

The complaint

Mr D is unhappy The Royal Bank of Scotland Plc (RBS) won't refund the money he lost as the result of a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that Mr D's son was the victim of a romance scam.

Some of the testimony is unclear and contradictory – which is not surprising given it was the consumer's son that fell victim to the scam. But from what I've seen - around September 2021, Mr D's son met someone (I will refer to as Ms A) via an online dating site. The conversation quickly moved onto a messaging forum outside the dating site. After a few weeks Ms A began asking for money for various things including a car, medical expenses for her mother, and house purchase. Mr D's son appears to have been of the understanding that this was on the basis they would be getting married and moving in together. Mr D's son met the person in question once when he travelled to her country. She made a variety of excuses for not meeting up but eventually met up it seems for around an hour. It seems she had promised to return home with him, but the following morning Ms A told Mr D's son her unwell mother had now died and she needed to stay in the country and needed more money for funeral costs.

Between 25 September 2021 and 20 December 2021 Mr D's son made multiple payments totalling £13,020.50. He transferred a further £12,563 from his own account with another bank.

Mr D raised a scam case on 7 February 2022. The case was declined for a refund as RBS did not feel Mr D had a reasonable basis to believe the request was genuine and did not carry out sufficient due diligence. It also considered Mr D breached the Terms and Conditions of use of his account, by allowing his son to have access to his online/mobile banking.

RBS tried to claim back funds on a best endeavours basis, however there was none left to refund.

Our investigator did not uphold the complaint. Mr D did not agree so the complaint has been passed to me for a decision.

I issued my provisional decision on 6 July 2023. RBS did not respond. Mr D did not accept my decision. He said:

He didn't think it is enough to say his son's bank's case has no bearing on this case because I don't have the details. He feels that because it is the same scam with the same people that is enough. He says those details are available and should be considered.

He has asked me to reconsider the emotional side of this case. As mentioned in the decision he and his wife were happy when their son told them he had met someone. They were elated and more than happy to help financially. They had not heard of 'romance scams' and nothing gave them cause for concern. It was their understanding that their son had met Ms A in the UK as well as abroad.

He also feels the question of whether RBS should have warned them also needs further thought. Warnings were not given because the threshold of £1,000 was not breached but he would question whether £13,000 in three months from an account that was previously hardly used should have sounded alarm bells.

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.

Responses to my provisional decision

Although Mr D doesn't agree with me that the outcome on his son's case is not relevant to my consideration of this case – I note that he hasn't provided that information during the course of his complaint or in response to my provisional decision.

I haven't asked for this information because my role is to judge each case on its own merits. The bank in that case (a different bank) made a decision (before coming to this service) relating to a different account holder. As I said in my provisional decision, what may appear to be a similar set of circumstances - may often transpire not to be the case. But ultimately each case presented to me is considered based on the particular set of facts to that case.

I do appreciate the emotional side here and do understand that Mr D and his wife were happy for their son. Making decisions on cases like this are not easy but my role is independent. I also have to be fair to the bank and need to be satisfied it should be held responsible for what happened on a fair and reasonable basis.

I note part of Mr D's testimony was that his son had met Ms A more than once. This was not something that came across in the direct testimony received from Mr D's son (or in the messages that were sent at the time - some of which were withheld). But I don't think this point makes a difference to the outcome here. In fact, if there were more meetings between the two, it could be argued this was more of a civil dispute between two parties which, as mentioned by the investigator previously, would not be covered by the CRM Code.

I also appreciate £13,000 was spent from the account over three months – which had been largely inactive. But as I said in my provisional decision there's a balance to be struck between identifying payments that could potentially be fraudulent and ensuring minimal disruption to legitimate payments. I don't think the size and pattern of transactions in this case would have presented to the bank as being a scam risk.

Because these points don't lead me to reach a different conclusion, I see no reason to depart from my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be not to uphold this complaint. For completeness, I have set this out below.

My decision

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I should start by saying that I do accept Mr D's son has fallen victim to what can only be described as a cruel and callous scam. I'm sorry Mr D has lost money as a result and I can understand why he would like to be compensated for all his losses. When I consider cases like this – I am looking at whether the bank – who was not party to the scam itself – should have done more. And it doesn't automatically follow that RBS is liable for a loss, just because a customer is a victim of fraud.

It also doesn't follow that because another bank has issued a refund in relation to the same scam – that would apply to another case. I am not party to the details of that case – for example; I don't know why the bank issued a refund, what the transactions looked like or other details. It may be pertinent that the account holder is different here too. Ultimately each case is judged on its own merits and - what may appear to be a similar set of circumstances - may often transpire not to be the case.

Authorisation

The question of authorisation is a key one in a case of this kind. Because, although it's not in dispute that Mr D (and his son) didn't set out to be scammed, under the Payment Services Regulations 2017 (PSRs), and general banking terms and conditions, Mr D is presumed liable in the first instance if he authorised the transactions.

Mr D did not carry out the transactions himself. However, by providing his secure account details to his son, Mr D permitted a third party to appear as if they had his authority to make payment transactions - even where Mr D didn't ask his son to make any payments or know about them. In other words, Mr D provided apparent authority to his son for the disputed transactions to be carried out. I therefore consider the payments were authorised, even though Mr D's son carried out the transactions and even though his son, in turn, was the victim of a scam.

The Contingent Reimbursement Model

As Mr D was the victim of an authorised push payment (APP) scam, my considerations don't end with the PSRs. That's because RBS is a signatory to the Contingent Reimbursement Model (CRM) Code. Although Mr D wasn't the direct victim himself, I consider the payments are covered by the CRM Code even though it was Mr D's son that fell victim to the scam.

The investigator mentioned this might be a civil dispute. The CRM Code doesn't cover civil disputes - so, for example genuine relationships where funds have been exchanged between the two parties and now one party wants their money back. I don't think this was an argument RBS was necessarily making, but for the avoidance of doubt, I don't agree this is a civil dispute.

I appreciate it is unusual in what we typically see in a romance scam for a victim to meet up with the scammer. But reading the messages between Ms A and Mr D's son in the run up to Mr D's son's trip to meet Ms A – in the first instance, I think it's clear the trip was Mr D's son's idea and Ms A tried to put him off coming to her country – she suggested it wasn't safe. Then once he'd arrived Ms A appears to have made a series of excuses not to meet him once he'd arrived – this went on for a few days. In the end the messages indicate that they did meet but for a limited amount of time and Mr D's son told us it was around an hour. I think the message history broadly supports that. This seems odd to me and not what I would expect if the 'romance' was genuine.

I think Ms A deliberately set out to deceive Mr D's son – she struck up a false relationship with him and persuaded him to give her money (for reasons I also believe - on balance - were not genuine). And she had no real intention of repaying. Overall, I'm satisfied that it's more likely than not Ms A acted fraudulently.

So I'm satisfied that Mr D's claim should be considered under the provisions of the Code and the bank has not questioned that.

The Code requires RBS to refund victims of APP scams in all but limited circumstances. Those exceptions 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 has been grossly negligent

There are further exceptions within the CRM Code, but these aren't relevant here.

Did Mr D act with gross negligence?

The Code does say a business can decline to refund the customer in full if it believes its customer has been grossly negligent.

I have considered whether the actions Mr D took fell so far below the standard of a reasonable person that he could be said to have failed with gross negligence to take all reasonable steps to keep his security information safe or to comply with the terms and conditions of his account. It's important to take into account all the circumstances when considering whether an individual's action amount to gross negligence.

Mr D told us he originally opened the account for his son because his son doesn't work and so he didn't have anything to fall back on. It was an emergency account if his son needed to use it. Mr D further explained that his son was in his forties and he'd never had a girlfriend. Mr D also explained his son and has a neurodiversity which means he finds personal relationships difficult.

Mr D also told us his son is intelligent; he reads a lot and there has never been a problem with financial things until this scam. He said – there was no issue regarding his son's capacity to deal with money and that he was usually very careful with money.

Whilst I appreciate the bank says Mr D breached the Terms and Conditions of use of his account, by allowing his son to have access to his online/mobile banking. I don't think this is enough on its own to warrant not refunding Mr D under the Code.

The Code also says that it needs to be established that those actions were material to the success of the scam. There are two parts to the test, and both must be established to show the exception can be applied. In other words, that terms were breached and, further, the breach was material to the success of the scam.

Even if I thought the breach amounted to gross negligence (that's not a decision I need to make here) I don't think the breach was material to the success of the scam. I say this because I think the scam would have happened anyway even if Mr D had carried out the transfers himself on behalf of his son. Mr D was also taken in by the story the scammer was relaying to his son. He was happy for his son to be in a relationship and so wanted to help. He thought investing in the supposed property was a good investment. So I don't think this exception applies.

Did Mr D have a reasonable basis for belief?

In thinking about reasonable basis for belief – it is Mr D's basis for belief, rather than his son's basis for belief that is key here. I need to consider not just whether Mr D believed he was giving his son money for him in turn to send to someone he had recently met on a dating site, but whether it was reasonable for him to do so. I've thought about the steps Mr D took to reassure himself about the legitimacy of the transactions and whether it was reasonable for him to proceed with the payments.

Mr D allowed his son to use his account to enable him to give money to someone his son had recently met online. And Mr D had not met Ms A himself. I think the risk is clearly heightened and warranted further checking. Mr D was also aware that this was his son's first relationship. He explained his son has a neurodiversity which means he had found personal relationships difficult. Given these circumstances, Mr D ought reasonably to have questioned the situation where someone his son had recently met romantically was asking for money so early on in their relationship. So, I think RBS is entitled to apply this exception under the CRM Code.

Did RBS meet its obligations under the CRM code?

Even though I don't think Mr D had a reasonable basis for belief when making the payments, he may still be entitled to a refund of 50% of the money he lost if RBS didn't meet its obligations under the CRM code – one of which is to provide effective warnings. The CRM code says that, where firms identify scam risks, they should provide effective warnings to their customers.

I've looked at Mr D's account statements in the lead up to the scam payments but the transfers weren't particularly large (although I appreciate overall it is a lot of money to Mr D) and didn't leave the balance of his account at a particularly unusual level. Whilst the size of payments does increase over time (the first few are in the hundreds and later on transfers of £1,000 are made). But by then they are to the same known payee and transactions are spread out with gaps in between. So, I don't think the transfers will have looked suspicious or would have stood out to RBS and I wouldn't expect RBS to have identified a scam risk as a result. There's a balance to be struck between identifying payments that could potentially be fraudulent and ensuring minimal disruption to legitimate payments. And so, I don't think RBS was required to provide an effective warning under the CRM code, or that it has failed to meet its obligations under the Code by not doing so. I therefore don't think RBS should be required to refund the money Mr D lost.

Did RBS do enough to recover Mr D's funds?

I've thought about whether RBS took reasonable steps to recover Mr D's funds once it was made aware, he was the victim of a scam. The scam payments were first made on 27 September 2021 and the last one on 20 December 2021. Mr D reported the scam to RBS on 8 February 2022. RBS contacted the receiving bank on 8 February 2022. The receiving bank confirmed that no funds remained.

I understand that Mr D didn't know he was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful as scammers usually remove funds within hours. From what I've seen RBS has done what it should have to try and recover the funds for Mr D, but have been unable to obtain a refund for him.

I realise this will be a significant disappointment to Mr D. He has put time and effort into bringing this complaint, but I don't think RBS has acted unfairly in declining to refund Mr D in all the circumstances of this case.

My final decision

My final decision is 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 24 August 2023.

Kathryn Milne
Ombudsman