

The complaint

Mr D complains that The Royal Bank of Scotland Plc (RBS) won't refund the money he paid for services he didn't receive.

What happened

On 15 July 2022, Mr D made a mobile banking transfer of £220 to a company (that I'll call C). C was due to provide accommodation over four nights at an overseas event in July 2023. On 26 June 2023, C emailed Mr D to explain it had ceased trading and it was unable to offer a refund for the services it could no longer provide. It suggested an alternative accommodation provider that it said it had no links to, to source different accommodation at a further fee.

Mr D contacted RBS on 26 June as he felt he'd been scammed. RBS' scam team considered Mr D's claim but said it was the subject of a civil matter – a buyer-seller dispute between Mr D and C. This is because C was still trading and was refusing to fulfil the services paid for, which RBS said didn't amount to evidence of fraud. It suggested Mr D contact Trading Standards and could pursue the matter through the courts.

Mr D was unhappy with RBS' response as he firmly believes he's been scammed. He noted he had to raise his complaint three times without acknowledgment, he was given conflicting information by RBS, and he was transferred through to the scam team who ultimately couldn't help.

When RBS considered Mr D's complaint it maintained the response of the scam team, but it apologised for the service issues Mr D complained about. RBS said it acted in accordance with Mr D's payment instruction and had no reason to refuse the payment.

Mr D referred his complaint to our service, but our investigator didn't uphold it. They considered Mr D's claim to be the subject of a civil dispute between him and C because it was likely C was a legitimate business when Mr D made his payment to C.

Mr D didn't accept this outcome. He said:

- It's obvious that C turned fraudulent because it waited until the last moment to declare itself unable to provide the services paid for. A genuine company would try to offer the service or refund what they could, which C did not.
- The definition of 'fraud' being used to assess his claim is vague and subjective. He thinks his case meets the definition of fraud outlined in the Fraud Act 2006.
- RBS didn't clearly inform him it was a civil matter which prejudiced his ability to pursue a civil case. The bank said it would be able to contact the beneficiary bank on his behalf. This delayed civil options and reduced the likelihood of him being able to recover any funds.
- He's suffered emotional distress due to being the victim of fraud and feels there is no protection for consumers.

As no agreement could be reached, this case was passed to me for a decision to be issued.

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.

In doing so, 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 be good industry practice at the time.

I understand Mr D has strong feelings about what has happened. I want to assure him I've carefully considered all of the points he's raised throughout the investigation, as well as the evidence provided by him and RBS. However, my decision focuses on what I consider to be the key issues of the complaint. Whilst I may not make direct reference to every single point raised, I have taken these into account. My role is to reach what I think is a fair and reasonable decision based on the facts of the case, which is what I've done.

It's also important to remember that my role here is to consider whether RBS has acted fairly and reasonably – not C.

It's not in dispute that Mr D made the payment himself. So, under the Payment Services Regulations 2017 (PSR 2017) Mr D is presumed liable for the loss in the first instance. But RBS is a signatory of the Contingent Reimbursement Model (CRM) Code, under which the starting position is that a customer who has fallen victim to an authorised push payment (APP) scam should be reimbursed.

However, the CRM Code doesn't 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."

The CRM Code would only apply if Mr D had fallen victim to an APP scam, which is defined under the CRM Code as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

There's no dispute that Mr D intended to transfer the funds to C, so (i) doesn't apply. For (ii) to be relevant, I'd need to be reasonably satisfied from the evidence that C intended to deceive Mr D by acting fraudulently.

Mr D has referred to the definition of fraud in the Fraud Act 2006. However, the Financial Ombudsman Service is an alternative to the courts and so the test here is not necessarily whether C could be convicted of fraud in a court of law. Fraud also isn't defined in the CRM Code, but an ordinary meaning is something done or obtained through (usually) criminal deception.

Whilst I know this will disappoint Mr D, I agree with our Investigator that C was most likely operating as a legitimate business at the time Mr D transacted with it. And it later fell into difficulties rendering it unable to provide the services Mr D paid for.

At the time Mr D made the payment, C was registered at Companies House and had been since 2008. The described nature of the business is a true reflection of the type of services C was offering. Companies House records show a voluntary application to strike the company off the register and be dissolved in October 2023, which was later suspended. But this suggests C was due to cease trading.

There are also a number of media publications concerning C's closure. Some of these publications suggest C was operating as a legitimate business before it fell into financial difficulties. And reviews about C in the public domain which are both positive and negative, support C was providing such services over multiple years, with many reviews left by repeat customers. So I'm not persuaded C was set up entirely to defraud people such as Mr D. C also proactively contacted Mr D almost a year after he'd paid C, to confirm it wouldn't be able to supply the services paid for. This is not typically the case with a fraudster, who more often than not is uncontactable shortly after taking the victim's money.

There are a number of reasons why C might not have been able to provide the services Mr D paid for or give a refund. Mr D made the payment in July 2022, and it was almost a whole year later when C confirmed it was unable to fulfil the services paid for. It's not my role to determine the exact reason C was unable to supply the services Mr D paid for, or why C failed as a business. Unfortunately businesses can operate poorly or be mismanaged such that contracts are breached and agreed goods or services aren't provided. But that doesn't necessarily amount to evidence of an intent to defraud.

Overall, having considered the circumstances of Mr D's complaint, I consider it is about a civil dispute and not a scam. So RBS hasn't acted unreasonably or unfairly in declining to assess his claim under the CRM Code.

Turning to the points raised about customer service, I've listened to the calls Mr D made to RBS to raise his dispute. Having done so, I'm satisfied RBS made no promises of reimbursement nor did it confirm it was treating Mr D's case as a valid scam claim. In the first call they said they will see if they can try to recoup Mr D's funds. And in the second call the advisor said they would put Mr D through to the scam team to get a scam case opened for him and look at getting Mr D's money back. I don't think the language used within these calls gave the impression reimbursement was mandatory or even likely. Many banks also have specialist teams like a scam team who would be best placed to assess the outcome of any potential scam claim raised. So I don't think it was wrong to put Mr D through to the scam team and later decide it was a civil dispute.

When Mr D spoke to the scam team, it confirmed it would not treat his claim as a scam because the company was still trading, and it referred Mr D to Trading Standards. I don't think this prejudiced Mr D's ability to pursue a civil case or recover funds. RBS is also not obliged or entitled to recover funds sent by bank transfer which are subject to a civil dispute. It would only be expected to do so, had the funds been sent as the result of an APP scam, and even then, recovery is not guaranteed. So, RBS hasn't made an error in not attempting to recover Mr D's funds. Overall, I don't consider any compensation is due for the service issues raised by Mr D.

I'm sorry that Mr D has lost this money, and I appreciate how helpless he may feel when making further similar bookings with other companies. Mr D may choose to pay by card in the future as this offers greater protection when things go wrong with legitimate purchases. However, for the reasons I've explained, I don't think RBS has acted unfairly in declining his

claim. The evidence supports C was a legitimate business which fell on hard times and subsequently was unable to meet its obligations to its customers, like Mr D. I can't fairly conclude, with any certainty, that C set out with an intent to defraud Mr D. As this case does not meet the definition of an APP scam, it doesn't fall under the scope of the CRM Code so there are no reasonable grounds for asking RBS to refund Mr D's loss. I also can't fairly hold RBS responsible for the distress Mr D has suffered as a result of C's actions.

My final decision

For the reasons I've explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2024.

Meghan Gilligan
Ombudsman