

The complaint

Mrs M complains that The Royal Bank of Scotland Plc (RBS) hasn't refunded her after she fell victim to a scam.

What happened

Mrs M was interested and has described how she needed the money and didn't think she'd be approved for credit elsewhere. She responded to the email to say she'd like to take the loan. But the email and the contact that followed all came from a scammer.

Mrs M was then asked to make a series of payments to cover various fees. The reasons for needing to make payment included: direct debit fees, legal fees, and money laundering fees. These had to be paid either by faster payment (bank transfer) – with Mrs M being given a total of five different accounts to pay – and through the purchasing of gift cards and mobile top-ups using Mrs M's debit card.

In total she sent over £1,600 to the fraudsters, across 19 different payments between 6 and 8 December 2022.

Mrs M says she realised she'd been scammed when she was asked to pay a final money laundering fee. She contacted RBS to report the scam.

When Mrs M first reported the scam, she told RBS someone had been calling her pretending to be from the business where another of her current accounts is held. But, later, Mrs M told RBS that the money had been sent to secure a loan.

RBS looked into what had happened and said it wouldn't refund any of the transactions. In its final response of 21 December 2022 RBS acknowledged both versions of events but said that Mrs M hadn't done enough to check that the person(s) she was speaking with were genuine.

Mrs M was unhappy with RBS' response and so brought her complaint to this service, where one of our investigators considered whether RBS had given a fair and reasonable response to the complaint.

Our investigator found that RBS hadn't done anything wrong and that it was fair and reasonable for the scam claim to be denied. He agreed that Mrs M ought to have questioned the legitimacy of what she was being offered and why she was being asked to pay fees for a loan, especially as those fees were going to multiple payees through different methods.

He also thought about whether RBS ought to have done more to protect Mrs M through interventions and warnings. He didn't think there was such an apparent scam risk that RBS had to do more than it did. He also noted that RBS spoke to Mrs M on 8 December 2022 to question a payment of £141 and, in that call, Mrs M lied about the payment purpose. She said she was buying trainers from a friend, and that other transactions were for similar purposes. She agreed the £141 payment could be cancelled as she could just visit her friend instead.

Mrs M disagreed. She felt she should be refunded as she'd been the innocent victim of a scam. The case has been referred to me as a result.

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 sorry to disappoint Mrs M but I'm not upholding her complaint, and for broadly the same reasons as our investigator. In making these findings I'm not saying that I doubt whether Mrs M has been the victim of a scam. And I'm not saying she hasn't unfairly lost money. But what I can't find is that it's for RBS to refund her loss. It isn't the case that being the victim of a scam means a customer will always get their money back.

I should set out from the start that it hasn't been possible for me to determine exactly what has happened in Mrs M's case. That is always difficult in any case, and it's not necessary for me to do so. I mention it here though because the difficulty I've had has come down to Mrs M seeming to have changed her version of events, regarding what the scam was.

There are call recordings where Mrs M clearly tells RBS she was sending the lost money as a result of contact with a scammer posing as a different financial business, where another of her current accounts is held. She clearly told RBS she was sending money to secure the opening of her new account.

Her version of events later changes to describe the loan application scam. And the evidence that Mrs M has provided, mostly in the form of emails from the scammer, do seem to support this later version of events. I can't be sure why the detail changes here so significantly, but overall, I'm satisfied the outcome wouldn't be different either way.

I do though have some further concerns over how much of the true story Mrs M has put forward. The evidence appears to show that Mrs M received the loan application email on 30 November 2022. And the further emails supplied appear to show that she was being pressed for – and sending – more money to the scammers. It seems more likely than not these funds were sent from a different account, and that the money sent (or at least some of it) pre-dates the transactions on her RBS account. I don't think we've had a clear explanation of all that's happened. But, as I've already said, I'm not persuaded the outcome would be different even if total clarity was provided. I'll explain why.

The Payment Service Regulations (2017) are of significance to Mrs M's complaint. Broadly speaking, they set out that a customer is responsible for all payments out of their account that they have authorised. That applies to any card payments or faster payments. And the position on authorisation doesn't change when someone has been tricked into sending money.

I'm satisfied Mrs M did authorise all the payments out of her account. At different times Mrs M has said that the scammers were the ones making the payments. But there's no evidence or explanation for how that might have been possible. There are also call recordings where Mrs M clearly states that it was her that made all the payments at the scammer's instruction. And so, on balance, I'm satisfied it was her.

There are then further considerations that also apply. They differ from card payments to faster payments (bank transfers). And so I'll deal with them separately.

The faster payments (bank transfers)

RBS is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code is in place to see victims of scams reimbursed. But there are exceptions to reimbursement that a firm can rely on to decline a refund, even when it's clear the customer has been scammed.

RBS has said, and I agree, that one of those exceptions to reimbursement applies in Mrs M's case. The two relevant exceptions can be summarised in the form of questions:

- did Mrs M ignore effective warnings given by RBS?
- did Mrs M have a reasonable basis for believing she was engaging with legitimate parties for legitimate purposes?

I'm not persuaded RBS had to deliver Mrs M an effective warning when she was making the payments. I don't think the spending stood out as so unusual or suspicious that it ought to have presented as a scam risk to RBS. I say as much as the payment values are, individually, quite low. That's not to say the overall loss isn't significant to Mrs M, but I do find it's fair to say none of the payments stood out as a scam risk.

It might be argued that the number and frequency of the payments ought to have given RBS cause for concern. I'm not really persuaded that is the case. But I have thought about what might have happened if I were to find RBS ought to have been on notice. There is evidence available that helps to inform the answer to that question.

RBS did call Mrs M on 8 December when she was trying to make a payment of £141 toward the scam. RBS asked the purpose of the payment and Mrs M gave a calm, clear, and reasonable response when saying she was buying trainers (and other items) from a friend. That she agreed for the payment to be cancelled and told the bank she would visit her friend, who lived down the road, instead meant any concerns RBS might have had were put to rest. I find that was a reasonable reaction on RBS' part in the circumstances.

There's then nothing to suggest Mrs M would have said anything different, or to have acted differently, if she was asked the same questions at any other point.

This means that I don't believe RBS needed to give a warning to Mrs M and that, even if it had, it wouldn't have made any difference to the scam.

Turning to the question of reasonable basis for belief, I don't find it can be fairly said Mrs M had one. As I've said earlier, it's been somewhat difficult to answer this question fully given the apparent gaps in Mrs M's version of events. But I've decided to issue this decision based on the evidence available.

I don't believe it's necessary to go into significant detail of the various reasons why there is a lack of believability here. I'm satisfied it's enough to list some of the key points:

- The original email came from an unknown source, was unprompted by Mrs M, and was automatically delivered to her junk folder. These points, in my view, immediately suggest it's a suspicious email not to be trusted;
- The further emails from the scammers also appear highly suspect. The written content is very poor and doesn't appear at all official, as someone would reasonably expect of a loan company;
- The emails are also clearly very pushy, demanding money again and again in very quick succession. There are often multiple emails a day;
- The purpose for each supposed fee (direct debit fee, insurance fee, etc.) aren't particularly believable. Even less so when they mount on top of each other again and again;
- Mrs M was told all fees would be refunded when the loan proceeds were paid to her. This ought then fairly and reasonably lead to the question as to why they were payable at all;
- The methods of payment were highly unusual and suspicious. That loan fees would be paid by way of mobile top-ups, gift vouchers, and payments to personal accounts does not sound legitimate;

- The name of the loan firm appears to change at least four times, but this was never questioned;
- Mrs M appears to have been told by the scammer to trust him/her that there would only be one more fee due before the proceeds were released several times. This happened at least as early as 3 December 2021. But Mrs M continued to make payments for another five days, despite the same promise being made repeatedly.

I'm satisfied that there were enough clear warning signs here that Mrs M ought to have questioned what and who she was getting involved with. And I can't say she held a reasonable basis for believing she was dealing with legitimate parties for legitimate purposes.

Mrs M has told us that she was vulnerable at the time she fell victim to the scam. In particular, she's said how she'd been diagnosed with post-natal depression following the recent birth of her child. She's also said how she really needed the money.

I don't doubt that Mrs M was going through a very difficult time. And I can accept that she might not have been thinking as clearly as she otherwise might. But I don't believe it would be fair and reasonable to say that she couldn't have been expected to protect herself from this scam. There were too many clear warning signs here and I've not seen evidence to suggest Mrs M's mental state was so poor that she couldn't have picked up on any of these.

It also seems Mrs M did have people around her she could have turned to for help. I've noted she's mentioned a partner. And I can see she has payments into her account from other family members. So it wouldn't be fair and reasonable to say she couldn't have protected herself.

I've considered what the bank did to try and recover Mrs M's money. I can see that it contacted the receiving banks quickly. But there was nothing that could be returned and so nothing further RBS could do.

The card payments

There is less to say about whether the card payments ought to be refunded. I've already explained the position on the authorising of transactions, and so Mrs M is responsible for them.

There are some circumstances in which a chargeback might be raised as a customer dispute. But here, Mrs M knowingly paid for gift cards and mobile top-ups. And she got what she paid for, albeit with the benefit going to the scammers.

That means a chargeback would have had no reasonable prospect of success, so I find it was fair and reasonable for RBS not to have pursued one.

Conclusion

Having considered all of the available evidence and arguments I can't say that RBS has acted unfairly in declining to reimburse Mrs M. I know it will feel unfair to Mrs M as she has lost out and is the victim of a scam. But I can't say that it's RBS that should be responsible for reimbursing that loss.

My final decision

I don't uphold this complaint against Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 January 2024.

Ben Murray
Ombudsman

