

The complaint

Mrs W says that she fell victim to a scam. She wants The Royal Bank of Scotland Plc to refund the money that she sent to one of its account holders.

Mrs W has also complained to her own bank which sent the payments. I have considered that complaint separately. This decision considers her complaint about RBS only.

Mrs W has made her complaint with the help of a professional representative. For ease of reading, I'll mostly refer to Mrs W throughout my decision. I intend no discourtesy by taking this approach.

What happened

The detailed background to this complaint is well known to both parties, so I'll provide an overview of some of the key events. Mrs W explains that she was told about an investment opportunity by a friend who referred her to a director of a wealth management company. Between 2017 and 2021, Mrs W followed the director's instructions and made a number of investments totalling £345,000. Between 2017 and 2023 Mrs W received some of her initial investments back, along with some interest payments. When these amounts are taken into account, Mrs W has received just over £47,000 less than she'd invested overall back. At the time Mrs W believed she was making the payments towards investments, but now she believes the director was operating a fraudulent ponzi scheme, paying returns from capital derived from new investors rather than from legitimate investment profits.

Mrs W made payments from her current account held with a different bank to two accounts the wealth management company held at RBS. She says she didn't receive these amounts back and didn't receive the returns that she was promised.

Mrs W complained that RBS had failed to protect her from fraud. She said RBS had failed to properly verify its account holder, allowing a fraudster to be onboarded who then scammed her. She said the conduct of the accounts would have been concerning and that RBS failed to prevent a fraudster from sending huge sums of fraudulently obtained money.

RBS investigated but said it was unable to agree there had been any bank error. It said Mrs W should contact her own bank to raise a claim. Mrs W contacted our service. Our Investigator didn't think we could consider all of Mrs W's complaint, and for what she could consider, she didn't recommend the complaint should be upheld.

Our Investigator highlighted that complaints about receiving banks and any acts or omissions came into our jurisdiction from 31 January 2019. As the bank accounts that received Mrs M's money were opened before that date, she was unable to investigate whether there had been any failings by RBS when it opened the accounts.

In relation to the parts that she could consider, she explained that she didn't have sufficient evidence to conclude Mrs W had fallen victim to a scam. She said she wasn't as sure as she needed to be that the wealth management company set out with an intent to defraud Mrs W, or that the company didn't invest Mrs W's money in the way that it said it was going to. As

she was not persuaded there had been a fraud or scam, she concluded there was no basis for RBS to have intervened in the operation of the recipient accounts or to have prevented Mrs W's funds from leaving them.

Mrs W disagreed and asked for the matter to be referred to an Ombudsman. She said she couldn't see how the bank had acted appropriately given the facts of the scam, highlighting the concerning nature of the transactions that she suspected were flowing into the accounts. As no agreement could be reached, Mrs W's complaint has been referred to me.

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.

Both Mrs W's bank and RBS are signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code). The CRM Code was implemented to reduce the occurrence of Authorised Push Payment (APP) scams. It sets out what is expected of the 'Sending Firm' when payments are made, and it also sets out the obligations for the 'Receiving Firm'. In summary, the obligations for the receiving firm state that firms should:

- Take reasonable steps to prevent accounts from being used to launder the proceeds of Authorised Push Payment (APP) scams.
- Have procedures to prevent, detect and respond to the receipt of funds from APP scams; and
- Where the receiving firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

Where there is a failing by either the Sending Firm or Receiving Firm, they may be required to reimburse the customer, and the customer may also be required to share some responsibility for the loss if it is determined that they also failed to meet their level of care under the CRM Code. The CRM Code provides additional protection for victims of APP scams, but it is not applicable to civil disputes.

With this in mind, I have considered RBS's obligations here. Our Investigator said there was not enough evidence to show that the director took Mrs W's funds with the intention of defrauding her, so they thought it was more likely this is a civil dispute. Mrs W has provided what detail she can, but she has very little evidence of what was agreed as part of each investment. Mrs W hasn't provided any paperwork to show exactly what was agreed in relation to the money that was paid into the RBS accounts, and the messages Mrs W has provided focus on the logistics of how Mrs W was going to make the payments, not the specifics of what each payment was for. The loan note that I've seen states what returns Mrs W should receive, but it does not indicate where or how Mrs W's money should be utilised. Therefore, in essence, there is no concrete information I can refer to when concluding that the actions the wealth management company took with Mrs W's money *didn't* align with what was agreed.

Taking everything into consideration, I don't find the evidence here sufficient for me to conclude this was most likely an APP scam.

This means the CRM code isn't a relevant consideration for this particular complaint because it does not apply to civil disputes, as I consider this situation to be. This means the CRM Code can't be used as a basis upon which to tell RBS it needs to do more.

Even if I were to accept that the situation was a scam, it still wouldn't automatically entitle Mrs W to reimbursement from RBS. In circumstances such as these, where RBS (in relation to the matter being complained about) do not have a contractual relationship with Mrs W, it wouldn't be fair to ask that it reimburse her losses unless it could fairly and reasonably be concluded that RBS's act(s) and/or omission(s) would've made a material difference and were causal to, all or part of the losses.

Whilst Data Protection reasons mean I can't share any information about the RBS accounts with Mrs W, I've not seen anything that makes me think RBS should have had any concerns prior to Mrs W making payments to these accounts. I have reviewed the bank statements for both accounts that received Mrs W's funds from the relevant period of time, and the accounts appeared to be operating in line with what RBS could have reasonably expected from a wealth management company.

I'm also mindful that it wasn't until 2023 (several years after the payments were made) that Mrs W informed RBS that she believed the payments she'd sent to one of its customer's accounts were made as a result of an alleged scam. I'm satisfied that at that point there wasn't much more that RBS could reasonably have done to assist in the recovery of Mrs W's funds from a recipient account.

I'm sorry to hear of the situation in which Mrs W finds herself in. Over £47,000 is a lot of money for anyone to lose, as well as the loss of opportunity to grow her capital to provide security for her future. But taking everything into consideration, I don't find the evidence here sufficient for me to conclude this was more likely than not an Authorised Push Payment scam, nor does the evidence persuade me it is more likely than not that RBS failed to act upon something that would have resulted in the discovery of a scam or fraudulent intent.

If in the future, new material evidence comes to light which establishes this was an APP fraud, then Mrs W can ask RBS to reconsider at that point. But as things stand, I don't think it's fair and reasonable to require RBS to refund Mrs W.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 March 2025.

Claire Marsh
Ombudsman