

The complaint

Mr M complains that The Royal Bank of Scotland Plc (RBS) won't refund money he lost, which he believes was as the result of an Authorised Push Payment (APP scam).

What happened

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

In or around early 2022, Mr M was looking to have some building work completed on his property. A friend of Mr M's gave him some details of a group on a well-known social media platform, which he looked into and from which he was then contacted by a builder.

The builder provided Mr M with pictures of work he'd carried out and visited Mr M's home to discuss the work that Mr M wanted to be done, following which Mr M was provided with a quote. Mr M decided to go ahead with the work and between February 2022 and August 2022, made a number of payments to the builder, totalling just over £34,000, from the account he held with RBS.

But Mr M has said the work the builder subsequently carried out was not completed to a high standard and it wasn't in line with the building plans or regulations. He's added that the builder didn't use the correct materials and he also paid for some materials that were never received. Mr M has said due to the poor quality of the work and wrong materials being used he had to employ different builders to put things right and complete the work. Mr M added that the builder had agreed with him to refund £10,000 of the money, but he never received it and that he received threats from the builder.

As a result Mr M has told us that he took legal proceedings against the builder and a judgement was made in his favour and he was awarded monies. However, he's said the builder declared bankruptcy and he hasn't received any of the compensation the builder was ordered to pay. Mr M has added that he is aware of other families who have raised scam reports against the builder and that he is being investigated by Trading Standards.

Mr M believed he had been the victim of a scam, so he raised the matter with RBS. RBS considered its obligations under the Contingent Reimbursement Model Code (CRM code), of which it is a signatory. It looked into Mr M's complaint and sent its final response, not upholding his complaint. In summary, it considered this was a civil dispute between Mr M and the builder, so this wasn't covered by the CRM code.

Unhappy with RBS's response, Mr M brought his complaint to our service and one of our Investigators looked into things, but our Investigator didn't uphold Mr M's complaint. In summary he also concluded this was a civil matter between Mr M and the builder. He said this because he didn't think there was enough evidence to suggest that the builder had set out to defraud Mr M, he said he could see that some services had been provided by the builder, albeit they turned out to be defective.

Mr M didn't agree with our Investigator's view. In summary, he strongly maintained that he'd been the victim of a scam. As agreement couldn't be reached, the complaint has now been passed to me for a decision.

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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I note that Mr M has referred to other customers of the builder who he's said are pursuing the recovery of money (or indeed have received some money back). But I think it's important to note that my decision solely focusses on the payments that Mr M has made.

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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having thought very carefully about RBS's actions, I don't uphold Mr M's complaint. I do appreciate how disappointing this will be for him and I don't underestimate his strength of feeling, but I don't think I can fairly say RBS should reimburse him. I'll explain why.

I'm sorry to hear of what's happened to Mr M, and I can understand entirely why he feels so strongly that his money should be returned to him. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary CRM Code, which RBS has signed up to and was in force at the time Mr M made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our Investigator felt the payments Mr M made formed part of a civil dispute and, as such, are not covered by the CRM Code. Mr M disagrees. He feels the builder has scammed him.

In order to conclude that the payments Mr M made were part of a scam, I'd need to be reasonably satisfied, from the available evidence, that the builder he was using set out to defraud him. But I don't think, based on what I know, that I can safely conclude that.

It's clear the agreement Mr M entered into with the builder did not go as planned and he has not received what he was expecting. I can understand entirely why he feels so strongly about what has happened. There may even have been some sharp practice in terms of how the builder carried out the work and it doesn't seem to be in doubt, considering Mr M had to employ different builders to put things right, that the work wasn't completed to a standard that Mr M could reasonably have expected.

But I can't safely say, with what I know, that the builder set out with an intent to defraud him. I say this because there was work carried out, at least to an extent. This is confirmed with Mr M's own representations, although as I've said, I don't doubt the works weren't carried out to the standards Mr M expected.

I'm also mindful that Mr M wasn't cold called which, while not always, can often be the case with rogue trader scams - where people can often be contacted out of the blue and pressured into having work done that they may not want / require. Here, Mr M was looking for a builder, agreed a price and some work was carried out.

I can see that Mr M continued to be able to communicate with the builder after the final payment had been made and at one stage the builder appears to have voluntarily offered to return some of the money (albeit this wasn't honoured). This is not typically the case with fraudsters, who more often than not, once in receipt of a victim's money, will not carry out any work at all and will then no longer be contactable, but that doesn't seem to be the case here.

Whilst I am unable to share details about a third party and the nature of their relationship with their bank. The evidence I've seen from the beneficiary bank, regarding the beneficiary account, indicates that the builder had successfully carried out similar activities for other customers, without any concerns being raised.

After taking everything into careful consideration, so the testimony and evidence provided by both parties, on balance, I can't safely conclude what has happened here meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a case of a builder, failing to honour its agreement by not providing the quality of work that its customer expected.

It follows that, on balance and based on the evidence currently available to me, I can't fairly or reasonably say that, based on what I know, the builder set out with the intent to defraud Mr M. This being the case I'm satisfied the CRM Code doesn't apply. And I can't ask RBS to refund Mr M the money he paid to the builder, as I don't think RBS treated Mr M unfairly when it said the payments he made were not covered by the CRM Code.

Finally, I am very mindful that there is an ongoing Trading Standards investigation and that the Police are assisting in this investigation. But this, in and of itself, isn't enough for me to conclude that a fraud has taken place and I am not aware that there have been any charges brought or any convictions. For the reasons I've given, as it stands, there is not enough information for me to safely say this is a scam. However, should new material evidence come to light, the first port of call for Mr M would be to go back to the Bank for them to see if this new evidence would lead it to reconsidering its position.

My final decision

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 M to accept or reject my decision before 20 October 2023.

Stephen Wise
Ombudsman