

The complaint

Mr and Mrs C complain that The Royal Bank of Scotland Plc (“RBS”) will not refund money they lost to an investment scam.

Mr and Mrs C are represented by a claims management company (“the CMC”). Mr C made the transfers and has been dealing with the complaint, so I’ll mostly refer to Mr C in this decision.

What happened

Around February 2021, Mr C was introduced to a company, which I’ll call S, by a family friend of forty years. The friend said he had invested with S, which traded cryptocurrency on his behalf, was making excellent returns, and that he’d received a “dividend”. The friend showed Mr C S’s online portal, which showed the returns he’d received.

Mr C looked online and found positive reviews. He also looked at S’s website and compared the numbers to other websites and felt it “looked right”.

Mr C provided his contact details to S and was called by its representative, who was very convincing in what he told him – in line with what his friend had said. As a result, Mr C was persuaded to invest.

S advised Mr C to open an account with a legitimate cryptocurrency platform, which I’ll call B. Mr C was told to transfer money to his crypto wallet at B, use this to purchase cryptocurrency, then forward the cryptocurrency to S. The CMC says that S helped Mr C with this process by taking remote control of his device, but Mr C didn’t mention this when speaking to our investigator.

Between 1 March 2021, when Mr C made the first payment, and 13 April 2021, Mr C sent £149,020 to S. Mr C had access to an online portal on S’s website and was very happy with the returns that were shown there. Even to the extent that in one call with RBS he discussed the “great” returns he was getting and encourages the RBS employee to “check out” S.

On 13 May 2021, S contacted Mr C to say there had been a “margin call” and he had to deposit a further £50,000 or risk losing all of the money he had invested. He made this payment on the understanding it would be refunded soon afterwards. But when he contacted S to ask for this money to be returned, S ceased all contact with him, and Mr C realised he had been scammed.

On 19 May 2021, Mr C contacted RBS to say he thought he had been the victim of a scam and to ask for help recovering the money. RBS said that because the payments had been made to his own account at B, it was not in a position to help, and Mr C should pursue the matter with B instead.

The CMC then made a complaint on Mr C’s behalf. It said that, Mr C was vulnerable at time of scam, and the transactions were out of character for Mr C. The CMC felt that RBS

should've intervened when he tried to make the payments and had it done so, it could have prevented the loss.

RBS didn't agree saying that the payments were not identified or stopped by RBS's security system because they did not meet the fraud trends at that time. It added that the payments were made to Mr C's own account at B, which would not be deemed suspicious.

Our investigator looked into what happened and did not uphold the complaint. She thought that although RBS should've intervened when an unusual payment of £10,000 was made, it wouldn't have made any difference because Mr C had seen his friend getting good returns and had found no warnings about S when researching himself. And RBS couldn't have done any more in an attempt to recover the money.

Unhappy with this, the CMC asked on Mr C's behalf for the complaint to be decided by an ombudsman.

In my provisional decision of 30 June 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. RBS didn't make any comments. The CMC did make some additional submission which I will address below.

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 my provisional decision I explained the following:

Having thought very carefully about what happened, I have decided not to uphold this complaint – for broadly the same reasons as our investigator. I appreciate that Mr C will be disappointed by this, and I'm very sorry for what has happened to him. But, based on what I've seen, I can't reasonably ask RBS to reimburse him for any of his losses.

To begin with, where customers authorise payments from their accounts, businesses such as RBS are under an obligation to process such transfers. If consumers are the victim of a scam (like Mr C), the starting point is that consumers have to bear the losses. To be clear, RBS did not scam Mr C and it is not the perpetrator of the scam.

So, even though it's not in question that Mr C was tricked into sending the money by scammers, because he authorised these payments, he starts off on the "back foot" when it comes to getting the money returned, because RBS was following a valid instruction.

However, financial businesses also have a duty to try to prevent their customers falling victim to scams. Businesses therefore need to strike a balance between intervening with payments to prevent scams or financial harm against the risk of unnecessarily inconveniencing or delaying legitimate transactions.

In order for me to uphold a complaint of this nature, and hold RBS liable for the losses instead of Mr C, I'd need to be satisfied that RBS failed in its duty to protect Mr C in some way, and that if it had instead done what it should have done, this either would have stopped the losses from occurring in the first place or helped to mitigate the losses once notified of the potential scam (by retrieving the money, for example).

Mr C made several payments to an account he held with B before converting it to cryptocurrency and sending it on to S to trade on his behalf. For the avoidance of any doubt,

there is no indication that B was involved in this illicit scheme, other than its exchange platform was used to facilitate Mr C's payments to S.

Between the 25 February 2021 and 15 March 2021, Mr C made several payments ranging from £500 to £3,500 from his RBS account to B. I don't think any of these payments are significant enough to have warranted an intervention by RBS. The transactions Mr C sent to B were for relatively small amounts. I appreciate these amounts might amount to a lot of money for many consumers, but when compared to the thousands of transactions a business like RBS processes – none of them are sufficiently significant figures that I would expect to trigger alarm bells. It is common for many consumers to transfer money like this to their online platform like B quite frequently to trade online and many of these transactions are completely legitimate.

In the absence of any other concerning factors known to RBS, I don't think these transactions would have been flagged as suspicious. RBS says it did not intervene because the payments did not meet the fraud trends at that time and they were made to Mr C's own account at B, so would not seem suspicious.

On the 26 March 2021, Mr C transferred £10,000 into his account held with B. This is significantly more than he has previously sent and not in line with the usual activity on his account. So, at this point, I think RBS ought to have intervened and asked Mr B about this transaction to ascertain whether he was at risk of financial harm. I understand Mr C made this transfer on the phone and spoke to an RBS advisor – so RBS had the opportunity to discuss this transaction with Mr C in detail. Although the bank's representative did ask Mr C some questions with a view to identifying some common scams, the questions were not aimed at identifying cryptocurrency investment scams such as the one Mr C fell victim to.

I think this intervention on the part of RBS was insufficient. So, I've gone on to think about what I think most likely would have happened if RBS had flagged this transaction as suspicious and discussed this transaction with Mr C. But having considered the specific facts of this case, I'm not persuaded that even if RBS had asked more probing questions that Mr C's answers would have been overly disconcerting for RBS and I'll explain why.

The CMC has pointed out that this scam had some typical themes of cryptocurrency scams such as transferring money to an online platform in the consumer's own name before transferring the money on to the scammers. But this is also how many legitimate trades are carried out. The CMC has added that S took remote control over Mr C's devices. But it's not clear when this took place, and, in fairness, if remote access did indeed happen at some point, I must bear in mind that Mr C did not mention this to our investigator when discussing what had happened. Accordingly, I have to bear in mind the possibility that he might also not have mentioned it to RBS.

In any event, I also have to consider that Mr C had decided to invest with S having been recommended by a family friend of forty years or so. By his own admission, he trusted this friend who had prospered from the investment, and Mr C had also researched online himself, finding positive reviews. This type of introduction is not in line with how these scams companies usually contact their consumers – and I think this holds significant weight. I think if RBS had spoken to Mr C, given these factors, I think it likely would have been enough for RBS to have been satisfied that there was unlikely a risk of harm.

I would add that by the time of this payment, Mr C had already 'invested' with S previously and was happy with the returns he believed were showing in his account with S. In my view, even if RBS had at this time mentioned the possibility that this might be a scam, considering all of these factors (the faith he had in his longstanding friend's experience, his own research and what he could see on S's portal) I think it's likely that Mr C would have remained

confident with going ahead with the payment. So, I don't think an intervention at this stage would have prevented the loss.

On 31 March 2021, a £30,020 payment was made using a CHAPS payment. In the initial call to RBS about this payment, Mr C discussed S and the returns he was achieving. It is clear that the scammers were using real-world events to prompt Mr C into investing more money – and that Mr C was happy this had been successful previously. Mr C was keen to make the payment as quickly as possible and it is clear from this call that Mr C was very happy with S – to the extent he was suggesting the bank representative look into it with a view to investing himself. The call ended with Mr C waiting for a call from the payments team.

I think this call is telling and reflects the Mr C's thought process at the time. I think it's evident that Mr C was now completely confident with S and it would have taken something significant to have persuaded him otherwise. I don't think there is anything RBS could have told him at this stage that would have altered his behaviour or stopped him from sending any further funds.

Mr C has also subsequently told us that his daughter also invested with S and lost her money too – this further demonstrates how much faith Mr C had in S at the time. Besides this, as far as I am reasonably aware, throughout the sequence of payments that Mr C made, his long-term friend had also not experienced any compelling problems with S. What's more, the information about S available in the public domain did not portray any real concern – the reviews at the material time appear to be broadly positive, and not compelling as to it being illegitimate or unlawful.

Over the coming weeks, Mr C then went on to make several other large transfers, but by this point Mr C had established a pattern of payments to B. It was clear that Mr C was happy with what he was doing. And I don't think these payments should've triggered any further intervention. I don't think these would have stood out as unusual or uncharacteristic based on Mr C's account activity.

Recovery

I'm satisfied that RBS did what it could in an attempt to recover the funds. It was told about the scam on 19 May 2021. It contacted the receiving bank the same day to ask if the money could be returned. But since this money had been converted to cryptocurrency and forwarded onto the scammer by Mr C, the receiving bank no longer had this. So, there was no way for RBS to recover the funds.

Summary

Ultimately, I am not satisfied that RBS could have stopped and prevented Mr C's losses. Even if it had intervened to discuss the payments with him (as I think it should have done in line with its duty of care), I'm not convinced that appropriate questioning and warnings from RBS would have persuaded Mr C not to proceed with the transactions (or those that followed). I also think RBS acted reasonably to try to recover the funds when the scam was reported by Mr C. So, I don't think it's fair to hold RBS liable for the losses and I don't intend to ask it to refund these payments.

The CMC disagreed with my provisional decision for the following reasons:

- The CMC reiterates that the conversations RBS had with Mr C were extremely poor and they feel if RBS had intervened appropriately, Mr C would have been stopped from sending the payments.

- It feels that RBS's comments regarding the scam not meeting fraud trends at the time is incorrect as it was a very common scam.
- They add that the friend who introduced Mr C to the scam company was also a vulnerable victim of the scam and was an inexperienced investor himself.
- That RBS ought to have asked more probing questions such as whether the scammers took remote access of his devices; whether he was being coached by a third party; and whether when Mr C sought to withdraw money from the company, the scammers asked for fees, which was another theme of the scam. The CMC feels that it's likely that RBS would therefore have exposed the scam.

Firstly, as set out in my provisional decision, I agree that the conversations RBS staff members had with Mr C were inadequate and they could have and ought to have asked more questions. I also agree that these sorts of scams have now been around for a number of years and we would expect financial business to be aware of the way these scams work and ask suitable questions when speaking to their customers.

However, while I have thought very carefully about the CMC's comments, I am still not satisfied that suitable questioning would have revealed the scam during the £10,000 call or £30,000 call. I say this mainly because I feel that, while the CMC has pointed out some concerning factors, overall I don't think there would likely have been enough information available to RBS during the calls that would have enabled it to have definitively identified this as a scam. I also don't think, given Mr C's state of mind during these calls, that even if RBS had warned him and the *possibility* that this might be a scam, that Mr C would have been persuaded to not send the payments.

When assessing whether an intervention would likely have worked, I have to consider the overall picture that likely would have been presented to RBS, not one or two things that might have been concerning. And I also need to think about how a consumer would likely have responded to the business based on the facts and circumstances available.

As explained in my provisional decision, Mr C's introduction to the scam company is not in line with what we usually see in this type of scam. The conversation that we would expect RBS to have with consumers, and the amount of probing that would be deemed appropriate would depend on the answers Mr C gave RBS. Business have to judge whether something warrants further exploration and act reasonably based on the information available to them. We have to be mindful, that many of these transfers made to cryptocurrency exchanges are legitimate and we wouldn't want customers who are carrying out legitimate transfers to be interrogated without good reason and delay transactions unnecessarily.

Mr C set out in detail what his experience of the scam was, in a lengthy call with our investigator, and not once did he mention the scammers taking remote access of his devices. While the CMC has reiterated that this was used, we still haven't been provided with any detail as to when and how this happened. So as explained in my provisional decision, I have to consider the possibility that he wouldn't have told RBS about that either.

I would add that Mr C did his own research and didn't find anything concerning about the company. He also felt the return rates were comparable to other websites – again normally we see promised return rates that are “too good to be true.”

As I've explained earlier, Mr C told us that his daughter invested with S and this demonstrates how much faith Mr C had in S at the time. And while I understand Mr C's friend also fell victim to this scam, my understanding is that when Mr C actually made the payments, his long-term friend had not experienced any compelling problems with S. Additionally, information about S available in the public domain did not portray any concern with reviews being broadly positive, and nothing suggesting it was a scam.

Demanding fees during the withdrawal of the investment is a typical theme of this type of scam, but this didn't happen until much later on in the process and long after the calls with RBS. So, this information wouldn't have been available to Mr C or RBS during the transfers that I think RBS ought to have intervened on. And I've already explained why we wouldn't expect RBS to intervene in the payments that followed.

Having a coach is likely to be only known theme of the scam that might've warranted any concerns, but against the backdrop of the all the other information that Mr C likely would have given to RBS, I don't think that alone would have been enough for RBS to have stepped in and stopped the payments. It could potentially have discussed this concern with Mr C. But I've already explained in my provisional decision that, given how taken in Mr C was with S, I don't think any discussions around this alone would have altered Mr C's behaviour in any event.

While I've thought carefully about the CMC's comments and appreciate the time they have taken to make further representations, I'm still not satisfied that, had RBS done what it ought to have done, in line with its duty of care, and asked appropriately probing questions, that it could have prevented the loss. So, while I am again very sorry for the losses Mr and Mrs C have suffered, I don't think RBS should be held liable for the losses. With all this in mind, I don't uphold this complaint.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 24 August 2023.

Asma Begum
Ombudsman