

## The complaint

Mr H complains that Bank of Scotland plc didn't refund him money, that he believed was lost through an Authorised Push Payment ("APP") investment scam.

## What happened

The background to this complaint is well known to all parties and has been laid out in detail by our Investigator in their view, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In or around May 2021, Mr H made enquiries about tax efficient investment schemes. He was subsequently contacted by a broker, who I'll refer to as 'C', about a particular investment in a company called 'F', which involved the development of apps focussing on recycling. The investment was part of the Enterprise Investment Scheme (EIS) and so had associated tax benefits, with F's growth strategy being to launch on the stock market within five years.

Mr H thought this was a good opportunity for investment and, on 27 August 2021, he made a payment for £100,000 from the sole account he held with Bank of Scotland. The payment was made through C as the broker and Mr H has said he received a share certificate after making the payment. Mr H went on to make further payments, including a payment from a joint account he held with Bank of Scotland, as well as payments from accounts he held with other banking providers – however, this decision focusses solely on the payment Mr H made from the sole account he held with Bank of Scotland.

Mr H has said he started to become suspicious in early 2024 when a voting pack, that he was expecting to receive, didn't materialise. Mr H had also been told about a potential buy out by venture capitalists - but he hadn't been made aware of any deal being made. He carried out some open-source research and learned about a police investigation into suspected fraudulent activity. Mr H said his suspicions grew when communication ceased and he heard that key people within the company he had invested in were using pseudonyms.

Mr H believed he'd fallen victim to a fraud and so raised a claim with Bank of Scotland for the payment he had made. Bank of Scotland responded and explained it had assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. However, it explained that as there was an ongoing police investigation it was unable to give an outcome and instead said it was pausing his complaint using a provision within the CRM Code.

The provision that Bank of Scotland was relying on was R3 (1) (c), which states:

*"If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision".*

So, Bank of Scotland did not agree to reimburse Mr H.

Mr H then referred his complaint to this service. One of our Investigators looked into it. Having done so, our Investigator concluded it was fair for Bank of Scotland to rely on R3 (1) (c) of the CRM Code to delay providing an outcome to his claim. Our Investigator added that the evidence he'd seen didn't demonstrate that the payment met the CRM Code's definition of an APP scam and overall that Bank of Scotland were not at fault when it didn't provide a refund.

Mr H didn't agree with our Investigator's view. As agreement hasn't been reached the complaint has been passed to me for 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm mindful that, in his submissions to this service, Mr H has mentioned actions that other banking providers have taken in respect of reimbursing their customers. That is a decision the other banking providers have made, however it doesn't automatically follow that this service would consider other payment providers should do the same. Here, as I'm required to do, I've looked at the individual circumstances of Mr H's complaint.

It isn't in dispute that Mr H authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction in the first instance. But he says that he has been the victim of an authorised push payment (APP) scam.

Bank of Scotland has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

Here, Bank of Scotland has sought to rely on provision R3(1)(c) of the CRM Code that allows it to wait for the outcome of an investigation by a statutory body before making a decision. So, I will firstly consider if it is fair for them to rely on this provision in the circumstances.

Ultimately, Bank of Scotland has one of three options available to it. It can either accept a scam has occurred and consider whether it should reimburse Mr H under the CRM Code, it can decide that no scam has occurred and therefore not reimburse Mr H, or it can decide to await the outcome of an investigation.

As set out above, Bank of Scotland has decided to await the outcome of an investigation by the police, and the CRM Code allows it to do so where the outcome of that investigation might inform its decision.

From what I have seen so far, I am not satisfied the evidence available to me indicates a scam has occurred in the circumstances. From the evidence Mr H has sent in, which

includes letters, shareholder updates and promotional materials, the documentation appears to be professional. Mr H has also said he received share certificates for the payments he made. And alongside this, I'm also mindful that Mr H has confirmed that he did receive tax rebates from HMRC, following some of his investments.

Ultimately, what I've seen doesn't demonstrate that F was orchestrating a scam investment in order to induce payments from investors with no intention to use the funds as intended. It is possible there have been some questionable sales tactics, but I've not seen sufficient evidence to persuade me that there was an intent to defraud, such that this was a scam rather than a high-risk investment.

I do appreciate there is an ongoing police investigation and recognise that this may appear to be proof that Mr H has been the victim of fraud—as it infers that the police have taken the matter seriously enough to pursue this course of action. However, the purpose of an investigation is to gather evidence. And that will likely go toward investigating what the intent was at the time; the result of which may or may not lead to a prosecution. But in and of itself, an investigation doesn't automatically mean that a fraud has occurred.

I'm mindful that there is the possibility that Mr H has been the victim of fraud here. But from the information available to me, I cannot reasonably eliminate the possibility he has instead lost money to a failed investment. It is possible that further evidence may become known at a later date, which may indicate that F were operating a scam. Should such evidence come to light, then Mr H can complain to Bank of Scotland again, and refer the matter to this office, should he not be happy with the outcome.

Overall, Bank of Scotland has chosen to rely on provision R3(1)(c) of the CRM Code and await the outcome of the investigation by the police. Because nothing I have seen on file clearly indicates to me that Mr H has been the victim of an APP scam, I think it is fair for Bank of Scotland to do so.

I'm sorry to hear of what's happened to Mr H and I have a great deal of sympathy for him. He has lost a significant amount of money and I don't doubt he has been badly let down by the companies he invested in. But, my role here is to consider Bank of Scotland's actions, and based on the evidence available I don't think it has acted unreasonably in relying on the provision of the CRM code that it has.

### **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 H to accept or reject my decision before 28 October 2025.

Stephen Wise  
**Ombudsman**