

## **The complaint**

Mr and Mrs P complain that The Royal Bank of Scotland Plc (RBS) didn't do enough to protect them when they made payments to a property investment opportunity that they now consider was a scam.

## **What happened**

Mr and Mrs P made payments between June 2020 and February 2021 from their RBS account towards a property development investment with 'H'. Mr and Mrs P say they received no returns and report losing £229,475. H went into administration in January 2022. They now say the investment wasn't genuine and that they are the victims of a sophisticated scam.

Mr and Mrs P complained to RBS in November 2023, but it didn't uphold their complaint. It said that no bank error was made in processing the payments. And it said it treated this as a failed income and not a scam.

Mr and Mrs P were unhappy with RBS's response and brought a complaint to this service. Our Investigator didn't uphold their complaint as they said they hadn't seen sufficient evidence this was a scam.

Mr and Mrs P disagreed and maintain that their complaint should be upheld. They say that RBS failed to comply with PAS 17271:2017 (the PAS Code) and FCA Principle 6. They've said RBS should've asked to see correspondence with H and they've raised the delay in H filing accounts. Mr and Mrs P have explained why they think H was operating a scam and a Ponzi scheme. In particular, Mr and Mrs P have referred to high commissions of as much as 35% paid to introducers and to high rates of returns offered. And they say Administrators for H haven't offered any conclusions on the inter group transactions that are being investigated and certainly haven't concluded there was nothing irregular going on. So, Mr and Mrs P confirmed they wanted an Ombudsman to reconsider their case.

## **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 business is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as RBS shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer 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 consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which RBS has signed up to. In this case Mr and Mrs P made all their payments toward the investment with H after the CRM Code came into force. As their representatives argue they were scammed by H, I've considered whether this Code applies and so if they are due reimbursement.

The CRM code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mr and Mrs P transferred funds to another person for what they believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mr and Mrs P have been the victim of a scam in line with this required definition. This means the CRM code doesn't apply to their payments and so RBS isn't required to reimburse them under it.

Our Investigator covered in detail why they considered the payment purpose Mr and Mrs P had in mind, and the purpose in which the recipient had matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mr and Mrs P's purpose for making the payments was to invest in H and for the funds to be used towards property development. And that they were persuaded at the time, through the paperwork, this was a legitimate venture. I accept that H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mr and Mrs P's funds in a different way to what was agreed. I haven't seen persuasive evidence that H's intention was to defraud Mr and Mrs P when it took their funds.

Mr and Mrs P's representative has provided additional paperwork from several sources that it says evidences H was operating a scam. But as our Service has explained to it on a number of cases already, while the information provided does indicate there may have been some poor business practices and/or financial management in some areas of H, this isn't enough to say H was operating a scam. We haven't seen evidence that Mr and Mrs P's funds weren't used for the intended purpose or that H took them with fraudulent intent.

Ultimately, the information we currently hold suggests that H was a failed investment venture, not a scam. The information provided doesn't evidence H had fraudulent intent when it took Mr and Mrs P's funds, as required under the definitions within the CRM code. So I can't agree RBS was wrong to consider Mr and Mrs P's situation a civil matter.

This also means I'm unable to ask RBS to reimburse Mr and Mrs P on the basis that they were vulnerable at the time the payments were made, as their representative has alleged. When the CRM Code applies a customer can be reimbursed if they are vulnerable even when an exception to reimbursement applies. But as that's not the case here and the CRM code doesn't apply, I won't be asking RBS to reimburse Mr and Mrs P.

With all the above in mind, I can't say RBS is wrong not to have reimbursed Mr and Mrs P under the CRM code at this time, or to not consider a refund more generally within the expectations on a firm to act to protect customers who may be at risk from financial harm from fraud. Given I've concluded that the payments Mr and Mrs P authorised weren't fraudulent, RBS's duty was not triggered here.

I appreciate Mr and Mrs P are now in a position where they've lost out financially due to this investment. But I don't consider their loss is the result of any failings by RBS.

**My final decision**

For the reasons set out above, I don't uphold Mr and Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 30 May 2025.

Amy Osborne  
**Ombudsman**