

The complaint

Mr and Mrs H complain that Bank of Scotland plc (“BoS”) did not reimburse the funds they say they lost to a scam.

What happened

Mr and Mrs H found an investment opportunity through a website initially. This investment was in the development of holiday lodges which would eventually be rented out to generate revenue. I’ll refer to the company providing the investment as ‘B’. They visited the sites, looked over the paperwork carefully and instructed a solicitor to review the documents before investing.

Mr and Mrs H would receive a quarterly payout on the amount invested with B buying back the lodges after a fixed term of 5 years.

They signed an agreement to invest in a plot that included one of the lodges being developed and Mr and Mrs H sent a total of £74,950 in April 2021, with the initial deposit of £1,099 being paid via their BoS credit card. They received quarterly returns as expected until April 2024, totalling £20,069.77.

Mr and Mrs H now feel they have been the victim of a scam. They have mentioned that they specifically thought they were purchasing a four-bedroom lodge, however these have not been built on the site they were expecting.

They raised a scam claim with BoS who explained they felt this was a civil dispute between them and the company they paid, B.

Mr and Mrs H referred their complaint to our service and our Investigator looked into it. They explained that based on what is known about B and the other companies involved in the development project, there was not currently enough to conclude this was a scam as set out in the Lending Standards Board’s Contingent Reimbursement Model (“CRM”) Code. So, they felt it was reasonable for BoS to treat this as a civil dispute.

Mr and Mrs H disagreed with the findings and again raised that they thought they were investing in a four-bedroom lodge but these do not exist, so they felt this indicated they had been victims of a scam. And they felt their payment should be protected under Section 75.

As an informal agreement could not be reached, the complaint has been passed to me for a 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.

It isn’t in dispute that Mr and Mrs H authorised the payments totalling £74,950. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victim of an authorised push payment (APP) scam.

BoS has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a

customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"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."*

I've therefore considered whether the payments Mr and Mrs H made to B fall under the scope of an APP scam as set out above, and whether BoS was wrong in reaching the conclusion that this was a private civil dispute. Having done so, I don't think the evidence shows BoS was wrong to reach that outcome. I'll explain why in more detail.

In order to determine if Mr and Mrs H have been the victim of a scam, I have to consider if their intended purpose for the payments was legitimate, whether the intended purposes they and the company they paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company, in this case B.

Mr and Mrs H's understanding

Looking over the agreement Mr and Mrs H have provided, as well as their testimony, I think their understanding was that they were investing in a holiday lodge rental investment scheme which would begin with the development of the holiday site. I think this was a legitimate purpose.

Were B's purposes fraudulent?

I've gone on to consider what purposes B had in mind for the payments it obtained from Mr and Mrs H and whether these purposes were in line with the purposes Mr and Mrs H had believed, or instead, if they were in fact fraudulent.

In reaching an answer on what purposes B and its linked companies had in mind, the key information I've considered is as follows:

- B and linked companies owned sites and either had, or sought, planning permission to build and develop holiday homes on these sites. This suggests that there was a genuine intention of B and those other companies to build and/or develop the sites.
- The evidence available doesn't demonstrate that investors' funds were obtained fraudulently or solely for the personal benefit of the directors. I've been provided with no evidence to show that the funds weren't, in the main, used for business purposes.
- Many submissions have been provided, and allegations made, regarding representations made to investors prior to their investments. Whilst some misrepresentations may have been made by agents selling this investment scheme, I don't think this speaks overall to the intention of B and the other companies involved (including whether they sought to defraud their investors). Furthermore, misrepresentations made prior to an investment wouldn't automatically mean that Mr and Mrs H's payments would meet the definition of an APP scam, only in so far as

these misrepresentations directly related to the purposes of the payments Mr and Mrs H made.

It's clear that there are large and complex ongoing investigations by both the administrators of the companies involved as well as the police. Given the breadth of these investigations, it's difficult for me to be certain that all the available evidence has been obtained from all parties and that all the information relevant to this complaint has been reviewed prior to the issuance of my decision.

Furthermore, these investigations haven't yet drawn definitive conclusions as to whether the companies, or their directors, have acted fraudulently. But, for completeness, I should state that fraudulent activity by the companies or their directors may not automatically mean that Mr and Mrs H's payments would then meet the definition of an APP scam, given any given activity found to be fraudulent may be unrelated to the purposes for which investors' funds were obtained and instead relate to other activities carried out by the companies.

It is possible that the allocation of the same lodge plot number to more than one investor reflects fraud. But I can't discount that it might simply have been poor administration, or a sub-divided share in a single unit, or that this had happened for another legitimate reason. To find that B was operating a criminal scam, I'd need to find that there is convincing evidence to show that fraud and criminality is the most likely explanation not one of a range of possibilities.

I have every sympathy for Mr and Mrs H as they have lost a substantial amount of money and have provided a lot of detailed information and evidence relating to their complaint. But many businesses and investments fail and enter administration for genuine reasons, and not because they were set up to defraud and scam people. Based on what I have seen, I can't say that an APP scam is a more likely explanation.

Ultimately, Mr and Mrs H made payments towards a holiday lodge scheme that was purporting to develop the site and rent a lodge. The evidence I've seen doesn't sufficiently demonstrate that B didn't have the intention of carrying out and completing the developments and rentals at the time of the payments, including four-bedroom lodges as set out in their agreement. Because of this, I'm not satisfied that Mr and Mrs H's claim meets the CRM Code's definition of an APP scam.

Mr and Mrs H have also requested reimbursement under Section 75. It should be noted that Section 75 only covers the credit card payment they made of £1,099 and would not extend to the much larger faster payment on £73,950. BoS has already explained that they were unable to uphold the Section 75 claim, and I agree this outcome is correct. As I have not found sufficient evidence to agree this claim meets the definition of an APP scam, and I've not seen enough to sufficiently demonstrate B didn't have the intention to complete the developments advertised, I do not think there are grounds for a Section 75 claim for either breach of contract or misrepresentation.

Lastly, I've considered whether BoS could've done any more at the time of the payments in order to prevent Mr and Mrs H's loss.

I've not seen evidence to suggest that BoS intervened and discussed the payments with Mr and Mrs H prior to releasing them. But, even if BoS had discussed the payments with them prior to their release, I'm not persuaded that the information they'd have presented would've suggested that they might be at risk of financial harm. This is based on the information available about B at the time of the payments. So, I can't fairly say BoS could've prevented Mr and Mrs H's loss at the time.

Overall, I'm not persuaded that Mr and Mrs H have fallen victim to an APP scam, based on the evidence available. I've no doubt that this will be extremely disappointing to Mr and Mrs H, given the impact this situation has had on them, but I'm unable to say that BoS are liable to reimburse their losses. Should any material new evidence come to light at a later date, for

example from the police or the administrators, Mr and Mrs H can ask BoS to reconsider their claim. But, as it stands, I can't fairly say BoS should reimburse Mr and Mrs H's loss under the CRM Code.

My final decision

My final decision is that I do not uphold this complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 15 December 2025.

Rebecca Norris
Ombudsman