

The complaint

Mrs B complains that The Royal Bank of Scotland Plc trading as The One Account ("RBS") hasn't done enough to protect her against the loss of money to a scam.

What happened

Mrs B says that in 2016 she was cold called by a company that I will call C. She subsequently signed up with it and opened an account. Once this account was opened she made a number of payments from her RBS account and her credit card account over a period of ten months totalling over £70,000.

Some months later after failing to be able to withdraw her funds from C, Mrs B discovered that she had been scammed. Mrs B says she also queried this in 2017 but my understanding is that she was told that she would not be offered a refund but she did not actually raise a formal complaint at this time.

Mrs B reported to RBS that she'd been scammed in 2022 via her representative. RBS declined to refund Mrs B's transactions. Mrs B remaining unhappy and referred her complaint about RBS to us. Our investigator did not recommend that RBS refund the transactions. Mrs B did not agree with this outcome and therefore the case has been passed to me for a final 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 don't think RBS could reasonably be expected to have prevented the payments Mrs B says she lost to a scam. This is because at the time generally, banks were expected to process payments a customer authorised it to make. And under The Payment Services Regulations and terms and conditions of the account, Mrs B is presumed liable for the loss in the first instance, in circumstances where she authorised the payments.

That said, as a matter of good industry practice, RBS should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

I can see that at the time of the transactions Mrs B had received a large amount of money into her current account on several occasions and had made several large purchases and transfers. In relation to the credit card account the payments were not so large that I would consider an intervention was needed. In this context the payments to C would not stand out sufficiently for me to conclude that RBS should have intervened when they were made. The payments were spread out over a large period of time and size wise they were not sufficiently large on their own at the start to have prompted intervention from RBS. By the time the payments were larger and closer together Mrs B had been making payments to C for several months. So, I don't think an intervention was warranted.

RBS do not have any records of contact between it and Mrs B at the time the payments were made. Mrs B says she was contacted via text but only to confirm that she had made the payments.

This means that as RBS didn't interact with Mrs B at the time of the payments – and I've concluded that I can't reasonably say RBS ought to have been obliged to have gotten in touch with Mrs B about them – I'm satisfied RBS didn't unreasonably miss an opportunity to prevent the payments being made before they were sent.

Additionally, I am not sure whether any intervention would have changed Mrs B's decision to carry on with the transactions. I say this because investment scams such as the one that Mrs B has described were not as common in 2016 and there were no warnings about C at the time the payments were made so all RBS could have done if it had intervened was provide a generic warning. Given what Mrs B has said about her interactions with C she seems to have been completely convinced that C was genuine. So even if I thought that RBS should have intervened and provided a generic warning, I don't think that it would have made a difference.

In relation to the debit card payments the only recourse to recover the funds would be a chargeback. But given the timescales involved I don't think that RBS could have attempted a chargeback for these transactions, so I don't think RBS did anything wrong in relation to this. I note that Mrs B says that she contacted RBS around the time of the scam but I can't see any record of Mrs B making a formal complaint or fraud claim at this point. By the time I can see that she did contact RBS the timescales exceeded those for a chargeback.

In relation to the credit card payments potentially there could be some recourse to recover the funds under Section 75 of the Consumer Credit Act but Mrs B has not provided enough to demonstrate that there was either misrepresentation that persuaded Mrs B to enter into a contract with C nor that there was any breach of contract either.

Overall, I have great sympathy for Mrs B and I understand that this will be really disappointing for her. But I can only recommend RBS refund the transactions if I think it did anything wrong and for the reasons above, I don't think that it did.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 December 2023.

Charlie Newton
Ombudsman