

The complaint

Mrs L and Mr L complain that The Royal Bank of Scotland plc ('RBOS') won't refund the money they lost as the result of a scam.

What happened

The background to this complaint isn't in dispute, so I'll provide a brief summary.

Mrs L and Mr L were introduced to an investment with a company I'll refer to as H. H was a property developer and Mrs L and Mr L say they were promised returns of 10% to 15%.

Mrs L and Mr L made the following payments to H from their RBOS account.

Date	Details of transaction	Amount
30.7.2019	Payment to H	£10,000
1.11.2019	<i>Return from H</i>	£250 cr
31.1.2020	<i>Return from H</i>	£250 cr
1.5.2020	<i>Return from H</i>	£250 cr
7.8.2020	<i>Return from H</i>	£250 cr
7.1.2021	Payment to H	£10,000

In January 2022, H went into administration.

Through a professional representative, Mrs L and Mr L raised a fraud claim with RBOS in 2024. RBOS investigated Mrs L and Mr L's fraud claim but declined to refund them, saying that H was a high-risk investment that failed – not a scam.

Mrs L and Mr L weren't happy with RBOS's response, so they brought a complaint to our service.

An investigator looked into their complaint but didn't recommend that RBOS refund them. The investigator felt H was a legitimate investment that failed, so it wasn't an APP scam as defined by the Contingent Reimbursement Model Code (CRM Code).

Mrs L and Mr L disagreed with the investigator's opinion and raised the following points:

- The investigator failed to take into account the FCA Principles of Business, Conduct of Business Sourcebook, British Standards Institution Code of Practice, and the CRM Code.
- The investigator didn't consider RBOS's obligation to scrutinise large payments to new payees and intervene when a potential risk of financial harm from fraud is identified.
- If RBOS had called Mrs L and Mr L to ask questions about the investment, they should've been concerned as the returns were too good to be true, the investment was unregulated, and it was promoted by an unregulated agent.

- If RBOS had given Mrs L and Mr L a relevant warning, they would've heeded it and not made the payments.
- We haven't taken into account Mrs L and Mr L's vulnerabilities.
- H's business model reflects that of a Ponzi scheme and the evidence supports that H was a scam.

As the case couldn't be resolved informally, it was passed to me to review.

Having reviewed the case, I reached the same answer as the investigator. But I wanted to address points not covered by the investigator's view. So, I issued a provisional decision explaining why and giving both parties a chance to respond before I issued a final decision.

My provisional decision

In my provisional decision I said:

I'd like to reassure Mrs L and Mr L that I have carefully reviewed and considered all of the evidence that has been provided, as well as the response to the investigator's view. But I've focused my decision on what I consider to be the crux of the complaint, the answer I've reached and how I've reached it.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. This includes the FCA Principles of Business, Conduct of Business Sourcebook, British Standards Institution Code of Practice, and the CRM Code.

In broad terms, the starting position in law is that RBOS are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's).

Are Mrs L and Mr L entitled to a refund under the CRM Code?

RBOS are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But the CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mrs L and Mr L made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs L and Mr L thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments and whether this was broadly in line with what Mrs L and Mr L understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mrs L and Mr L were making payments to invest with H, who were a property developer. I haven't seen anything that would suggest that Mrs L and Mr L didn't think this was legitimate.

So, I've gone on to consider what purpose H had in mind and whether it was in line with what Mrs L and Mr L thought.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H, its directors and any linked businesses. The key information to this case is:

- H completed on three separate developments. It also had other developments it was working on, which it sold to developers after experiencing financial difficulties. This persuades me that H were operating as a genuine business at the time Mrs L and Mr L made their payments.
- I haven't seen any evidence that investors' funds weren't used for the intended purpose, or that the company was operating a Ponzi scheme. There has been a suggestion that this is the case by Mrs L and Mr L, but I haven't seen evidence that supports this, for example, from the liquidator.
- Mrs L and Mr L say H was paying a very high commission to introducers. But this doesn't necessarily mean that H was a scam. Whether or not the introducers were regulated doesn't show that H intended to scam investors, or that H hadn't planned to invest the money into development projects with the intention to make a profit to provide the relevant return to investors.
- I appreciate that there are a number of subsidiary companies involved in the H group. But I haven't seen evidence that these companies weren't using investors' funds for the intended purpose.
- While H may not have filed accounts since 2018 or had any of their accounts audited, this doesn't persuade me that H intended to scam investors. A failed business or financial mismanagement of a business, in and of itself, isn't sufficient to establish that the business, or those operating it, had a different purpose for the funds when they were obtained from the consumer.

Taking all these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Mrs L and Mr L's funds weren't used in the manner agreed by H or that the purpose H had in mind was different to Mrs L and Mr L's. On that basis, I'm not satisfied that Mrs L and Mr L's payments meet the definition of an APP scam as set out in the CRM Code.

As I'm not satisfied that Mrs L and Mr L's payments meet the definition of an APP scam, I can't fairly ask RBOS to refund them under the CRM Code.

If material new information comes to light at a later date, for example from the police or liquidator, Mrs L and Mr L can ask RBOS to reconsider their claim.

Is there any other reason I could ask RBOS to refund Mrs L and Mr L?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider RBOS should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect RBOS to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Having reviewed Mrs L and Mr L's statements, I'm not satisfied that the payments they made to H were unusual and out of character. I say this as they had made payments of a similar size in the prior months - in July, June, May and February 2019. So, I wouldn't have expected RBOS to have identified a potential risk of financial harm or intervened when these payments were made.

However, even if I was satisfied that RBOS should've intervened, it wouldn't change the outcome. I say this as, at the time Mrs L and Mr L made these payments, the information available suggested that H was a legitimate property developer. So, I don't think questioning by RBOS would've identified any concerns about the payments Mrs L and Mr L were making.

While Mrs L and Mr L were introduced to the investment by an unregulated introducer, that doesn't mean that the investment was a scam. Also, for the second payment that Mrs L and Mr L made to H, they dealt directly with H, not with an introducer.

I appreciate that the returns were high, but this was a loan note in a property development company, which would offer higher returns than a traditional bank investment, as there is inherently more risk associated with it. Also, I'm not satisfied that this information, when weighed up against the other information available, meant RBOS should've been concerned. H were a UK incorporated company who had already completed on a number of property developments and investors received returns.

It's worth noting, that when RBOS intervened, I would expect them to ask open questions about the investment to identify any potential indicators that Mrs L and Mr L might be falling victim to a scam. I wouldn't expect RBOS to give investment advice or decide whether it was an appropriate investment for Mrs L and Mr L. Even if RBOS had suggested that Mrs L and Mr L complete further checks on H, I'm not satisfied that would've uncovered any concerning information or any information that would suggest this wasn't a genuine investment.

So, I'm not satisfied that I can fairly say intervention by RBOS would've prevented Mrs L and Mr L's loss.

Vulnerability

Mrs L and Mr L say they were particularly vulnerable at the time they made the payments as they had serious medical conditions.

But, as I'm not satisfied that Mrs L and Mr L's payments are covered by the CRM Code, I can't apply the vulnerability provisions under the Code to their complaint. And, I haven't seen any evidence that RBOS were made aware of Mrs L and Mr L vulnerabilities prior to them making the payments to H.

As RBOS weren't made aware, I wouldn't have expected them to have taken additional steps as a result.

For completeness, even if RBOS was aware of their vulnerabilities, I can't fairly conclude that it's more likely than not this would've prevented their loss. I say this as, even if Mrs L and Mr L were told to do further checks into H, or recommended to get independent advice before investing, the lack of concerning information available about H is unlikely to have prevented them from proceeding with the investment. And I'm not satisfied that RBOS could fairly have refused to make Mrs L and Mr L's payments, based on the information available about H.

I'm really sorry to disappoint Mrs L and Mr L as they have suffered a serious financial loss. However, having carefully considered all of the evidence, I'm not satisfied that I can fairly hold RBOS liable for their loss or ask RBOS to refund them.

My provisional decision was that I didn't intend to uphold this complaint.

Responses to my provisional decision

RBOS responded to say they had nothing further to add.

Mrs L and Mr L didn't respond to the provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.15, says, if a complainant (in this case Mrs L and Mr L) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my 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.

As no new evidence or arguments have been provided for me to consider, I see no reason to reach a different answer than I did in my provisional decision.

In summary

I'm not satisfied that the circumstances under which Mrs L and Mr L made their payments meets the definition of an APP scam, under the CRM Code. I say this because I'm not persuaded the evidence shows H took their funds with a different purpose in mind, or that their funds weren't used for the intended purpose.

I'm also not persuaded that if RBOS had intervened when Mrs L and Mr L made the payments, that their loss would've been prevented. This is because the information available about H, at the time of the payments, supported H being a genuine property development company who had completed projects. There wasn't any information that would've suggested to RBOS that Mrs L and Mr L might be the victims of a scam, or that RBOS shouldn't have processed Mrs L and Mr L's payment instructions.

Based on the evidence, I'm not satisfied that RBOS can fairly be held liable for Mrs L and Mr L's loss.

My final decision

My final decision is that I don't uphold this complaint against The Royal Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 27 August 2025.

Lisa Lowe
Ombudsman