

## The complaint

Mrs Y complains that The Royal Bank of Scotland Plc won't refund the money she lost when she was the victim of what she feels was a scam.

## What happened

In mid-2022, Mrs Y met someone at a party who said they had an investment opportunity she could get involved in. And as Mrs Y trusted the person, and an acquaintance of hers also confirmed the opportunity was legitimate, Mrs Y agreed to invest. Over the following weeks, she then made a number of payments from her RBS account to account details the person gave her, as set out below:

Date	Amount
31 May 2022	£10,000
1 June 2022	£5,000
6 June 2022	£5,000
6 June 2022	£5,000
7 June 2022	£5,000
10 June 2022	£3,000

Unfortunately, Mrs Y says she was never paid the investment returns she was promised so she reported the payments she had made to RBS as a scam and asked it to refund the money she had lost.

RBS investigated but said it was satisfied it had acted in accordance with its legal and regulatory obligations. It said also it felt this was a high-risk investment between Mrs Y and the person she sent the payments to and so would be classified as a dispute between them, rather than a scam. So it didn't agree to refund the payments Mrs Y had made. Mrs Y wasn't satisfied with RBS's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was enough evidence to say that Mrs Y had been the victim of a scam, so they didn't think RBS should have to refund the payments she made. Mrs Y disagreed with our investigator, so the complaint has been passed to me.

## 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 don't think it would be fair to require RBS to refund the payments Mrs Y made here. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mrs Y accepts she made the payments here. So while I recognise she now feels she has been scammed by the person she was sending the money to, she did authorise the payments.

And so the starting position in law is that RBS was obliged to follow her instructions and make the payments. So Mrs Y isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether RBS has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mrs Y has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether RBS should refund the payments Mrs Y made, I first need to consider whether she has been the victim of a scam – or, in other words, whether she was deceived about the purpose of the payments to the point where she and the person she was paying intended different purposes for the payments and the person set out from the beginning with the intent to defraud her.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

From what I've seen, it appears there are some differences in the explanations Mrs Y has given of what she understood she was investing in at different points of her complaint. When she first referred her complaint to our service, she said she understood the person she sent the payments to was an investment advisor who would be investing her funds and providing her with returns, and that she was shown evidence of successful trades the person had done as evidence of their expertise. But when raising the claim with RBS, and then later with our service, Mrs Y said she understood the person would loan the money to individuals abroad and she would then receive interest on the money lent. So while I appreciate that some time has passed since she first met the person, and that reporting the circumstances of a scam can be sensitive and distressing for victims, I think these differences mean I must be cautious when relying on what Mrs Y has said.

I've seen copies of some of the messages between Mrs Y and the person she sent the payments to. But these messages don't show any clear explanation of what the payments Mrs Y made were for. There is some mention of returns Mrs Y could receive, but no explanation of what is happening to create these returns. And while there is some mention of a loan agreement, the amounts mentioned around this don't match the amount Mrs Y sent and these messages appear to have been sent a number of months after the payments Mrs Y made. So I don't think these messages support that Mrs Y was deceived about the purpose of the payments she was making in the way she suggests.

RBS has said the bank the payments were sent to said there were a number of payments both to and from Mrs Y on the account Mrs Y made the payments to. Mrs Y accepted she did receive some returns from the person she sent the money to. But from the evidence I've seen, payments were received into Mrs Y's account from the person she sent the payments to for more than seven months after the last payments Mrs Y made. And these payments totalled significantly more than Mrs Y said she'd received, and nearly 70% of the total amount of the payments Mrs Y made. And I wouldn't expect someone who set out with the intention of scamming her to have sent Mrs Y this amount of money back, or to have continued sending her money for so long after the payments Mrs Y made.

So, based on the evidence I've seen, I don't think I can safely conclude that Mrs Y was deceived about the purpose of the payments she made or that the person she paid set out with the intention to defraud her. And so I don't think the protections in place for victim of scams apply here, or that it would be fair to require RBS to refund the payments Mrs Y made.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 31 May 2024.

Alan Millward  
**Ombudsman**