

The complaint

Mr W complains that The Royal Bank of Scotland Plc ("RBS") won't refund money he lost to a cryptocurrency investment scam.

Mr W is being represented by solicitors in his complaint.

What happened

The detailed background to this complaint is well known to both parties, so I won't repeat it again here. Instead, I'll focus on giving my reasons for my decision.

The complaint concerns three payments totalling £16,150 which Mr W made to a cryptocurrency exchange using his RBS debit card in June and July 2019. They were made in connection with an investment opportunity that subsequently turned out to be a scam.

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 agree with the conclusions reached by the investigator for these reasons:

- The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Mr W made the payments using his security credentials, and so they are authorised. But a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.
- I've looked at the operation of Mr W's account. Contrary to his representative's submissions, the disputed transaction amounts (£3,650, £8,900, and £3,600) weren't out of character for the general account spending. Transactions for similar amounts weren't unusual for Mr W's account. For example, in the months leading up to the first disputed transaction, he'd made payments of £8,535 and £11,662 using his debit card. So, I don't consider the disputed transactions were particularly unusual or suspicious such that I think RBS ought to have been concerned. But we know that RBS did block the first payment and spoke to Mr W about it. So, I've considered whether its intervention went far enough.
- A recording of the relevant call isn't available. But RBS has provided a recording of the call between its fraud prevention team and Mr W which happened the next day. This was in connection to a payment on his credit card to the same crypto exchange – on the same day as the first disputed transaction on his debit card – which the bank had declined. While this call happened the day after the disputed transaction, it is a good indicator of the sort of enquiries the bank made, as well as the responses it received from Mr W.

- The agent asked Mr W what the payment was for and explained that the bank considered cryptocurrency-related transactions 'highly suspicious' as they carried a 'higher risk'. I don't think the intervention during that call went far enough as the bank was merely checking whether it was indeed Mr W who had authorised the transaction on his credit card, which happened to be for the same amount as the first disputed transaction. While the bank made it clear that *it* didn't like these types of transactions on its credit cards, there was no additional context given. There was no mention of scams, let alone a warning. I think it's more likely than not that the conversation during the call on the day of the first disputed transaction would have gone in a similar way. And so, I consider that RBS could have done more when making enquiries.
- But that's not the end of the matter. Causation is a critical determinative factor in every scam case. It isn't enough that a payment service provider like RBS failed to act unfairly or unreasonably; its acts or omissions must be the immediate and effective cause of losses that were reasonably foreseeable at the time of the breach. I can't know for certain what would have happened if RBS had questioned Mr W further about the disputed transaction. In such situations, I reach my conclusions not based on mere possibilities but rather on what I find most probable to have happened in the circumstances. In other words, I make my decision based on the balance of probabilities – so what I consider most likely to have happened considering the evidence and wider circumstances of the case.
- Having carefully thought about this, I'm not convinced that a scam warning would have made a difference to Mr W's decision-making. I've kept in mind that the scammer was in constant contact with Mr W during the relevant period. They had already warned him that he'd get a call from his bank about the payment, and that he needed to authorise it. It is also my understanding that Mr W had already seen profits from his initial investment (which doesn't appear to have been made through his account with RBS). In this case, I'm more persuaded that any concerns Mr W *might* have had following a more in-depth discussion with RBS would have been alleviated by the scammer's reassurances. By Mr W's own admission to our investigator, the scammer was so convincing that he believed them. Under the circumstances, I find that Mr W was taken in by the scam. And I'm not convinced that a scam warning by RBS would have necessarily broken the spell he was under.
- I've also thought about RBS's actions in relation to the recovery of payments *after* it became aware of the situation. As these were debit card transactions, the only avenue here would have been a chargeback. But time limits apply to when a chargeback can be raised and considered. Mr W didn't report the matter to RBS until 2022 – well outside the chargeback time limits. In any event, RBS could have only raised a chargeback against the merchant he paid, not another firm. And given the merchant he paid had provided the service (conversion of money into cryptocurrency), it's unlikely that a chargeback would have been successful even if time limits had been complied with.

In summary, I know that Mr W will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which he finds himself, for the reasons given, it wouldn't be fair of me to hold RBS responsible for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 August 2023.

Gagandeep Singh
Ombudsman