

## The complaint

Mr A complains that the Royal Bank of Scotland Plc (RBS) didn't protect him from an investment scam.

Mr A is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr A in this decision.

## What happened

Mr A says that in 2018 a friend introduced him to an investment in forex trading with a company (which I'll refer to here as 'H'). Mr A says his friend (who he says wasn't a financial advisor) had known an individual linked to 'H' for several years.

Mr A says he carried out online checks into 'H' and found nothing negative. And he visited 'H's offices to discuss the investment in more detail. Mr A says he had no reason to believe the investment wasn't genuine.

Mr A says 'H' promised returns on the investment of 5% per month. He completed an application form and was provided with a loan agreement dated 10 August 2018.

Mr A made the following online international transfer payment to fund the investment:

Date	Amount
30/8/2018	£50,000 (plus a £20 fee)

Mr A says the payment wasn't flagged by RBS and that it provided no warnings to him before it was processed.

Mr A received monthly returns on his investment totalling £17,500. The return payments came from another company linked to 'H' (which I'll refer to as 'P'). Mr A's outstanding loss is therefore £32,520 (including the payment fee).

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mr A has since tried to recover his funds by way of the liquidator, but this has been without success.

On 17 November 2023 Mr A made a complaint to RBS. In short, he said he'd been the victim of scam and that RBS hadn't done enough to protect him. Mr A therefore held RBS responsible for his loss. He wanted it to refund him the £50,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

RBS replied to say it had done nothing wrong. Essentially, it said no banking error had been made and it had been Mr A's choice to invest in a high-risk investment; and that he was therefore responsible for any resulting loss. RBS said this was a civil dispute – not a scam.

Mr A referred his complaint to the Financial Ombudsman. In summary, he said if RBS had warned him about the risks associated with unregulated investments, his loss would've been prevented.

One of our Investigators considered the complaint but didn't uphold it. Essentially, she said RBS should've flagged the £50,000 as suspicious and questioned Mr A about it. But she didn't think this would've prevented Mr A's loss. Our Investigator also thought RBS had no reasonable prospect of recovering the lost funds.

Mr A didn't agree and so the case has been passed to me to make 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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer Mr A was hoping for and so this will come as a disappointment. I'm really sorry to hear that he's been the victim of a scam, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether RBS can fairly and reasonably be held responsible for Mr A's loss. Overall, I've decided that it can't be. I'll explain why.

I would like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether RBS could've prevented Mr A's loss.

Following a court hearing in July 2020, it's now accepted that Mr A has likely been the victim of a scam. But the £50,000 transaction he made was an authorised payment, so Mr A is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as RBS, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether RBS ought reasonably to have held such suspicions or concerns in relation to Mr A's £50,000 payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if RBS acted fairly and reasonably in its dealings with Mr A when he made the £50,000 payment. Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if RBS could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by RBS prior to processing Mr A's payment instruction. This was a significantly larger than usual payment for Mr A's account, and one being made to a new payee.

But for me to find it fair and reasonable that RBS should refund the payment to Mr A requires more than a finding that RBS ought to have intervened.

I would need to find not only that RBS failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always prevent a payment being made. And if I find it more likely than not that such a proportionate intervention by RBS wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by RBS at the relevant time would've looked like, and then what I think the result of such an intervention would most likely have been.

To reiterate, RBS's primary obligation was to carry out Mr A's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, RBS didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment RBS was recommending or even endorsing.

RBS's role here was to make the payment that Mr A had told it to make. Mr A had already decided on that investment. And I find that RBS couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr A's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr A (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of RBS in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for RBS, as a matter of good industry practice, to have taken steps to establish more information about this payment when it spoke to Mr A. What matters here is what those steps might be expected to have uncovered at the time.

While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what RBS could reasonably have established during a proportionate enquiry to Mr A about his payment back in August 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr A has provided about 'H' and 'P', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included the court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either RBS or Mr A at the time the £50,000 payment was made.

I think it's also likely Mr A would've told RBS that he had documents from 'P' confirming the terms of the investment, together with a loan agreement which all appeared entirely genuine. And that Mr A's friend had provided him with a clear and detailed overview of the investment opportunity several months prior to him making the payment, which included an endorsement of 'H' as well as information about a capital protection guarantee scheme. This would've likely further reassured Mr A that his money was protected.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payment was made by Mr A.

I've thought next about how Mr A found out about the investment. Mr A says he was introduced to it by a friend who wasn't a financial advisor – but knew one of the individuals linked to 'H'.

Had RBS asked Mr A who'd advised him about the investment, then the involvement of his friend would've unlikely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as was the case here.

So, the regulatory status of the investment and how Mr A was introduced to it weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr A asked RBS to make the payment.

Further to that, I've not seen any evidence to suggest Mr A ever doubted the advice he was being given by his friend. Nor did he see anything to question his friend's advice when checking the legitimacy of 'H' online.

In addition, in an email Mr A's friend sent to him in June 2018, his friend is clearly endorsing 'H' and provides detailed information about how the investment works, the individuals involved, and their respective investment experience. It also explains that the service received from 'H' over the last three years has been '*faultless*'.

Given this communication, I don't think, on balance, that any advice or warning from RBS about 'H' or 'P', or about unregulated investments more generally, would've likely resonated with Mr A. And in my opinion, any concerns Mr A did have would've been allayed by his friend.

All things considered; I don't think it would've been readily apparent in August 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think RBS could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' or 'P' at that point in time. Neither do I think Mr A could've uncovered such information at the time – he was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by RBS to have been proportionate to the perceived level of risk of 'H' or 'P' being fraudulent. I don't think that a proportionate enquiry in August 2018 would've led to either RBS or Mr A considering 'H' or 'P' to be anything other than legitimate. With that in mind, and all things considered, I'm not persuaded that RBS was at fault for carrying out the relevant payment instruction, or for not preventing Mr A from making his payment.

In terms of trying to recover the lost funds; I'd expect RBS to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr A contacted RBS. Furthermore, both 'H' and 'P' had gone into liquidation by this point.

Therefore, I can't say RBS had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than four years before.

I have a great deal of sympathy for Mr A and the loss he's suffered. But it would only be fair for me to direct RBS to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision **before 10 December 2024**.

Anna Jackson  
**Ombudsman**