

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

In December 2022, Mr P says he saw an advert for an investment company on a social media platform. He says he was then contacted via an instant messaging service by someone from the company, who explained the investment involved completing tasks and that he would earn money for each set of tasks he completed. The person messaging him then showed him how to buy cryptocurrency, and then use the cryptocurrency to fund the tasks he was being given to complete. Mr P was also shown how to open an account on the company's platform where he could see the money he was making.

Mr P then made a number of payments from a number of accounts he held, including one with RBS, to buy cryptocurrency which was then sent on to wallet details the company gave him. I've set out the payments Mr P made from his RBS account below:

Date	Amount
19 December 2022	£25
19 December 2022	£200
19 December 2022	£130
19 December 2022	£120
19 December 2022	£20
19 December 2022	£85
19 December 2022	£500
19 December 2022	£216

Unfortunately, we now know the investment company was a scam.

After the scam was uncovered, Mr P reported the payments he'd made to RBS and asked it to refund the money he had lost. RBS investigated but said it had followed the correct process and hadn't made an error. It also said it had spoken to Mr P before he made the last payment but, based on what he told it, it didn't have any concerns. So it didn't agree to refund the payments. Mr P wasn't satisfied with RBS's response, so referred a complaint to our service.

I sent Mr P and RBS a provisional decision on 19 January 2024, setting out why I wasn't intending to uphold the complaint. An extract from my provisional decision is set out below:

"Are the payments Mr P made covered by the CRM code?"

I've first considered whether the CRM code applies to the payments Mr P made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code which RBS has signed up to. It sets out a number of circumstances in which

firms are required to reimburse customers who have been the victims of certain types of scam. But it only covers certain types of payments where a customer paid funds to another person for what they thought were legitimate purposes, but which were in fact fraudulent.

Mr P has said the payments he made were to buy cryptocurrency, which was then sent to a number of different electronic wallet details the data company gave him. I recognise that he only did this under the direction of the scammers. But the purchase of the cryptocurrency itself appears to have been genuine, as Mr P appears to have actually bought cryptocurrency before sending it on to the scammers. So the way the CRM code is written means that I don't think it applies to these payments.

Did RBS do enough to protect Mr P?

Banks are expected to make payments in line with their customers' instructions. And Mr P accepts he made the payments here. So while I recognise he didn't intend for the money to go to scammers, he did authorise the payments. And so the starting position in law is that RBS was obliged to follow his instructions and make the payments. So Mr P isn't automatically entitled to a refund.

Even though I don't think the payments Mr P made are covered by the CRM code, the regulatory landscape, along with good industry practice, also sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think RBS should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

And so I've also considered whether RBS should have identified that Mr P was potentially at risk of fraud as a result of these payments.

But the payments Mr P made from his RBS account as a result of the scam weren't for particularly large amounts. There had been a number of payments out of his account for what I consider to be similar amounts to the scam payments in the previous months. The scam payments didn't leave the balance of his account at a particularly unusual level or use up a significant proportion of the available balance in his account. And, as the scam payments were for varying amounts and were sent to a number of different accounts, I don't think they formed a particularly suspicious pattern.

So I wouldn't have expected RBS to identify that the payments Mr P made as a result of the scam were unusual or out of character for him, or that he could be at risk of financial harm as a result of them. And so I don't think it would be fair to say RBS had acted unfairly or unreasonably in not carrying out additional checks before allowing them to go through.

RBS did stop the final payment Mr P made, for £216 on 19 December 2022, and spoke to him before allowing it to go through. And I've listened to a recording of the call it had with him. In the call, RBS asks what the payment is for and Mr P says he is buying presents for a friend of his. Mr P says he has known the person for two months and has met them in person. RBS then asks if Mr P has been asked to lie to it, and Mr P says he hasn't.

Mr P has argued that RBS should have asked more questions in this call and that, if it had done so, the scam would have been uncovered. And I appreciate that RBS had the opportunity to discuss the payment further in this call and that banks are required to take steps designed to protect their customers from the risk of financial harm. But those steps are only required to be proportionate to the risk identified. And I don't think this payment, or any of the other payments Mr P made as a result of the scam, were for particularly large amounts or that anything Mr P told it should have caused it any concern. Mr P gave RBS a plausible explanation of the payment. And so I don't think it was unreasonable for RBS to not ask any further questions in this call, and to allow the payment to go through based on the information it was given.

Mr P has argued that he was financially illiterate and inexperienced, and so was vulnerable to this scam. He's also mentioned that he wasn't working at the time, as a result of a physical condition. Any my intention isn't to diminish the difficulties these things can cause, and I don't underestimate the impact they had. But I can't see that RBS was specifically made aware of Mr P's circumstances, or that it should have been aware of them. And, based on what he's told us and what I've seen of his communication with our service, RBS and the scammer, I don't think Mr P's circumstances were such that he was unable to protect himself from this particular scam. So I still don't think RBS should be required to refund the money he lost.

I sympathise with the position Mr P has found himself in. He has been the victim of a cruel and sophisticated scam and I appreciate that my decision will come as a disappointment to him. But, for the reasons I've set out above, I don't think RBS has acted unreasonably or that anything I would reasonably have expected it to do would have prevented this scam. And, as I don't think it has acted unreasonably or made an error, I don't think it would be fair to require RBS to refund the money Mr P lost."

I said I'd consider anything further Mr P and RBS sent in following the provisional decision, provided it was received by the deadline given.

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.

RBS said it didn't have anything further to add following the provisional decision. Mr P responded to the provisional decision with a number of points, which I will address below.

I want to assure the Mr P that I have read and considered everything he sent us. I may not comment on every point he made, as I have focused my findings on the issues I think are most relevant to the outcome of this complaint, but I have considered everything he sent us in coming to this decision.

Mr P again mentioned that he was vulnerable to this scam due to being financially illiterate and inexperienced. And as I explained in the provisional decision, my intention isn't to diminish the difficulties these things can cause, and I don't underestimate the impact they had on him. But I can't see that RBS was specifically made aware of Mr P's circumstances, or that it should have been aware of them. And, based on what he's told us and what I've

seen of his communication with our service, RBS and the scammer, I don't think Mr P's circumstances were such that he was unable to protect himself from this particular scam. So I still don't think RBS should be required to refund the money he lost on the basis of this vulnerability.

Mr P also said RBS's intervention when the final payment was made didn't ask the right questions and fell short of its duty to conduct its business with due care, skill and diligence. And I accept that RBS had the opportunity to ask more questions that it did. But the steps banks are required to take to protect their customers are only required to be proportionate to the risk identified. And, due to the size of the payments here, I don't think RBS should have identified a significant risk and I think the questions it asked were in line with the risk I would have expected it to identify. The recording of the call also shows that Mr P misled RBS about the purpose of the payment and who he was sending the money to. So I don't think RBS made an error or acted unreasonably in not asking further questions here.

And while I said in my provisional decision that I didn't think the payments were for significant amounts, my intention wasn't to diminish the importance of the amounts to Mr P or the financial impact this situation has had on him. But we must judge the risks banks are expected to identify in the context of the wider financial environment, as well of the context of previous activity on Mr P's account. And, taking both of these into account, I don't think the payments were unusual or out of character enough that RBS should have identified that Mr P could be at risk of financial harm as a result of them.

Mr P mentioned that other banks he made payments from had refunded him some of the money he lost. But we look at each case individually on its own merits. I don't think other banks choosing to refund some of the money Mr P lost means RBS should be required to refund some of the money as well. And, for the reasons I've set out, I don't think RBS has acted unreasonably or should be required to refund the money Mr P lost here.

Mr P also said that the investigation process was biased against him and lacked compassion towards him. But while I appreciate that the provisional decision did not find in his favour, we are an independent and impartial organisation. We do not act on behalf of financial businesses or consumers and it is not in our interest to find in one party's favour over the other. And where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

As I said in my provisional decision, I sympathise with the position Mr P has found himself in. He has been the victim of a cruel and sophisticated scam and I understand that my decision will come as a disappointment to him. But I don't think it would be reasonable to uphold a complaint on that basis alone. And as I don't think RBS has acted unreasonably or that anything I would reasonably have expected it to do would have prevented this scam, I don't think it would be fair to require RBS to refund the money Mr P lost.

Mr P also made a number of points about the provisional decision being based on a flawed understanding of the situation and about information that contradicts the outcome. But he didn't give any specifics about where the understanding of the situation expressed in the decision was incorrect, or about what information contradicts the outcome. And, having reviewed the information we have, I'm still satisfied the information and conclusions set out in my decision are correct.

I therefore still don't think RBS has acted unreasonably or that anything I would reasonably have expected it to do would have prevented this scam. And, as I don't think it has acted unreasonably or made an error, I don't think it would be fair to require RBS to refund the money Mr P lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 March 2024.

Alan Millward
Ombudsman