

## **The complaint**

The estate of Mr F complains that Yorkshire Building Society (YBS) won't refund the money Mr F lost to a scam.

## **What happened**

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

One of Mr F's sons, Mr F2, has explained that Mr F had health concerns dating back to 2011 which affected his short-term memory. Between 2015 and 2016, Mr F made a number of payments from his YBS accounts in relation to a wine investment. Mr F2 found records of this at Mr F's home in early 2017. He was concerned about the amount Mr F had paid and the legitimacy of the investment. When he asked his father about the payments, Mr F didn't seem to know much about them.

There are records that Mr F, supported by his family, contacted YBS about the payments in January 2017. According to its notes, YBS attempted recovery but explained it couldn't guarantee this would succeed as Mr F had confirmed he wanted to make the payments at the time. There was also discussion around Mr F pursuing the matter with the police and Action Fraud, and about his vulnerabilities.

Sadly, Mr F died in May 2020. In November 2021, YBS received a complaint from Mr F's estate (of which Mr F2 is the executor) about the payments made to the wine investment – which they think was a scam. YBS said it wouldn't look into a complaint about the payments made over six years ago, as that had been raised too late. And it didn't accept liability for the more recent scam payments.

Unhappy with YBS's response, the estate referred the complaint to our service. Our investigator didn't think we could consider the payments made prior to November 2015. For the later payments, which the investigator was satisfied we could consider, he wasn't persuaded YBS ought to have uncovered the scam and prevented the loss at the time.

The estate has appealed the investigator's outcome. It doesn't feel YBS did enough to protect Mr F, particularly given his circumstances. The case has therefore been passed to me. I've already issued a decision explaining we can't consider the payments made prior to November 2015 – but we can consider the payments made from then on. And that is what I will now address within this 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.

Having done so, I've decided not to direct YBS to refund the loss being claimed for the scam payments made from November 2015 onwards. I'll explain why.

I'll briefly cover which payments I'm considering – as this was covered in detail by the investigator, and I can't see either party has disputed what he said:

Date	Amount	Payment type
January 2016	£6,000	Faster Payment
February 2016	£6,000	Faster Payment
May 2016	£4,000	Faster Payment
June 2016	£4,500	Faster Payment
August 2016	£3,000	Cash withdrawal

For the faster payments, the recipients make it clear that the payments relate to the supposed wine investment. For the cash withdrawal, there are records from when Mr F made the payment in branch which show he told YBS it was for the wine investment.

In line with the Payment Services Regulations 2009 (the PSRs), which are the relevant regulations that apply to these payments, firms are expected to execute authorise payment instructions without undue delay. Given this duty, Mr F would generally be liable for payments he authorises.

While it's not disputed that Mr F was scammed, it's also not in dispute that he made these payments. And so, under the PSRs, he is presumed liable for these payments in the first instance.

But there are some situations where we believe that firms—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If YBS failed to identify and respond appropriately to an indication Mr F was at risk from fraud, and we think that failure likely affected his loss, then we might reasonably hold it liable for the resulting loss.

YBS has provided notes made at the time of each payment. These show it checked the reason for the payment – and Mr F explained he was paying into a long-running investment with a company he had paid before.

While the payments were sizeable, by the time of the transactions I can consider, Mr F had a history of making similar-size payments to the company. I think that has a bearing on what we would reasonably expect from YBS. As it makes the potential fraud risk appear less obvious and concerning.

I've not seen anything to suggest YBS had been told – or should otherwise have known – about Mr F's vulnerabilities at the time of the January 2016 payment. So I consider it reasonable that YBS processed the payment, understanding it was going to a trusted account.

By the time of the February 2016 payment, YBS knew more about Mr F's circumstances. The notes suggest it was aware his vulnerabilities, and took those into account, when asking him about the payment. The notes also suggest Mr F provided paperwork to the branch staff in relation to the payment request – which would reasonably have helped alleviate any fraud concerns.

While YBS was aware of Mr F's vulnerabilities, that in itself wouldn't and shouldn't cause it to refuse his payment requests. Particularly as there is nothing from the time to suggest that he appeared confused or unaware of what he was doing. So again, I consider it reasonable that YBS processed this payment.

For similar reasons, it doesn't seem the May 2016 payment appeared uncharacteristic or otherwise concerning. Again I consider it reasonable, based on the records we have, that YBS processed the payment. The same goes for the June 2016, although I'd note there is also an (admittedly limited, given the time that's passed) indication that scam risks were discussed at that point – and F confirmed he was still happy to proceed.

Regarding the August 2016 payment, the records show YBS had concerns about Mr F's vulnerabilities, and that he didn't have an invoice for that particular payment. So that could indicate it should perhaps have done more to satisfy itself about the risk. However, I'm not convinced that, even if YBS's questioning fell short, further suitable questioning would have prevented the loss stemming from this payment.

Overall, the records don't persuade me that YBS could and should have uncovered the scam at this point. This appears to have been a sophisticated and long-running scam. Given Mr F's history with the company, it seems unlikely to me he would have been deterred by further warnings, as he was likely very persuaded by this point that his funds were being genuinely invested.

I appreciate this will be disappointing for the estate. And I'm conscious that Mr F2 is clearly motivated by his concerns about his vulnerable father being exploited by a cruel scam. But my role here is to decide, on balance, whether there are grounds to hold YBS liable for the loss. In the circumstances, I'm not persuaded any failings by YBS likely caused, or contributed to, the losses being claimed. As such, I'm not satisfied it's fair to expect it to refund the estate for these payments.

### **My final decision**

For the reasons given, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 22 September 2023.

Rachel Loughlin  
**Ombudsman**