

## The complaint

Mr R complains that Bank of Scotland Plc (BoS), trading as Intelligent Finance did not reimburse the funds he says he lost to a scam.

## What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them in detail here.

In summary, Mr R invested in a company I'll call 'X' that leased cars. He transferred £28,000 from his BoS account to X on 7 October 2020.

Mr R signed a loan agreement with X in October 2020 agreeing to loan them £28,000 with an interest rate of 13.3% cumulative per annum. He was told his investment would be used to fund two vehicles which would then be leased out, and he would receive fixed interest payments each month. The monthly returns were set at £534.72, and Mr R received three of these totalling £1,604.16. After some chasing, a legal charge was registered for both vehicles in Mr R's name and filed at Companies House in November 2020.

X went into administration and Mr R raised a scam claim with BoS for the payments he had made to X. BoS said they felt X was operating as a legitimate company that had failed, so they did not think the Lending Standards Boards Contingent Reimbursement Model (the CRM code) applied.

The complaint was referred to our service and our Investigator looked into it. They didn't think the available evidence demonstrated that X never intended to act in line with the agreement it had made with Mr R. Mr R's representative disagreed and said it had been confirmed X was operating a Ponzi scheme. They also said the registered charges for the two vehicles were 'category 2' charges and therefore invalid. And they had to chase a significant amount to get the charges registered on Companies House, so they felt this indicated there was no intention to use Mr R's funds to lease the specific vehicles. The case was passed to me and I issued a provisional decision that read as follows:

*In broad terms, the starting position at 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.*

*BoS 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 code where they have been the victim of a scam – as defined in the code.*

*The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.*

*The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.*

*So in order to determine whether Mr R has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and X intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.*

*From what I've seen, I'm satisfied Mr R made the payments here with the intention of investing with X. I think he thought the funds would be used to fund two vehicles as set out in the loan agreement, and that he would receive returns on the investment. And I haven't seen anything to suggest that Mr R didn't think this was legitimate.*

*Having reviewed everything available, I'm not satisfied the evidence I've seen shows that X intended a different purpose for the payments, or that their intended purpose for the payments were not broadly aligned with Mr R's.*

*Mr R received the monthly interest payments he was told he would receive for three months, and these interest payments only stopped shortly before X entered administration. So, it appears the investment was functioning as Mr R understood it would do up until this point.*

*Mr R was also told the repayment of his investment with X would be secured by way of a legal charge registered over the vehicles he had funded. The loan agreement he signed set out the specific vehicles the charge was over. And Mr R was also sent a document setting out the terms of the charge and again set out the specific vehicles the charge was over. I can also see the charges were registered in Mr R's name at Companies House shortly after he transferred the funds.*

*I do appreciate the comments made by Mr R's representatives that he had to chase X a number of times before the charges were registered. However, considering the charge was registered on the same vehicles mentioned in the loan agreement at the inception of the investment, on balance I think this suggests X intended to, and did, provide the investment and security in line with its agreement with Mr R.*

*Mr R's representative has said X's administrator is treating the charge he received as invalid. They have argued that Mr R's purpose of the payments to have security over two vehicles was therefore invalid.*

*But from what I've seen of the administrator's progress reports during the administration, the validity of the charges the car leasing company granted was uncertain for a significant period of time. The administrator has said they undertook a significant amount of work and applied for legal advice and directions from the court to determine how the charges should be treated. And the legal advice the administrator received said that the matter was very complex and not clear-cut, and counsel was unable to provide a definitive opinion.*

*So, even if it is now settled that the charges are invalid, which isn't certain, I think the fact that the administrators had to seek further guidance and took a number of years to come to an agreement suggests it was not clear cut that the way the charges were registered made them invalid. I'm not persuaded the administrators reaching the conclusions they did is persuasive evidence X knew that registering the charges in this way would make them invalid or that it deliberately registered them in this way in order to avoid acting in line with its agreement with Mr R.*

*I therefore don't think the administrator treating Mr R's charge as invalid some years later necessarily means that X didn't intend to provide the security in line with its agreement with him at the time.*

*So, I'm not persuaded the available evidence is sufficient to safely conclude that the purpose X intended for these payments was different than the purpose Mr R intended. I therefore currently don't think the circumstances here meet the definition of a scam, or that BoS has acted unreasonably in not agreeing to refund the money Mr R lost from these payments as a result.*

*It's possible that material new evidence may become available at a future date, which suggests that X did register the charge in a manner that would suggest it knew it would make the charge invalid. If that happens, Mr R can ask BoS to reconsider his claim for these payments and, if not satisfied with its response, bring a new complaint to our service.*

*I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against X's parent company. More information about the FSCS's position on claims submitted against the parent company can be found on the FSCS's website. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under their rules. It might be that the car leasing company's parent company has conducted activities that have contributed to the same loss Mr R is now complaining about in connection with the activities of BoS.*

*Our service and the FSCS operate independently, however in these circumstances, it's important that we and the FSCS are working together and sharing information to ensure that fair compensation is awarded. More information about how we share information with other public bodies can be found in our privacy notice on our website.*

BoS replied accepting my provisional findings.

Mr R responded and did not agree with the outcome. He made a number of points including:

- There was evidence showing the administrators of X and the Serious Fraud Office agree they were carrying out a Ponzi scheme and defrauding investors.
- He was induced to make his investment based on promises of a valid security that did not materialise, and he feels this is due to dishonest deception.
- He does not feel the CRM Code is being applied correctly, as it states he should be reimbursed unless there has been gross negligence on his part.

### **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 would like to start by acknowledging Mr R's frustration at this process, and to thank him for taking the time to write to me directly setting out his points in response to my provisional decision. I have considered everything he has said and everything that has been previously provided by all parties carefully.

I understand that Mr R has lost a significant amount of money and that X did not ultimately deliver on what it was supposed to in terms of their agreement. I am also aware that our service has issued findings for other complainants where we have concluded X did intend to scam them and their losses have been reimbursed.

But I must consider Mr R's complaint on its own individual merits and, as I explained in my provisional decision, a legal charge was registered at Companies House in Mr R's favour. And I'm satisfied here that the provision of the charge over a vehicle is an important and persuasive consideration. I'm also conscious that there were numerous investors who contracted with the car leasing company over several years and received all that was promised, demonstrating that there were people the car leasing company appears not to have set out to defraud.

While I understand that the administrator has now said the charges are invalid, I also highlighted in my provisional decision that I do not think this was persuasive evidence that X was aware they would be invalid when they applied them. This is because it took the administrators a significant amount of work and legal advice to come to the conclusion they were invalid, and the legal advice they received said the issue was very complex. I think the significant time it took to come to this outcome mean it's more likely it was not clear cut to X that these charges would be invalid. And I don't think this therefore shows they intended to defraud Mr R from the outset.

On balance, I'm still not satisfied the evidence I've seen shows that X intended a different purpose for the payments to Mr R, or that their intended purpose for the payments were not broadly aligned with Mr R's. I therefore do not think this meets the definition of a scam as set out in the CRM Code.

### **My final decision**

I do not uphold Mr R's complaint against Bank of Scotland Plc, trading as Intelligent Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 October 2025.

Rebecca Norris

**Ombudsman**