

## The complaint

Ms L complains that The Royal Bank of Scotland Plc ("RBS") failed to assist her when she was the victim of a scam.

## What happened

In May 2021 Ms L had a timeshare she no longer wanted; she had been trying to get rid of it since 2016. In that month, she was cold-called by a third party firm which I will call "X." X persuaded her that it could get rid of her timeshare for her, and so she paid X £7,115 for its services, in two debit card payments from her RBS current account. She signed a contract with X.

After that, Ms L heard nothing further from X, and she eventually concluded that she had been scammed. Her suspicions were confirmed when she researched the company online and discovered a large number of negative reviews. (She had previously researched the company and found nothing out of the ordinary.)

In February 2022 Ms L asked RBS for a refund of the payments. RBS asked her for further evidence to support her claim, but on receiving no reply it closed her case in April 2022.

In February 2023 Ms L made a second claim to RBS, this time represented by a claims management company ("CMC"). RBS did not uphold her claim. The CMC then complained on her behalf. In particular, it said that RBS had failed to intervene at any point to prevent Ms L from paying X, or to warn her of the risks. It referred to the judgement of the Court of Appeal in *Philipp v Barclays Bank Plc*, and said that RBS had been under a duty to enquire into the reasons for the payments she was making and to protect her. It argued that RBS had failed in its duty of care. In support of that point, it suggested that the payments had been unusual activity on Ms L's account, and that this should have triggered its intervention.

RBS apologised for some customer service failings on some phone calls (Ms L having said that the calls went on for too long and that the staff were impersonal). But apart from that, RBS said it had done nothing wrong, and it did not uphold the rest of her complaint. In particular, it said that the payments had been authorised by Ms L, and the fact that no additional checks had been triggered by the bank's systems did not mean that a banking error had occurred. Being dissatisfied with that response, Ms L brought this complaint to our service, again represented by the CMC.

Our investigator did not uphold this complaint. He said that the payments had been authorised, and that they had not been particularly out of the ordinary; he pointed out that there had also been a payment of over £9,000 earlier in that same month. So he did not agree that RBS should have been suspicious. He said there had been nothing about the payments to suggest that they were not being made to a legitimate company. He said that X's contract had said that it could take up to twelve months for it to complete its service, and when Ms L had first approached RBS this time had not run out. So it had been too soon for RBS to attempt to raise a chargeback dispute. He also thought that it had been reasonable of RBS to close Ms L's case when she did not provide the further evidence it had asked for. Then a year later, when Ms L had approached RBS for the second time, it had been too late

to raise a chargeback, the time limit having expired.

The investigator also said that there was no evidence that X had actually failed to provide the service Ms L had paid it for. Ms L did not know whether she still had the timeshare or not, and the timeshare company had not made any further demands for payment. So he said there was no proof that Ms L had not got what she had paid for. He concluded that RBS had done nothing wrong.

The CMC did not accept that decision. It said that Ms L had not just paid X to get her out of the timeshare agreement, but also to recover the £15,000 she had paid to the timeshare company. Since she had not got back a penny, X had failed to fulfil its obligations. It added that the other large payments Ms L had made from her RBS account were not related to the payments to X and were therefore irrelevant. It argued that RBS should have intervened to ask Ms L tailored questions, which would then have uncovered the fraud which was being perpetrated on her, and then the payments need not have been made. It asked for an ombudsman to review this complaint.

## **What I've decided – and why**

### Introduction

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 do not uphold it. I will explain why.

I accept that X did not provide the service that Ms L paid it for. On the balance of probabilities, X and the timeshare company are most likely the same people, and they tricked her into making the two payments in May 2021.

However, RBS is not automatically liable for that, so I need to decide whether RBS did anything wrong. Firstly, I will consider whether RBS should have stopped the payments. Then I will consider whether RBS should have done more than it did to try to get them back.

### Should RBS have intervened when the payments were made?

By now, the CMC will be aware that the Supreme Court has overruled the decision of the Court of Appeal in *Philipp*.<sup>1</sup> I have taken the Supreme Court's judgement into account.

The duty the CMC described only applies to a bank in cases where a payment is not being made by a customer directly, but on the customer's behalf by another person who is acting, or who purports to be acting, as the customer's agent. Where the circumstances are such that the bank has reason to suspect that the person making the payment is not really acting on the customer's authority, or is exceeding that authority, then the bank has a duty to inquire into the matter and to satisfy itself that the payment is duly authorised by its customer. But in this case, Ms L authorised the payments herself, so *Philipp* does not apply.

The bank's duty is therefore to carry out its customer's instructions and make the payment. There is no general duty of a bank to protect a customer from making a risky or unwise payment. I would nevertheless expect a bank to give general warnings or advice to customers about the risks of being scammed, but I would not expect RBS to go as far as the CMC has argued it should, and to pause Ms L's payments and ask her questions about them.

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<sup>1</sup> [2023] UKSC 25

Sometimes a bank's systems will flag a suspicious transaction for review or for further security checks if it looks as though it might not have been authorised by the account holder. But that is not the same thing as what is being complained about here: a payment authorised by Ms L, albeit one that she was tricked into making. The bank was under no duty to inquire into why she was making the payment; it only needed to be satisfied that it was carrying out Ms L's instructions, and it was. (There is an exception to this: good banking practice is to ask questions when a payment is being made over the counter in a branch, but that was not the method of payment here.)

I am therefore of the view that RBS did nothing wrong by executing Ms L's payment instructions. (I have not needed to consider the other payments she had made earlier in May 2021.)

#### Did RBS do enough to try to get Ms L's money back?

Ms L asked RBS for her money back in February 2022, and again in February 2023. I will consider each of these occasions in turn.

Ms L made her payments by debit card, so the only remedy she had with RBS was the chargeback scheme.<sup>2</sup>

In considering whether to raise a chargeback dispute, I would expect RBS to ask for certain evidence, such as the terms of Ms L's contract with X. Indeed, a chargeback dispute would be unlikely to succeed without such evidence. So without it, RBS had no realistic option but to close Ms L's case.

Nevertheless, I have read the contract, and it says that X may take "no longer than 12 months" to complete its service. As that time had not yet expired, I think that a chargeback could not have succeeded earlier than May 2022.

A chargeback might have succeeded after that, but by February 2023 it was too late to raise one. So I don't think there was anything else RBS could have done to assist Ms L with recovering her money. It was under no obligation to pro-actively contact her in May 2022 or shortly afterwards to ask her if she wanted to try again, nor is that normal banking practice.

For all of the above reasons, I do not think that RBS did anything wrong, or that it needed to do anything differently.

#### **My final decision**

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 29 December 2023 (the CMC may respond on her behalf). But apart from that, this final decision brings our involvement in this case to an end.

Richard Wood  
**Ombudsman**

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<sup>2</sup> Section 75 of the Consumer Credit Act 1974 does not apply to debit card payments. The Contingent Reimbursement Model Code does not apply to card payments.