

The complaint

Mrs P has complained that The Royal Bank of Scotland Plc (RBS) has refused to refund the money she has lost falling victim to a scam.

Mrs P is being represented by a third party. To keep things simple, I will refer to Mrs P throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, around July 2022 Mrs P was sent a link to a business (X) by an ex-colleague offering cryptocurrency investments and had a call with it. X explained an investment opportunity to Mrs P that she became interested in.

X helped Mrs P with the process of investing using the screen sharing application AnyDesk. Mrs P initially started by investing small amounts with X before moving on to invest larger amounts. The investments appeared to be doing well until September 2022 when X explained Mrs P had lost all her money due to a merger.

Mrs P was later contacted again by a someone posing as a legitimate business explaining that Mrs P would need to make further payments to release the balance of her account. Mrs P made the payments requested but her money was not released to her.

Mrs P then received a further email requesting even further payments. Mrs P spoke to a friend about what was happening and realised she had fallen victim to a scam.

Mrs P made the following payments into the scam via her RBS account:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Payment Type</u>
3 August 2022	Bitnomics	£1,000	Debit Card
4 August 2022	Bitnomics	£1,500	Debit Card
4 August 2022	Bitnomics	£3,499	Debit Card
8 November 2022	Bitnomics	£2,699	Debit Card
8 November 2022	Bitnomics	£4,000	Debit Card
10 November 2022	Bitnomics	£3,900	Debit Card
10 November 2022	Bitnomics	£3,100	Debit Card
14 November 2022	Bitnomics	£4,873	Debit Card
14 November 2022	Bitnomics	£3,499	Debit Card

Our Investigator considered Mrs P's complaint but didn't think it should be upheld. As Mrs P didn't agree, this complaint has been passed to me to decide.

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.

It has not been disputed that Mrs P has fallen victim to a cruel scam. The evidence provided by both Mrs P and RBS sets out what happened. What is in dispute is whether RBS should refund the money Mrs P lost due to the scam.

Recovering the payments Mrs P made

Mrs P made the payments into the scam by debit card. When a payment is made by card the only option RBS has to recover the payment is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mrs P was dealing with the scammer, which was the business that instigated the scam. But Mrs P didn't make the debit card payments to the scammer directly, she paid a separate cryptocurrency exchange. This is important because RBS was only able to process chargeback claims against the merchant she paid, not another party.

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mrs P's payments into cryptocurrency. Therefore, it provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mrs P paid. Any chargeback attempt would likely fail.

Should RBS have prevented the payments Mrs P made?

Mrs P has accepted she authorised the payments she made from her RBS account, so the starting point here is that Mrs P is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether RBS should have stepped in when Mrs P was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The first three payments Mrs P made into the scam, although made to a business that Mrs P hadn't previously paid, were for relatively low amounts. It wouldn't be reasonable for me to say RBS should stop payments every time one of its customers tries to pay a new business, especially when that business appeared to be genuine.

Mrs P then tried to make a further payment on 10 August 2022 as directed by X to a different cryptocurrency exchange. This payment was blocked, and Mrs P spoke to RBS several times on 10 and 11 August 2022.

RBS explained that the payments Mrs P was making were likely related to a scam. RBS checked the FCA register and explained neither her broker nor X itself was registered with the FCA to give investment advice. It also explained that Mrs P's description of what was happening matched that of a common scam.

RBS went on to explain that Mrs P may even receive follow up communication from a further scam claiming to be able to recover her money, but this would usually require further payments first.

Mrs P seemed to accept the likelihood of the investment being a scam. She opened a scam case and agreed to have her debit card cancelled. Yet when Mrs P was contacted again in November 2022, she made further payments again using AnyDesk and the same cryptocurrency exchange previously used.

Considering the above I think RBS stepped in at a time I would have expected to prevent the payments Mrs P was making and gave a very clear scam warning, to the point Mrs P agreed to stop her card and have the scam investigated. Mrs P confirmed she would not be sending any more funds.

I think RBS gave an adequate scam warning, so it was not responsible when Mrs P decided to make further payments in relation to the scam, and does not need to refund any payments to Mrs P.

RBS has paid Mrs P £75 compensation for customer service issues which I think is reasonable in the circumstances.

Mrs P has further said she was vulnerable at the time she made the payments, but I haven't seen enough to show RBS should have been aware of any vulnerabilities, or that Mrs P was unable make daily decisions. So, this doesn't change my decision.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 August 2023.

Terry Woodham
Ombudsman