

The complaint

Mr H is unhappy Bank of Scotland plc (“BoS”) won’t refund payments he made as part of a scam.

Mr H brings his complaint via professional representatives, but for simplicity I’ve referred to the actions of Mr H throughout this decision.

What happened

Mr H received a call out of the blue from someone offering the opportunity to invest in a construction company, I’ll call G, that was building luxury accommodation. He was promised a fixed rate of return of 12% annually for seven years, and shown professional looking literature detailing the opportunity. So Mr H decided to invest – and between August 2019 and November 2020 he sent £200,000 across five payments to G from his BoS account.

After the first year Mr H received a £6,000 payment from G. But after sending the final payment, Mr H heard that G had run into financial difficulties. He didn’t receive any further returns, and says he assumed the investment had failed. But after speaking to his solicitors he came to realise he might have been scammed.

A complaint was raised with BoS, which argued the payments should be refunded under the Contingent Reimbursement Model (CRM) – a voluntary scheme providing refunds for fraud in certain scenarios. Mr H was also unhappy that BoS hadn’t questioned him over the transfers, which were large and out of character for his account. BoS’s final response declined to refund the money, as it thought the payments were made to a genuine company that had unfortunately gone into administration. As it believed the dispute was a civil matter between Mr H and G, and therefore not covered by the CRM, BoS didn’t think it was liable to cover the loss.

Mr H didn’t agree with the outcome and so referred the complaint to our service for review. One of our investigators considered everything and didn’t think the complaint should be upheld. In her view, the evidence supported that G was likely a genuine construction company – particularly given the number of development projects it had completed. The investigator thought that showed the funds were intended to be used for the stated investment. She acknowledged some of the factors that caused Mr H concern about their legitimacy, like the involvement of unregulated introducers promoting unlikely returns, and not filing its annual accounts. But, overall, the investigator didn’t think those elements meant G was definitely a scam – and she could also find nothing to support that conclusion from G’s liquidator. She added that if evidence it was a scam later came to light, then Mr H could put that to BoS for its consideration.

Mr H didn’t accept the investigator’s opinion, and asked for the complaint to be reviewed by an ombudsman. So the matter was passed to me to decide.

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.

Having done so, I'm not upholding the complaint, for broadly the same reasons as given by the investigator. I appreciate that will come as a great disappointment to Mr H, who has sadly lost a lot of money. I have a great deal of sympathy for what he's been put through. But, on balance, I can't fairly say BoS should refund the loss. That's because I'm not persuaded the payments were lost to a scam, and I've explained why below.

There's been a longstanding regulatory expectation on firms to monitor for signs of fraud, and to act where there are clear indications a customer might be at risk. A failure to intervene appropriately, or reasonably attempt to recover fraudulent payments, can mean a firm is liable for some or all of the loss. In addition, some firms (including BoS) had signed up to the voluntary code I've mentioned in the background (the CRM code) by this point, which created additional obligations.

Refunds under both the regulatory expectations and the CRM code are predicated on the disputed transactions having been lost to a scam. The bank wouldn't be responsible for losses arising from, say, civil disputes or failed investments. The transactions being disputed in this case were 'authorised' by Mr H, in the sense that he made them. But I need to decide whether he was likely tricked into sending this money to a scam – or if G was a failed investment.

The definition given in the CRM Code of an Authorised Push Payment (APP) scam says the payment needs to be made to: *"another person for what they believed were legitimate purposes, but which were in fact fraudulent"*. So I need to be satisfied that G set out to dishonestly deceive Mr H, and didn't intend to use the funds for the purpose of the investment when the payments were made. Though I can understand why Mr H has concerns about aspects of G's business practices – on balance, I haven't been persuaded that it set out to defraud him. Instead I've found the available evidence supports that G more likely intended to act in line with the agreement on which the transfers were made (both Mr H and G's purposes for the payments aligned). Mr H believed the payments were for a legitimate property investment, so I've considered the evidence for whether that was what G had in mind for the money.

G completed three of the promised developments around the country, which were large scale projects requiring huge amounts of planning and oversight. I appreciate G may have still owed some contractors money for work done on those. But coordinating and completing projects that large strongly suggests it was operating as a genuine company and wasn't a scam. It also had other projects it was working on but eventually sold to other developers after coming into financial difficulty. I think that supports the view that the intention was likely to use the money towards the investment. The liquidator is understandably still investigating the large number of transactions connected to G's operations, with the various subsidiaries involved making that a difficult task. But so far the liquidator hasn't provided any evidence this was a scam.

Mr H has pointed to the involvement of unregulated introducers being paid high commission as evidence for G being a scam – as that meant the promised rates of return were unlikely. Whilst that could be seen as questionable business practices, I don't think that means G wasn't intending to invest the money into development projects. I think the work completed and started shows it was attempting to make a profit to provide the returns to investors (some of which was paid).

Another point raised is that G hadn't filed accounts for a while, meaning its finances weren't audited for that time. I can appreciate why Mr H believe that indicates G had something to hide. While that might suggest financial mismanagement, I don't find it to be conclusive

evidence that G intended to scam investors. In the period concerned, when the accounts weren't filed, G was completing property developments and attempting to deliver on others. So I don't think the potential mismanagement of the accounts is strong enough evidence for me to conclude that G was never intending to use Mr H's funds towards the promised projects.

I've thought about whether fraud checks at the time the transfers were made would have prevented the loss – and I don't think they would have. Mr H was convinced the investment was legitimate, and he had carried out his own diligence on the opportunity prior to investing. There were lots of indications G was operating as a genuine company (and I've concluded that was probably the case), with projects completed by the time the later payments were sent. So I think it's likely Mr H's answers during any checks would have reassured BoS, to the extent of its responsibility, he wasn't at risk. I acknowledge what Mr H has said about returns being sold to him as 'guaranteed' – but he was also aware the investment was high risk and unregulated from the paperwork. So I don't think proportionate questioning or any warnings from BoS would have highlighted any risks he hadn't already considered, or deterred him from making these payments.

I have every sympathy for Mr H and the other investors who lost money as part of this scheme. But I've not seen enough evidence the funds obtained weren't used towards the purpose of property development, or that G set out to scam Mr H. So I don't find that the transactions he's complained about are covered for a refund under the CRM code. I'm also not persuaded, for the reasons given, that fraud interventions at the time would have produced a different result.

My final decision

My final decision is I don't uphold Mr H's complaint about Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 July 2025.

Ryan Miles
Ombudsman