

The complaint

Mr P complains that The Royal Bank of Scotland Plc ('RBS') won't refund the money he lost when he was the victim of a scam.

What happened

What Mr P says

Mr P is represented in this case but for ease I'll refer to Mr P throughout this decision.

Mr P says that he saw an advert for a company I'll refer to in this decision as G and also heard friends talking about the company. He registered his interest and received a call from a representative of G. After seeing positive reviews on G's website and finding G on Companies House, Mr P decided to invest and was told he'd receive returns of up to 32.5%. Mr P was asked for identification documents and received professional looking emails from G. He was also given access to a platform where he could see how his investment was doing.

Initially the representative of G was friendly, and Mr P says he was able to withdraw £200. But as time went on, he began to apply pressure and Mr P was told if he didn't invest that day, he'd lose all his profits.

I have set out in the table below the payments Mr P made. The payments were made to three different companies which weren't G. Mr P questioned this and was told that G used lots of clearing companies around the world.

Payment number	Date	Amount
1	07/10/19	£1,000
2	10/10/19	£2,500
3	15/10/19	£2,500
4	11/11/19	£5,544
Total		£11,544

Mr P realised he was the victim of a scam when he tried to withdraw funds and was told he needed to pay more to do so. He reported the scam to RBS on 17 July 2020.

What RBS say

RBS investigated Mr P's complaint under the Lending Standards Board (LSB) Contingent Reimbursement Model Code (CRM Code) and its general obligations and didn't agree to refund any of the funds lost. It said the payments weren't identified as suspicious, but it gave tailored scam warnings when they were made based on the payment reason given. It attempted to recover Mr P's funds but was unable to do so.

Our investigation so far

The investigator who considered this complaint asked RBS to provide evidence to show that the investment scam warning was provided to Mr P. In response, RBS offered to refund 50% of Mr P's total loss - £5,772 plus interest.

Mr P felt the offer wasn't fair and pointed to the fact he had checked Companies House and reviews of G, had provided verification documents, received a contract, and professional looking emails.

The investigator issued a view recommending that the complaint be upheld in part. She said that RBS didn't need to provide a warning when the first payment was made. But effective warnings should have been provided when payments two to four were made but RBS hadn't evidenced that this happened. But also, Mr P didn't complete enough independent checks before making the payments so should only receive a refund of 50% of them. The investigator also awarded 8% simple interest from the date of loss for payment two and from the date the claim was declined for the next two payments.

RBS accepted the investigator's findings, but Mr P did not. He said the 50% deduction was harsh as the scam was convincing and Mr P had a good basis for belief. He referred to some of the previous points and said he did enough independent checks. Finally, Mr P said the deduction wasn't in line with the CRM Code and the then recent clarification provided by the LSB.

The complaint was passed to me to consider. I issued my Provisional Decision on 11 September 2023 and said RBS should provide Mr P with a full refund. I explained why I had reached this conclusion in the *"What I've provisionally decided and why"* section where I said:

"In deciding what is 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.

I've also thought about the LSB's voluntary CRM Code, which RBS has signed up to and was in force at the time Mr P made the payments in this case.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is victim of an Authorised Push Payment (APP) fraud except in limited circumstances. It is for RBS to establish that it can fairly rely on one or more of the listed exceptions set out in the CRM Code. The exceptions relevant to this case are:

- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*
- The customer ignored an effective warning in relation to the payment being made.*

Did Mr P have a reasonable basis for belief?

Taking into account all of the circumstances of this case, including the characteristics of Mr P and the complexity of the scam, I think Mr P had a reasonable basis for believing he was making payments for a genuine investment. I say this because:

- Mr P has provided emails he received from G. These show contact details, a logo and a disclaimer at the bottom, as would be expected of emails from a legitimate company.*
- Mr P was asked to send G know your customer information including identification and a utility bill. This process would be followed for a genuine investment.*
- G provided Mr P with professional looking invoices on headed paper. There was nothing concerning about them to indicate that something might be amiss.*

- Mr P says he saw positive reviews on social media but also on Google, but these reviews are no longer available, possibly because they have been removed now that it is clear G was in fact a fake company.
- Mr P questioned G about some aspects that seemed unusual, like the fact that he was asked to pay four different companies, none of which were G. While the explanation given in an email Mr P has provided to this service – that G used hundreds of clearing companies around the world depending on where a customer is and the size of the transaction – doesn't make sense to those with more experience, I don't think Mr P acted unreasonably in accepting this explanation. He was an inexperienced investor, and what he was told was plausible to him.
- Mr P had access to a platform that allowed him to see the progress of his investment. The platform showed both losses and gains. I can understand why such a platform would make G seem legitimate.
- Mr P was provided with a detailed service level agreement. I appreciate he only received this after he'd made the first three payments so it's only relevant to his level of belief when he made the final payment. But the final payment was the largest. A document of this nature would have been very persuasive when Mr P was considering this final payment.
- I can't find anything negative about G at the time of the scam and note that an FCA warning wasn't published until early the next year.
- Mr P says he was able to withdraw £200 which he paid to an account with a different bank. I can see why this would reassure him that G was legitimate and trustworthy.

I appreciate that with the benefit of hindsight there were some unusual factors, but I don't believe these mean that Mr P didn't have a reasonable basis for believing the investment was genuine. For example, it's not clear exactly what rate of return Mr P was offered but I can see a figure of 32.5% in respect of the final payment. Mr P has explained that he has some shares that have increased in value by more than 100% so at the time he thought the return was possible. And Mr P says he called the office of G but only found out that a number of financial firms were based there rather than G specifically. I don't consider these factors outweigh those I have raised above though.

Did RBS provide Mr P with an effective warning?

The CRM Code says that where firms identify authorised push payment (APP) scam risks in a payment journey, they should provide effective warnings to their customers. This should include appropriate actions for the consumer to take to protect themselves from scams like the one Mr P has fallen victim to

I agree with the investigator that no warning was required when the first payment of £1,000 was made. As I'm satisfied Mr P had a reasonable basis for belief this payment should be reimbursed in full.

RBS said it provided Mr P with an investment warning that said a customer should seek independent advice and thoroughly review the company including a review of the FCA register when each payment was made. The investigator asked for evidence that this warning was live in October 2019 (rather than subsequently). RBS didn't provide this evidence and offered a 50% refund, so I think it's fair to conclude that RBS accepts that it didn't provide Mr P with an effective warning when the payments were made. As this is a provisional decision, RBS has the opportunity to raise further points if this is not the case.

Could RBS have done more to prevent the scam?

I am also mindful that when Mr P made this payment, RBS should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customer was at risk of fraud or financial harm. I have only been provided

with statements from 1 August 2019. Normally I'd ask for statements for the 12 months before the scam. But in this case, given my conclusions above, I'm only looking at whether RBS could have prevented the scam to establish when interest should be paid from. If RBS doesn't agree with my provisional decision, it should provide statements from October 2018 onwards.

It seems to me that Mr P used his account for low value day to day spending, The early payments were higher than normal, but not at a level I think RBS should have intervened. There is a balance to be struck here and if banks stopped all transactions of this nature there would be significant disruption to legitimate payment journeys. But I think that the final payment ought reasonably to have been flagged by RBS and a conversation should have taken place. If this had happened, I think RBS would have advised Mr P to check the FCA register before making the payment. So I think RBS could have prevented this payment from being made. The significance of this finding is that interest on this payment should be paid from the date of loss. Interest for payments two and three though should be from the date RBS declined Mr P's claim.

Overall, I'm not persuaded RBS has demonstrated that it may rely on any of the exceptions to reimbursement in the CRM Code."

Responses to my provisional decision

Mr P accepted my provisional decision, but RBS did not. In summary it said that Mr P should receive 50% of his loss for the following reasons:

- It provided effective warnings and advised Mr P to seek independent advice.
- It has fraud prevention measures in place and none of the payments caused any concern.
- There was no bank error.

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.

Having reviewed the responses, I have received my final decision is the same as my provisional decision and for the same reasons. I have set those reasons out above.

I'm not persuaded that Mr P ignored effective warnings as set out in the CRM Code or that he didn't have a reasonable basis for believing the payments were for genuine investment purposes. In the circumstances, RBS can't fairly rely on an exclusion and should reimburse Mr P in full.

In its response to my provisional decision RBS said that it provided Mr P with effective warnings. But RBS still didn't provide the evidence the investigator requested to evidence that the warning RBS says it provided was live at the relevant time (rather than a warning RBS displayed subsequently). As RBS hasn't evidenced which warning was displayed, I can't fairly say it provided an effective warning.

RBS said none of the transactions triggered its fraud prevention system. In my provisional decision I asked RBS to provide statements if it didn't agree with what I said about the final payment flagging. I haven't been provided with this information and on the evidence I have I believe this final payment should have triggered for the reasons I gave in my provisional decision. I'm satisfied RBS should have refunded Mr P in full under the CRM Code. I have only raised intervention as it is relevant to the date interest should be payable from.

My final decision

I require Royal Bank of Scotland Plc to:

- Refund Mr P £11,544
- Pay interest on the above amount at the rate of 8% simple a year. Interest for the payments of £1,000, £2,500 and £2,500 should be paid from the date of RBS' decision not to reimburse Mr P to the date of settlement. Interest for the payment of £5,444 should be paid from the date of the payment to the date of settlement.

If Royal Bank of Scotland Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks/ask for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 October 2023.

Jay Hadfield
Ombudsman