

## **The complaint**

Mrs and Mr A, who are represented in this matter, complain that Bank of Scotland plc ('BoS') won't reimburse money they lost to fraud.

As the circumstances have been given through the perspective of Mr A, for ease of reading I will refer to him throughout my decision.

## **What happened**

As the circumstances of this complaint are well-known to both parties, I have summarised them briefly below.

In February 2023, Mr A was introduced to an investment opportunity whereby he was offered to lease a plot, offered by a business I will refer to as Business A. The investment contract agreed a five-year term paying 8% annual returns.

Persuaded to invest, between 3 February and 13 February 2023 Mr A made several payments from his BoS account to Business A.

Mr A saw returns on his investment, paid in quarterly intervals to him. But in May 2024, Business A entered into administration after a legal dispute ensued. Mr A later discovered that investors had been misled and therefore raised a claim with BoS asking it to refund his losses under the principles of the Contingent Reimbursement Model (the CRM Code).

BoS considered Mr A claim but didn't agree it was liable to reimburse him. After consideration of the evidence, it found that Mr A had likely made a legitimate investment that had unfortunately failed. It therefore concluded that he had no valid claim under the CRM Code, and it was instead a civil dispute between him and Business A.

Mr A's representative referred his complaint to our service for an independent review. But after consideration of the evidence, an Investigator agreed with BoS's position that this was more than likely a legitimate investment that had failed. They therefore didn't recommend a reimbursement be given.

Mr A's representative disagreed, so the matter has now been passed to me to decide.

## **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.

### *Considerations*

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 have been good industry practice at the time.

There is no dispute here that Mr A authorised the transactions in question. And the starting position in law is that he will be held liable for the transactions authorised in the first instance. That is due to BoS's primary obligation to process payments in line with its customer's instructions, as set out in the Payment Services Regulations 2017.

However, BoS was a signatory to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) at the time the payments were made. Under that Code, firms are expected to reimburse customers who fall victim to fraud, subject to a number of conditions and exceptions.

However, the CRM Code is only relevant if I'm persuaded Mr A was a victim of fraud. The Code specifically doesn't cover certain types of disputes. It says:

*"This Code does not apply to...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".*

Likewise, even had the payments not fallen within the scope of the CRM Code, BoS has no liability to reimburse Mr A his loss from a bank transfer where the matter is deemed a civil dispute, such as where he paid for a legitimate investment that failed.

*Has Mr A likely been the victim of fraud?*

Mr A's representative has submitted lengthy representations to our service as to why it disagrees with our approach to cases involving Business A. And our service has in turn provided substantive responses to these representations as to why the matter is, with the current evidence available, more likely than not a civil dispute. I do not intend to respond to this complaint in detail for these reasons.

However, for the benefit of Mr A and the avoidance of doubt, I am not persuaded that Mr A's circumstances meet the definition of an authorised push payment fraud, as set out in the CRM Code.

Firstly, what is known in this case is that Business A was a legitimately registered business in the UK and that it entered into administration in May 2024. Mr A's representative has made submissions that the Liquidator has commented on the investment scheme having "all the hallmarks of a sophisticated investment fraud". But our service has seen no persuasive evidence to support this observation.

Mr A's representative says that there are some irregularities and questions surrounding the use of investor's funds. But much of this, as it currently stands, amounts to gaps in information rather than evidence of deliberate misuse of funds or an intent to defraud from the outset. Our service has reviewed the account history of Business A and has seen evidence that investor's funds were predominantly used for payments to relevant parties, showing it does appear to be an account being used for legitimate purposes.

Mr A's representative also submits that Business A made false representations that investors would own the land of the plot they were to lease, but the contracts provided—which were drafted by Business A—do not support that assertion. Business A set out in the contract that it owns/controls the site; it does not seem that there were any references made in the promotional material or contract to Mr A owning the land on which the lodge plot was based. It is also clear from the contract that this was always intended to be a fixed term agreement which, at the end of that period, would see the lodge plot being bought back into the control of the site owner for a higher sum than was paid. So, I cannot agree that the representations made were in fact false from the evidence I have seen.

I have noted that Mr A's representative has argued strongly against our service's position regarding cases involving Business A. But our service is limited to the information it can obtain as part of its investigations. Law enforcement bodies have the legal capability to trace funds to their exit source and interview persons in an attempt to understand intent. Should any future investigations reveal stronger evidence that Business A and its representatives were defrauding investors, then Mr A can present that new evidence to BoS for further review. But as the evidence stands, I cannot rule out, to a satisfactory standard, that Mr A has not lost funds to a failed investment. I therefore cannot reasonably direct BoS to reimburse his loss here.

### **My final decision**

For the reasons I have given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 5 January 2025.

Stephen Westlake  
**Ombudsman**