letter to him, when it said he made a legitimate payment and this didn't appear to be a true scam. So, I don't think RBS can now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into B and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website. RBS has since said that it considers it is still reasonable to pause any decision regarding this case while it awaits guidance from UK Finance.

But as the SFO has reached an outcome on its investigation, I don't think it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for more than two years – or to wait for any further guidance from UK Finance, which in any case is not a statutory body. And, as RBS is also aware, the Lending Standards Board has said that the Code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, I don't think it's fair for RBS to delay making a decision on whether to reimburse Mr H any further.

Has Mr H been the victim of a scam, as defined in the Code?

The Code defines an APP scam as a payment made "to another person for what they believed were legitimate purposes, but which were in fact fraudulent."

So, I need to consider whether the purpose Mr H intended for the payments he made was legitimate, whether the purposes he and B had in mind for the payments were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of B.

I'm satisfied Mr H made the payments here with the intention of investing with B. He thought his funds would be used to buy a vehicle which would then be leased out – by R, a company related to B and which was regulated by the Financial Conduct Authority (FCA) – and that he would receive regular returns on his investment. Nothing I've seen suggests to me that Mr H didn't think this arrangement was a legitimate investment.

But I think the evidence I've seen does suggest that B didn't intend to act in line with the purpose for the payments it had agreed with Mr H. Mr H had been told the vehicle he funded would be secured in his favour by way of a charge registered at Companies House. But the

FCA's supervisory notice to R – the connected company that would be leasing the vehicles - said that, while the various companies involved had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – suggesting that the vast majority of the vehicles funded weren't secured in the way Mr H was told his would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found many more discrepancies:

- more of these vehicles were second-hand than the stated business model suggested or would support,
- a number of leases started significantly before the vehicles were put on the road, and
- some vehicles were not found on the database at all.

The FCA also said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of R also said that the total number of known loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

I think the evidence shows the company was not carrying out key aspects of its agreement with investors on a large scale. There's also no evidence to show that any charge was specifically registered in Mr H's favour over any vehicle following his investment. So, a significant aspect of what he agreed with B does not appear to have been carried out.

The SFO has also made it clear that the former company directors are accused of providing those who invested with false information and encouraging people to invest whilst knowing that investments were not backed up by the cars they had been promised.

With all this in mind, I'm satisfied that the purpose that B intended for the payments Mr H made wasn't aligned with the purpose Mr H intended for those payments. And that the discrepancy in the alignment of the payment purposes between Mr H and B was the result of dishonest deception on the part of B. It follows that I consider the circumstances here do meet the definition of a scam as set out in the Code.

Is Mr H entitled to a refund under the Code?

RBS is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I'm satisfied Mr H fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the Code, a firm may choose not to reimburse a customer if it can establish that the customer ignored an effective warning in relation to the payment being made, or the customer made the payment without 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 Code, but these don't apply here. I have also seen no evidence that any effective warnings were shown to Mr H regarding the payments he made, so I don't consider he can be said to have ignored an effective warning.

And, from what I've seen, the information available at the time of Mr H's payment would also not have indicated to him that B was acting illegitimately. R, which carried out the leasing activity on B's behalf, was an FCA regulated company. The company literature that appears to have been available at the time appeared professional, as did the documents Mr H received. And B had been operating for several years at the time Mr H invested. So, I don't think there was anything about the investment that should have caused Mr H significant concern. I therefore consider that Mr H did have a reasonable basis for believing the investment was legitimate.

With this in mind, I don't think RBS has established that any of the exceptions to reimbursement under the Code apply here, and so it should refund the money Mr H lost in full.

Putting things right

As Mr H received a number of monthly interest payments back from B, I think it would be fair for these payments to be deducted from the amount RBS has to refund him.

I also don't think any reasonable action I would've expected RBS to take would have prevented Mr H making these payments, or enabled it to recover any of Mr H's funds once he told it of the scam. I say this as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payments would've brought the scam to light. I also don't think it was unreasonable for RBS to initially decline Mr H's claim, as it wasn't wholly clear from the evidence available at the time that this was a scam. RBS also could not have recovered Mr H's funds at the time the scam was reported given that B had already entered liquidation by that stage.

But I do think RBS should have responded to Mr H's claim and refunded his losses under the Code within 15 days of the SFO publishing the outcome of its investigation. And so I think RBS should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

As B is now under the control of administrators, it's possible Mr H may recover some further funds in the future. So, if RBS chooses to, it could reasonably ask Mr H to complete an indemnity confirming he'll return any funds recovered in future to RBS. But this will be for RBS to decide, and if it chooses to take this step it should correspond about this with Mr H directly, separate to this complaint, at the appropriate time.

To resolve this complaint RBS should now:

- Refund to Mr H the payments he made as a result of this scam, less any returns he received from B and its related companies

- Pay Mr H 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

My final decision

I uphold this complaint, Royal Bank of Scotland Plc should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 22 August 2024.

Sophie Mitchell
Ombudsman