

## **The complaint**

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

## **What happened**

In early 2022, Mr G was looking to get some landscaping work done at his property. He came across a trader advertising landscaping services on a social media platform. And after meeting the trader, checking their company online and seeing examples of other work they had done, Mr G agreed for the trader to carry out the work. Mr G then made a number of payments to the trader to pay for materials, including two payments from his RBS account totalling £1,000.

Unfortunately the trader then didn't start the work when agreed and, shortly afterwards, Mr G received a message that the trader's company had gone into liquidation. After finding out other people had been left in similar positions by the trader, Mr G reported the payments to RBS as fraud and asked it to refund the money he had lost.

RBS investigated but said it thought the trader was operating a genuine company at the time, so it didn't think this was a scam. It said it considered this to be a civil matter between Mr G and the trader, so didn't agree to refund the money Mr G had lost. Mr G wasn't satisfied with RBS's response, so referred a complaint to our service.

One of our investigators looked at the case. They thought it was likely that the trader was operating a genuine company at the time and hadn't intended to scam Mr G. So they thought it was a civil dispute between Mr G and the trader and RBS didn't need to refund the money Mr G had lost. Mr G disagreed with our investigator, so the complaint has been passed to me.

## **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 don't think it would be fair to require RBS to refund the money Mr G has lost. I'll explain why below.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

RBS is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain

types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam.

The CRM code says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier. So in order to determine whether RBS should refund the money Mr G lost under the CRM code, I need to consider whether he has been the victim of a scam – or, in other words, whether the trader set out from the beginning with the intent to defraud him.

Mr G says he first saw the trader advertising on a social media platform, and then checked and saw that they were registered on Companies House and on an online directory for tradespeople. And I wouldn't necessarily expect a scammer to be registered in this way.

Mr G also said the trader came to his property three times to assess the work to be done. And that he was shown pictures of other work the trader had done, spoke to several other people who had work done by the trader and saw some other work the trader had completed at a nearby property. But I wouldn't usually expect a scammer to have this much in-person contact with someone before receiving any payment, and I wouldn't usually expect a scammer to be able to arrange these kinds of examples of work or previous customers.

The trader also allowed Mr G to pay some of the up-front cost by credit card. Whereas scammers will usually want people to pay them in cash or by bank transfer, as there is less chance of these types of payments being recovered or traced.

The bank the payments were sent to has also told us that the activity on the trader's account is consistent with their nature of business. And from what I've seen of the activity on the account the money was sent to, it appears to have been run as I would expect a legitimate account to have been.

I appreciate how Mr G feels about this case, that no work was ever done at his property and that other people appear to have been left in similar positions by the trader. He's suggested that the trader was acting fraudulently if he knew his company was in trouble but kept taking payments. And it is possible that this is the case. But I haven't seen anything to show the trader knew he wouldn't be able to complete the work, rather than just hoped he could work through the trouble his company was having.

Where the evidence available is incomplete or inconclusive, I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the trader here was attempting to operate as a legitimate business at the time and that other factors ultimately meant the landscaping work wasn't completed. I don't think the trader set out from the beginning with the intent to defraud Mr G, or that Mr G has been the victim of a scam here.

So I don't think the payments Mr G made to the trader are covered under the CRM code, or that RBS should be required to refund the money he lost.

I sympathise with the position Mr G has found himself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the trader. But, for the reasons I've explained above, I don't think it would be fair to hold RBS responsible for the money he's lost.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 September 2023.

Alan Millward  
**Ombudsman**