

The complaint

Mrs L complains that Bank of Scotland plc did not refund the £100,000 she says she lost to a scam.

What happened

Mrs L's husband, the late Mr L, was looking to invest and was introduced to a company I'll call 'HS' for the purpose of this decision. HS had several different building projects they were providing investments for in the form of loan notes. Mr L agreed to take out a two-year loan note for a specific building project and he received a loan agreement. He decided to invest £100,000 and made a transfer from his joint Bank of Scotland account with Mrs L for the amount on 19 December 2019.

No returns were made on the investment in the term and HS extended the period before returns were paid by six months, despite this Mr L still did not receive returns. Eventually, HS went into administration in December 2021.

Mrs L felt the late Mr L had been the victim of an investment scam and that HS set out to defraud him. She raised a scam claim with Bank of Scotland who issued a final response letter in which they explained HS appeared to be a genuine company who had entered into financial difficulties. So, they felt it was more likely this was a failed investment rather than a scam, and they didn't agree to reimburse Mrs L. As a result, the complaint was referred to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they agreed it was more likely a civil dispute between Mrs L and HS. On balance, they did not think the evidence showed HS never intended to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed, so they didn't agree Bank of Scotland needed to refund Mrs L.

Mrs L's representative disagreed with the findings. As an informal agreement could not 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.

Mr L has sadly passed away since the investment was made. As the joint account that the investment was made from is now in the sole name of Mrs L, I will mostly refer to her throughout this decision even when the late Mr L carried out the action.

It isn't in dispute that the payments in question were authorised. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that Mrs L is liable for the transactions. But she says that she has been the victim of an authorised push payment (APP) scam.

Bank of Scotland has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

I've therefore considered whether the payment Mrs L made to HS falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Mrs L has been the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes her and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Mrs L was intending for the funds to be invested in a specific building project. She then expected to receive returns on the maturity of the investment of 15%. The paperwork received prior to investing appeared to be professional and detailed, and I can see HS was on Companies House and had been incorporated since 2011. So, I see no reason why Mrs L would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Mrs L intended as set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Mrs L's representatives have said HS paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely to be possible. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HS set out to defraud investors of their funds, with no intention to invest the funds into building projects. On balance, I don't think there is a correlation between the level of commission and Mrs L being a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

On balance, I think HS's intended purpose for the funds aligned with Mrs L's and nothing I

have seen indicates to me that HS intended to defraud her. Instead, I think it's more likely this was a failed investment, So I don't think it meets the definition of an APP scam. And I think Bank of Scotland acted reasonably when it treated the case as a civil dispute.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Mrs L can complain to Bank of Scotland again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I do not uphold Mrs L's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 13 December 2024.

Rebecca Norris
Ombudsman