

The complaint

K, a limited company, is unhappy that The Royal Bank of Scotland Plc (RBS) won't refund money it lost to an investment opportunity it now believes is a scam.

The complaint is brought by K's two directors who are being represented by a third party, R.

What happened

I'm not going to cover all the points raised in detail. The view of 9 May 2025 covered the timeline of the transactions and the details of K's testimony. But briefly in 2020, K came across an opportunity to invest in a scheme with a company I will refer to as L, run by an individual I will refer to as H.

The investment in L was by way of a loan agreement for £100,000 that was due to be repaid on 8 June 2022. The loan agreement was to fund the purchase of a specific property.

K says H did not purchase the property and it's not received most of its funds back.

RBS said the matter was a civil dispute between the two parties.

Our investigator did not uphold the complaint. He didn't think the situation met the Contingent Reimbursement Model (CRM) Code's definition of an authorised push payment (APP) scam. So, he didn't think RBS needed to reimburse K its losses.

R didn't agree. It said:

- The land was never purchased, and everything points to a balance of probabilities decision there was an intent to defraud.
- H stopped engaging in the legal process and no legal action was taken. All the money is still owed and there is no active court case. H has gone bankrupt.
- A bank paid out on another case where it was the same property development. In another case H lied about the status of the property involved and ownership.

As the complaint has not been resolved informally, it's been passed to me for a 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 should start by saying that each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case.

Banks can make their own commercial decisions about refunding consumers and I am not aware of the reasons why the bank in question made that decision on another case.

The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My findings focus on what I consider to be the central issues. My role is to consider the evidence presented by all parties and reach what I think is a fair and reasonable decision based on the facts available.

In deciding what's fair and reasonable, I'm 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 time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is more likely to have happened in light of the available evidence.

I'm sorry to hear about the situation K and its directors have been left in. They have paid out a considerable sum of money and it's clear that they feel strongly that H has tricked them. From their perspective, H never purchased the land at the heart of the investment with L, so they feel H never intended to fulfil the investment agreement. But I don't have the power to decide any dispute between K and H or L. My role is limited to looking at whether RBS has treated K fairly.

RBS didn't contract with K for the investment opportunity, and I can't hold it responsible for any breach of contract or other failings on H/L's part. As a starting point in law, K and its directors are responsible for payments they've instructed RBS to make. Unfortunately, there's little protection available to them for bank transfer payments, like these.

At the time K made the payments RBS was signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM) Code.

But the CRM Code is 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"

So, it wouldn't apply to a genuine investment that subsequently failed.

The Scope and Definitions section of the CRM Code details that the CRM Code can only apply to authorised payments meeting the Code's definition of an 'APP Scam'.

In order to determine whether K has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose K intended for the payment was legitimate, whether the purposes K and L/H intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of H/L.

In this case, the relevant question to determining whether the payments K made are covered by the CRM Code is whether H set out to obtain money by deceiving them about the very purpose for which their payments were obtained.

I'm satisfied K made the payments here with the intention of loaning L funds with a view to a property investment. And I haven't seen anything to suggest K didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that L/H intended a different purpose for the payments, or that K and L/H's purposes for the payments weren't broadly aligned.

In order to meet the test for 'fraudulent purposes' (as opposed to legitimate purposes), any fraud would need to be specifically in relation to the purposes for which the payments were obtained. And that must have been at the time the payment transactions occurred or earlier.

It does not follow that fraud at a later date will meet the CRM Code's definition of an APP scam. Neither would fraud which doesn't specifically relate to the purpose of the payment.

That is to say, there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of an APP scam set out under the CRM Code.

Whilst some of the points R has raised about H in relation to other matters may show that he's of poor character; they do not show that in relation to the transactions carried out by H in this particular case that there was a fraudulent intent.

I do understand the concerns R has raised about H. And whilst I have considered all the points R have raised, they do not fundamentally address the purpose for which K's funds were obtained. H did ultimately engage and conduct business in the property market and held a number of related businesses. It's not clear how all these companies interlinked or how funds may have moved between them. And whilst I can't follow the exact trail for the money K invested this doesn't lead me to conclude that K has been the victim of a scam.

I appreciate that H may not have purchased the land set out in the loan agreement. But I have seen third party evidence (which I am unable to share for data protection reasons) that does suggest there was a clear intent to purchase the land/property in question. It's not clear why that didn't happen. It's possible H used the funds for his other businesses, and these were absorbed as costs in running such a business and its multiple linked entities.

On balance, I am unable to safely say this situation meets the definition of an APP scam. It is very difficult for me to establish that H was willingly and intentionally acting fraudulently by deliberately setting out to scam K at the time the payments were made. I don't have the power to compel H to provide me with evidence, or to cross-examine him or to have him cross-examined in order to try and establish what his true intentions were.

Whilst some of the points raised could be an indicator of fraud, particularly if money was never intended to be used for genuine reasons, it could also simply be poor business practice. I accept that it's possible that H misappropriated the funds and they were not used for the intended purpose. But I can't exclude the possibility that L failed for reasons not relating to fraud. And with the information that's currently available to me, I haven't seen any evidence that K's funds were used in a way that meets the definition of an APP scam and that its funds were used for fraudulent purposes.

As such, I don't think it is unfair for RBS to conclude the payments made fall outside of the scope of the CRM Code. I am sorry to have to deliver this news to K's directors. I know this wasn't the answer they were hoping for. It is clear that this situation and its aftermath has been and continues to be very difficult for them. But my role is limited to determining whether RBS bears any responsibility for K's financial loss. I haven't seen convincing evidence that this came about as the result of an APP scam. It follows I can't say the bank ought reasonably to be held liable for K's losses.

For the reasons I have explained, I consider that the payments K made fall outside of the scope of the CRM Code. I've not seen any evidence to show that RBS has

acted incorrectly or that it ought to have done more than it did to assist K when it learnt of the situation that it was in. Nor can I see there are other grounds on which I could say that RBS should, fairly and reasonably, bear the responsibility for K's loss.

If material new evidence comes to light at a later date, then K can raise a new complaint with the bank at the time. But as it stands there is not convincing evidence that the issues K has faced with H are the result of an APP scam.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 6 November 2025.

Kathryn Milne
Ombudsman