

## **The complaint**

Ms K and Mr N complain that The Royal Bank of Scotland Plc (RBS) has not refunded the money they lost to what they believe was a scam.

Ms K and Mr N are represented in this complaint by a solicitor, but for simplicity I have referred to Ms K and Mr N throughout this decision, even when referencing what their representatives have said on their behalf.

## **What happened**

In around 2017 Ms K met an individual I will call L, over the next few years she developed a friendship with L. Ms K and L spent time together in person and spoke regularly, sharing details of personal challenges they were each experiencing. Ms K says that L became aware of an inheritance that had been left to Mr N, and that around this time L began to speak about financial challenges she was facing.

In around September 2021, after L said that she was due to be evicted, Ms K suggested that she invest in L's business – a limited company which I will call D. In October 2021 Ms K invested £20,000 in D, with an agreement that she would receive returns at various milestones based on D's growth. Ms K was subsequently made a director of D.

Over the next year Ms K made various other payments to D. These were for various purposes, including paying business expenses and paying off an ex-employee. Ultimately, Ms K says she was persuaded to convert her investment into a director's loan, and an agreement was drafted regarding this loan. During this period payments were also made to D for coaching for Mr N, and for Ms K and Mr N's son.

Ms K did not receive any return on her investment, nor did she receive any repayments for the director's loan. When she asked L to return her funds the relationship with L broke down, despite attempts to arrange mediation. Ms K now believes that L deliberately manipulated her, Mr N and their son in order to extract money from them, so she asked RBS to refund her loss as she believes she and Mr N have been the victims of a scam.

RBS looked into what had happened, but did not feel it was liable for any of Ms K and Mr N's loss. It said this was a civil dispute between Ms K, Mr N and L.

Unhappy with RBS' response, Ms K and Mr N brought their complaint to this service and one of our Investigators looked into things. But having thought carefully about the evidence available, they thought that this was most likely a civil dispute between the parties involved, meaning that Ms K and Mr N would not be entitled to a refund of the loss.

Ms K and Mr N disagreed with the Investigator's findings. So, as no agreement could be reached, this complaint has been passed to me for review.

## **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 and having thought very carefully about all the evidence provided, I agree with the findings set out by our Investigator. I do appreciate how disappointing this will be for Ms K and Mr N but, whilst I'm sorry to hear of what's happened, and appreciate the significant impact this has had on them, I don't think I can fairly hold RBS liable for their loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I understand that Ms K and Mr N feel they have been the victims of fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which RBS has signed up to and which was in force at the time the relevant payments were made. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether RBS therefore ought to reimburse Ms K and Mr N under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

*“...a transfer of funds...where (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The CRM Code is also quite explicit that it doesn't apply to all push payments. It says:

*“DS2(2) This code does not apply to:*

*(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.”*

Fraudulent isn't defined in the CRM Code, but as the CRM Code specifically excludes civil disputes, I think I need to consider, as a first step, whether this was a scam (where a scammer takes money from a customer for no legitimate purpose) or a civil dispute (where a payment is made to a legitimate trading company or business, but there is some dispute about the goods or services that should have been supplied).

If this was a scam, or fraud – then banks (including RBS) must follow industry and regulatory guidance, including the CRM Code, to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. But where payments are made to a legitimate business for a legitimate reason, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Having thought very carefully about all that Ms K and Mr N have said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say

with any certainty, based on what I know and what the evidence shows, that L (or D) set out with an intent to defraud Ms K and Mr N.

I say this for the following reasons:

- D appears to have been a legitimate business, which had been operating for several years, and which was registered on Companies House.
- Ms K knew L very well, having been friends with her for many years, and it was Ms K's own suggestion to invest in D.
- It is clear that some of the payments Ms K and Mr N made were for specific expenses, such as the payments which related to the ex-employee and payments for coaching sessions, some of which evidently did take place, so it is difficult to argue that these payments were not made for any legitimate purpose.
- Ms K was a registered director of D during the period when many of the payments were made to D.
- While I can't share exactly what I have seen, D's account statements do suggest it was carrying out transactions that one might expect from its stated business.
- D's bank has told us it had received no other scam claims against D and that it has no fraud concerns about how D's account operated.
- The records of Ms K and Mr N's correspondence with L do suggest there may be reasons other than a scam for why the relationship broke down.

All of this leads me to consider that D was more than likely operating as a legitimate business. I acknowledge that Ms K ultimately did not receive what she was expecting following her investment, and that she was then removed as director of D by L, but there are many reasons, other than fraud, why this may have happened. A business, and its agents, may act unprofessionally but still be carrying out legitimate business, or it may get into financial trouble and be unable to meet its obligations. And this service isn't in a position to forensically analyse D or L's actions here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that L (or D) set out to defraud Ms K and Mr N.

I know this will be a huge disappointment to Ms K and Mr N. I appreciate how strongly they feel about this case, and that they have lost a significant amount of money here. And I'm in no way saying that they don't have a legitimate grievance against L (or against D). But, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold RBS responsible for the money they've lost.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Ms K to accept or reject my decision before 12 June 2025.

Sophie Mitchell  
**Ombudsman**