

The complaint

Mr G complains that Bank of Scotland plc trading as Intelligent Finance ('Intelligent Finance') won't refund the money he lost when he fell victim to a scam.

What happened

Mr G says that a friend of his introduced him to an investment opportunity involving foreign exchange through someone I'll refer to as V in this decision. He says that his friend told him about the profits he had earned which he had reinvested rather than withdrawn. Mr G says that his friend also showed him a video, which V had provided, which showed over £26 million in a trading account.

Before deciding to invest, Mr G says he wanted to find out more about V's investment experience and the companies he had previously been involved in. He spoke to a business development manager I'll call K whose role was to bring in investors. K was knowledgeable about the investment and told Mr G that V was in the process of setting up a company and a hedge fund abroad. As the company wasn't fully set up, investors were advised that deposits were being temporarily collected in V's personal account. It was agreed that once the hedge fund was set up funds would be moved, and documents would reflect the hedge fund entity. Mr G also said that he looked V up online and found that he was an established and experienced trader.

Mr G invested funds as follows:

Transaction	Date	Amount	Payee
1	07/06/21	£300,000	V personal account 1
2	12/10/21	£35,000	K personal account
3	12/10/21	£35,000	V personal account 2
	Total	£370,000	

Mr G signed a contract on 4 June 2021 which stated that V personally guaranteed a 10% return each month on a client's balance at the start of each month. If V or K did not achieve a 10% return, V contracted to personally add 10% to the account. The "guaranteed monthly returns" could be withdrawn at any time. The contract also set out that after the guaranteed 10% return had been credited the client and manager (V and K) would split the remaining profit with 70% going to the client and 30% to V and K.

Mr G received monthly reports which showed screenshots from a trading platform where V said he had an account. He says that a lot of communication with V and K was by phone but there were also periodic video conferences and messages.

After Mr G had made the final payment, he started to hear that other investors were having difficulty withdrawing their funds. He tried to withdraw himself and was unable to. Mr G also found out that V only had a demonstration account with the trading platform so the evidence of trades he had provided were false. I understand that V has now moved abroad.

Mr G contacted Intelligent Finance on 5 August 2022.

Intelligent Finance is signed up to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and considered Mr G's complaint under it. It said that it spoke to Mr G when he made each of the transfers but didn't have a detailed discussion or provide a warning that was relevant to the scam he fell victim to. Given this, Intelligent Finance agreed to reimburse 50% of Mr G's loss.

Mr G wasn't happy with Intelligent Finance's response and brought a complaint to this service. He said Intelligent Finance failed to pick up on out of character payments that indicated Mr G was the victim of fraud, and that had it appropriately intervened the loss could have been prevented.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said that Intelligent Finance fairly relied on the reasonable basis for belief exception to reimbursement and that the warning it provided didn't go far enough. As a result, the investigator asked Intelligent Finance to refund £185,000 plus interest from the date of loss. The investigator gave reasons for saying Intelligent Finance could rely on an exclusion, including the offer being too good to be true, the fact a legitimate company wouldn't ask for funds before it was up and running, inadequate documentation, V and K's links to dissolved companies, unprofessional looking screenshots and spreadsheets, paying multiple payees, and the fact Mr G hadn't provided any evidence of the profits earned by the friend who referred him. Finally, the investigator said Intelligent Finance took reasonable steps to recover Mr G's funds.

Mr G didn't agree that an exception to reimbursement applied and noted this was a sophisticated scam. In summary, he said:

- He was introduced to the investment by a close friend who had already invested in the hedge fund. He saw evidence of returns from this friend, who also told him that he had seen evidence of others getting returns. Many investors had received returns for significant periods making the investment seem legitimate.
- Mr G had conversations with K who sounded professional and explained how the investment would work and showed evidence of how V had previously traded. As Mr G had seen evidence that these returns could be achieved he didn't think the rate offered was unrealistic. And hedge funds and foreign exchange often involve high returns.
- Mr G was shown legal documents and contracts and heard that V was in the process of setting up abroad and in the meantime, trading would start from V's platform.
- There were good reviews online in respect of V.
- Investors communicated with each other, and many had met members of the investment team including K.
- Investors were sent monthly reports with evidence of an investment platform and returns.

After the investigator issued his view, Intelligent Finance noted that there was an ongoing investigation that affected this case and meant its offer to reimburse 50% of Mr G's loss was premature. It referred to the CRM Code definition of an APP scam and noted that the code wasn't designed to underwrite poor investment choices.

The complaint was passed to me to decide. Whilst I agreed with the investigator's reasoning, I intended to make a different award to the investigator so issued a provisional decision on 24 March 2025. I explained that I was minded to require Intelligent Finance to reimburse 33% of payments one and three and 50% of payment two, plus interest on all refunded payments.

After clarifying the award I planned to make, Mr G accepted my provisional decision. Intelligent Finance didn't respond to my provisional decision within the timescale specified.

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.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

Loss

The investigator noted that funds were transferred to Mr G's joint account from a third-party account before being transferred to K and V in October 2021. Mr G explained, through his representative, that the funds were given by Mr G's mother. The funds were given to them to invest but they were not expected to pay interest back to her.

It's clear from the messages Mr G exchanged that his mother wished to invest but for ease the funds would be sent by him. Mr G also gave his mother's bank account details for the expected profit of £7,000 a month to be paid. And Mr G confirmed his mother was investing in calls with Intelligent Finance. So, Mr G's mother has been added to this complaint as a third party.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Intelligent Finance is a signatory of the CRM Code. This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. The relevant definition is:

“...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

Application of R3(1)(c) of the CRM Code

Intelligent Finance says this complaint shouldn't progress until the conclusion of an ongoing police investigation. It relied on a provision of the CRM Code (R3(1)(c)) which says:

R3(1) Firms should make the decision as to whether or not to reimburse a Customer without undue delay, and in any event no later than 15 Business days after the day on which the Customer reported the APP scam.

(c) 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.

R3(1)(c) refers to the timeframe in which a business should make a decision on whether or not to reimburse a customer. As Intelligent Finance has already made that decision and offered to reimburse 50% of Mr G's loss, it can't now rely on this clause.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be of little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

In order to determine Mr G's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that he was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr G first raised his claim with Intelligent Finance in August 2021, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr G an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for investors; in order to avoid the risk of double recovery, I think Intelligent Finance would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr G under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the police investigation for me fairly to reach a decision on whether Intelligent Finance should reimburse Mr G under the provisions of the CRM Code.

Was Mr G the victim of an APP scam as set out in the CRM Code?

I consider there is convincing evidence that confirms the CRM Code definition has been met. I have not seen any evidence at all to suggest any trading took place with the funds that Mr G transferred. This service has also seen a number of receiving account statements and there's no activity that would suggest V was operating or carrying out the activities as he described, or Mr G's funds were fundamentally being utilised as agreed between him and V.

So, on balance, I'm satisfied there is enough persuasive evidence that Mr G has been the victim of an APP scam.

For data protection reasons, I'm unable to share this compelling evidence. But the rules under which this service operates allows me to accept information, including confidential information about third parties, in confidence. This information leads me to conclude that Mr G's funds weren't used for the intended purpose as a result of dishonest deception.

Is Mr G entitled to a refund under the CRM Code?

When thinking about what is fair and reasonable in this case, I've considered whether Intelligent Finance should have reimbursed Mr G under the provisions of the CRM Code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Did Mr G have a reasonable basis for belief?

When considering whether Intelligent Finance can fairly rely on the reasonable basis for belief exception to reimbursement, I've looked at the evidence that was available to Mr G at the time he made the payments.

Taking into account all of the circumstances of this case, including the characteristics of Mr G and the complexity of the scam, I think Intelligent Finance can fairly rely on an exception to reimbursement set out in the CRM Code in this case. I'm not satisfied that Mr G had a reasonable basis for believing the payment was for genuine services. I say this because:

- I've tried hard to understand exactly what Mr G knew at the time of making the payment as the picture given was inconsistent. It's clear that Mr G was referred by a close and trusted friend – N. But my understanding is that N hadn't received returns.

I can see from the messages that have been provided to me that K provided Mr G with a 'Monthly Statement' which was said to be his dad's, on 4 June 2021, shortly before Mr G invested. This was sent after Mr G asked for a performance report covering the previous two years. The monthly statements Mr G received, which it seems likely were the same as that received by K's dad, simply showed figures in a spreadsheet that could have been added by anyone. I'm not sure what it was about these spreadsheets that Mr G found persuasive or that made him think the investment was legitimate, given their sparse detail and basic format.

I appreciate that Mr G says he saw a video which showed a substantial balance in a trading account in V's name, but there is no evidence of this or reference to it in any chat, and there is no date on the video provided. Mr G's representative also didn't mention that he'd seen a video in Mr G's letter of complaint and when Mr G discussed the research he had completed when he reported the scam, he did not mention seeing any evidence in respect of V's trading account. In any event, a figure in a personal trading account doesn't show that the investment Mr G was offered was legitimate, so I don't consider this to be determinative.

- Mr G was asked to transfer funds to the personal account of V until the hedge fund was set up and was told trading would initially be in V's personal platform. I'm not persuaded this is how a legitimate business would operate and think Mr G ought reasonably to have had concerns about transferring such a large amount of money to a personal account and trading taking place on a personal platform. The certificate of incorporation of the new company was issued in August 2021, so can't have influenced Mr G's decision making as he made the payment before this.
- The contract Mr G signed says, "[V] agrees to personally guarantee a 10% return each month on the total value of the Clients [sic] Balance at the start of each month. If the Manger does not achieve a 10% return for the client in any calendar month [V] will personally add 10% to the Client's Balance on the last day of each month." After the 10% monthly return had been credited, the remaining funds would be split between Mr G and the 'Manager'.

I consider the rate of return was too good to be true and ought to have led to a greater degree of caution before investing £300,000. Even Mr G's representative said that hedge funds by their nature are high risk, so a guaranteed return of this nature isn't believable. The personal guarantee is also unusual.

- There was no live investment platform and the only information shared about performance of the investment wasn't persuasive and didn't include company details.
- V doesn't appear to have provided detail about how he would be able to generate such lucrative profits without any risk. And Mr G hasn't provided evidence or explained that he asked about this either.

The two payments of £35,000 in October 2021 were made on behalf of Mr G's mother, who wished to invest herself.

I consider Intelligent Finance can still rely on an exception to reimbursement in respect of these payments. Most of the points I have raised above also apply to these transactions (monthly statements, video evidence, too good to be true nature of the investment without any evidence of how this could be achieved, no live platform). The only difference when these payments were made was that Mr G had seen a certificate of incorporation of the company V said he was setting up abroad. I'm not satisfied this is enough, given the other points I have raised, to say Mr G had a reasonable basis to believe the investment was legitimate when the October 2021 payments were made. I also think that spreading the payments across two personal accounts was particularly concerning, particularly when the new company was apparently incorporated.

None of the factors I have listed above should be considered in isolation; it is the combination of them that leads me to conclude that Intelligent Finance can fairly rely on an exception to reimbursement.

Some of the points raised by Mr G's representative are generalised points about people who invested in the scheme. But I need to consider Mr G's personal circumstances and the information he had at the time the payments were made to determine if Intelligent Finance can fairly rely on an exception to reimbursement.

Should Intelligent Finance have provided effective warnings or intervened further?

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

The CRM Code requires that warnings be both specific to the scam risk identified and impactful – to positively affect a customer's decision-making in such a way that the likelihood

of an APP scam succeeding is reduced. The CRM Code goes on to say this should include steps to ensure that the customer can reasonably understand the consequences of continuing with an irrevocable payment.

In this case Mr G was required to call Intelligent Finance to make the £300,000 payment as it exceeded his daily transfer limit. Having listened to the call I'm not persuaded Intelligent Finance provided an effective warning or that its intervention went far enough.

Mr G was asked the reason for the payment, and he explained that it was for a personal investment. He was asked if he had paid before and checked the FCA register. After checking the origin of funds, the Intelligent Finance agent provided a generalised scam warning that covered impersonation scams, whether anyone else was listening to the call, whether Mr G had been told to lie, and the fact that once made the payment couldn't be amended, cancelled, or recalled. As the warning wasn't specific to investment scams it wasn't specific and so didn't meet the requirements of the CRM Code.

I also consider that if Intelligent Finance had asked probing questions about the reason for the payment it would have had concerns and could have prevented Mr G's loss. Mr G said he was investing but was transferring £300,000 to an individual. This ought to have raised significant alarm bells for Intelligent Finance. But, for the reasons I have set out above in respect of Mr G's reasonable basis for belief, I'm satisfied that a deduction should be made in respect of contributory negligence. The significance of this finding is that Intelligent Finance should pay interest on the award I am recommending from the date of payment.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. There is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Liability split

The CRM Code sets out how a scam victim should be reimbursed. Where an exception to reimbursement applies and a sending firm hasn't met its standards, a customer should receive 50% of their loss. If a receiving bank also hasn't met its standards, liability is split between the sending bank, the receiving bank, and the customer.

In this case this service has decided that the receiving banks in respect of payments one and three haven't met their standards under the CRM Code. So I'm provisionally requiring Intelligent Finance to reimburse 33% of these payments. This service has decided that the receiving bank should not be held responsible for payment two, so Intelligent Finance should reimburse 50% of this transaction.

Recovery

I've gone on to consider whether Intelligent Finance took reasonable steps to recover Mr G's funds. They raised a scam claim with Intelligent Finance on 5 August 2022 and recovery was attempted on the same day, but no funds have been returned. So I consider that Intelligent Finance acted reasonably.

Overall, I consider Mr G is the victim of a scam and that Intelligent Finance should reimburse him as set out below.

My final decision

For the reasons stated, I uphold this complaint and require Bank of Scotland plc trading as Intelligent Finance to:

- Pay Mr G £128,050; and

- Pay interest on the above amount at the rate of 8% simple per year from the date of the transaction to the date of settlement.

If Bank of Scotland plc trading as Intelligent Finance is legally required to deduct tax from the interest it should send Mr G a tax deduction certificate so he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 June 2025.

Jay Hadfield
Ombudsman