

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 R. R was looking to invest in renewable fuel producing machinery. The investments Mrs L and Mr L took were for a four-year fixed term, with a return of between 8% and 10%.

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

Date	Pmt	Details of transaction	Amount
15.2.2019	1	Payment to R	£5,000
15.2.2019	2	Payment to R	£5,000
25.7.2019	3	Payment to R	£5,000
29.8.2019		<i>Return from R</i>	<i>£250 cr</i>
11.9.2019	4	Payment to R	£10,000

In December 2022, R 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 R 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 said:

- The payments made in February 2019, are not covered by the Contingent Reimbursement Model Code (CRM Code) as it wasn't introduced until May 2019.
- If RBOS had intervened when the first two payments were made, it was unlikely they would've been concerned that Mrs L and Mr L were at risk of financial harm from fraud.
- For the other two payments, the CRM Code doesn't apply as the payments don't meet the definition of an APP scam. The investigator wasn't satisfied that Mrs L and Mr L had evidenced that the funds weren't used for the intended purpose by R.
- If RBOS had intervened on the last two payments, it was unlikely that they would've been concerned and prevented the payments from being made.

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.

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).

The first two payments Mrs L and Mr L made in February 2019

The CRM Code doesn't apply to these payments as it wasn't introduced until May 2019, and can't be applied retrospectively.

But, 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.

When Mrs L and Mr L made the first two payments, I'm not satisfied that RBOS should've identified a risk of financial harm from fraud. I say this as the payments weren't unusual or out of character compared to the usual account activity. I can see that Mrs L and Mr L made several payments of between £5,000 and £18,000 between July 2018 and February 2019. They also regularly made slightly smaller payments of between £2,000 and £4,000 most months.

However, even if I was satisfied that RBOS should've intervened, I'm not satisfied that this would've prevented Mrs L and Mr L's loss.

R was a UK incorporated company since 2017 and all of the documentation and literature about the investment was professional. Also, there wasn't any information available at the time which suggested that this wasn't a legitimate investment.

I'm aware that R's marketing material explained that the investments were high-risk and not FCA regulated. But, just because an investment isn't FCA regulated, doesn't mean that it's a scam.

Also, it's important to explain that while I would expect RBOS to ask questions in order to satisfy themselves that Mrs L and Mr L weren't at risk of falling victim to a scam. I wouldn't expect RBOS to give investment advice on whether the investment was suitable for Mrs L and Mr L.

Based on the information available at the time Mrs L and Mr L made the payments, I'm not persuaded that RBOS should've been concerned that the investment wasn't genuine or that they acted unreasonably in following Mrs L and Mr L's payment instructions.

Are Mrs L and Mr L entitled to a refund under the CRM Code for payments three and four?

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 (R) 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 R, as part of a green energy investment. 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 R had in mind and whether it was in line with what Mrs L and Mr L thought.

I haven't seen any evidence that investors' funds weren't used for the intended purpose, or that R obtained the funds with a different purpose in mind. The liquidator's report on Companies House says that R has assets valued at around £250,000. It appears that R's director has agreed to buy these assets for his new company and that he intends to refund investors of R.

Mrs L and Mr L being introduced to the investment by an unregulated introducer doesn't show that R intended to scam investors. Also, a failed investment or business, doesn't prove that the business, or those operating it, had a different purpose in mind for the funds when they were obtained from Mrs L and Mr L. Investments and companies can fail for genuine reasons.

Based on the evidence that Mrs L and Mr L have provided, I'm not satisfied that there is sufficient evidence to say their funds weren't used in the manner agreed by R or that the purpose R had in mind was different to theirs. 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, and I can't fairly ask RBOS to refund them under it.

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

As I explained in relation to payments one and two, there is an expectation on RBOS to monitor accounts and any payments made or received to counter various risks, including preventing fraud and scams.

And, RBOS should 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 payment three was unusual or out of character compared to their usual account activity. I say this for the same reason as for payments one and two, because Mrs L and Mr L had previously made payments of a similar size on a regular basis.

However, payment four was unusual and out of character. Mrs L and Mr L had made two payments for more than £10,000 but this was over a six-month period. So, I don't consider a payment of £10,000 to be in line with regular activity on their account.

However, even if RBOS had intervened, it wouldn't change the outcome. I say this for the same reasons I explained in relation to payments one to two.

All of the information that Mrs L and Mr L would've given RBOS about R and their investment, would've suggested that it was a legitimate investment. The paperwork was professional and the information available at the time said that R was a genuine company. And, as set out above, I wouldn't expect RBOS to give Mrs L and Mr L investment advice or determine whether it was a suitable investment for them.

RBOS may've suggested that they get independent investment advice, but there is no new information that an advisor is likely to have given them that wasn't contained in the literature and material they received from R. R's marketing material said the investment was high-risk and that R wasn't FCA regulated.

So, I'm not satisfied that RBOS can fairly be held liable for Mrs L and Mr L's loss, or that they acted unreasonably in following their payment instructions.

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 R.

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 R, or recommended to get independent advice before investing, the lack of concerning information available about R 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 R.

It's important to note, that Mrs L and Mr L may still have their investment returned as part of the administration process. If they don't and material new information comes to light at a later date, for example from the police or liquidator, which shows that investors' funds weren't used for the intended purpose or were obtained by dishonest deception - Mrs L and Mr L can ask RBOS to reconsider their claim.

I'm sorry to disappoint Mrs L and Mr L, but having considered all of the evidence, I can't fairly hold RBOS liable for their loss.

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 my 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

The first two payments Mrs L and Mr L made aren't covered by the CRM Code, as they were made prior to the CRM Code's introduction.

Payments three and four aren't covered by the CRM Code either, because I'm not satisfied that R had a different purpose in mind for the funds, or that R didn't use Mrs L and Mr L's funds as intended. So, I'm not satisfied that the circumstances under which payments three and four were made meet the definition of an APP scam as set out in the CRM Code.

I also considered whether RBOS could've prevented Mrs L and Mr L's loss when the payments were made. But, even if RBOS had intervened at the time of the payments, I'm not satisfied that the information available about R, or the answers Mrs L and Mr L would've given to questions RBOS might've asked, would've suggested that Mrs L and Mr L might be the victims of a scam. So, it wouldn't have prevented the payments from being made or meant that RBOS shouldn't have followed Mrs L and Mr L's payment instructions.

Having carefully considered the evidence I'm still not satisfied that I can fairly hold RBOS 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