

## **The complaint**

Mr M complains that The Royal Bank of Scotland Plc ('RBS') won't refund payments he 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.

Mr M met a third party, S, while on holiday. This person explained that they were the director of a company, L, that would IPO (Initial Public Offering) soon. S offered Mr M the opportunity to buy shares in the company before the IPO, meaning he would stand to make a significant profit once the company had gone public.

Mr M was invited to S's property on numerous occasions, shown proposals, company documents and projections regarding their future operations. Mr M also reviewed the company website, which he found to be very professional. Mr M agreed to purchase shares in L.

Mr M made payments in order to purchase the shares to S, totalling £50,000, from his RBS account between 03 August and 08 September 2021.

In 2023, after numerous delays in the IPO date, Mr M raised a scam claim with RBS – through a professional representative. Mr M felt that he'd been scammed given the delays in the company going public. He also felt that the fact he'd made payments after the company had receiving a winding up order demonstrated that the company wasn't legitimate.

RBS declined Mr M's complaint on the basis that they provided appropriate warnings prior to the payments and that the payments were not unusual enough to have warranted additional intervention at the time they were being made. Overall, they felt they'd acted in accordance with their legal and regulatory obligations.

An investigator looked into Mr M's complaint but didn't uphold it. The investigator said that they didn't think there was sufficient evidence to demonstrate Mr M had fallen victim to a scam and RBS weren't liable to refund him.

Mr M disagreed with the investigator's findings as he still believed that the payments formed part of a scam. They also supplied additional evidence and arguments, including the following:

- Mr M paid a personal account as opposed to a business account, which wouldn't have happened if the business was legitimate.
- L had a notice to strike off filed on Companies House in 2019.
- L's website contains numerous lies and discrepancies, including the company addresses.
- S has an outstanding CCJ against them.

- L wasn't showing as public at the time of the payments – so if RBS had intervened appropriately they would've identified this and would've been concerned Mr M was falling victim to a scam.

As the complaint couldn't be resolved by the investigator it 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 M and his representative have provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr M's complaint. This is not meant to be a discourtesy to Mr M and I want to assure him I have considered everything they've submitted carefully.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank such as RBS is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

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 M was a victim 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 M's payments meet 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 M, and that the recipient's purpose was fraudulent.

In this case, Mr M made payments to purchase shares in L. Having reviewed Companies House, I can see that Mr M's shares are registered on L's confirmation statement. Mr M has also supplied our service with copies of the share certificates he received following the payments.

Information available online also shows that, as was explained to Mr M when he questioned S, his shares had been transferred over to one of the linked companies S owned.

This information demonstrates that Mr M did receive what he paid for (the shares). As that's the case, I'm satisfied that the purpose both parties had in mind was the same.

I accept that there may be some discrepancies in the information Mr M received regarding the IPO date and also some misinformation with regards to the performance of the company. Though this may be the case, the evidence supplied by Mr M and his representatives doesn't sufficiently show that S set out to deliberately defraud him at the time of the payments.

Mr M and his representatives argue that an outstanding CCJ filed against S demonstrates his fraudulent behaviour. The information supplied to our service doesn't show why the CCJ was filed against S. Without knowing this, I can't say that it has any links to S's actions as the director of L.

I've also considered whether the notice to strike off is persuasive evidence that S was acting fraudulently. Information on Companies House shows that the notice to strike off filed in 2019 was discontinued the next day. I, therefore, don't find this persuasive evidence that S was operating L fraudulently.

Taking all the above into account, I'm not persuaded based on the available evidence that S deliberately set out to defraud Mr M of his funds – or took the funds with a different purpose in mind. Ultimately, there could be many reasons as to why the companies owned by S haven't gone out to IPO, but the evidence supplied to me by Mr M and his representative doesn't satisfy me that S's intention at the time of the payments was to defraud Mr M. As that's the case, I don't believe that RBS are liable to refund Mr M under the CRM Code as I don't find that he has been the victim of an APP scam.

Further to this, I can see that a discussion took place between Mr M and an RBS member of staff when he attended branch to make the first payment. From reviewing their notes, I'm satisfied that the RBS member of staff asked appropriate questions of Mr M and there was no information given to them which meant they acted unreasonably in following Mr M's payment instruction.

Following that, I don't believe that any additional intervention from RBS on any of the other payments made would've led them to having any cause for concern that the payments were being made as part of a scam.

Overall, I'm not persuaded that Mr M has 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 M was the victim of a scam then I would suggest he contacts RBS to make them aware of any new evidence.

### **My final decision**

My final decision is that 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 M to accept or reject my decision before 17 April 2025.

Billy Wyatt  
**Ombudsman**