

The complaint

Mr A complains that The Royal Bank of Scotland Plc ('RBS') won't refund money he lost after falling victim to a scam.

What happened

Mr A says that he was looking to buy a car and found one advertised on a genuine automotive marketplace.

The car was being sold by a garage and Mr A says it was advertised as a White Ford Kruga with an automatic transmission and a 2013 plate. Mr A made payment to the seller of the car over seven separate payments which totalled £3,075.

Mr A says that a car was delivered to him, but it wasn't the car that was advertised. Mr A says the car he received was a Black Ford Kruga with a manual transmission and a 2009 plate. Mr A says the car had numerous mechanical problems, wasn't taxed, and didn't have a current MOT. Mr A says that ultimately, he had to scrap the car for £120, and received a fine for driving an untaxed car.

Mr A contacted RBS and asked them to raise a fraud claim for him. RBS told Mr A that as he had received a car, they considered the matter a civil dispute between Mr A and the seller. As such, they declined to refund him the money he'd lost.

Mr A wasn't happy with RBS's response, so he brought a complaint to our service.

An investigator looked into Mr A's complaint but didn't uphold it. The investigator explained that they didn't have any evidence to show that Mr A was the victim of a scam, so they were unable to ask RBS to refund him.

Mr A disagreed with the investigator's opinion and asked for the case to be passed to an ombudsman.

Having reviewed the case, I got in touch with Mr A and asked for some evidence before I issued my decision. In response, Mr A provided:

- a copy of the delivery paperwork for the car he says he received
- pictures of a White Ford
- a picture of a V5C which links to the registration of a 2010 Black Ford
- a picture of a Red Vauxhall
- two screen shots of what appear to be a Whatsapp message, with the contact name showing as "seller of Ford Kruga"
- two screen shots of what appears to be a Whatsapp message where Mr A is trying to sell the car.
- a DVLA document in Mr A's name for a Ford

I asked Mr A to provide any further evidence he wanted considered by 28 July 2023. As that deadline has passed, I've reviewed the case in order to reach 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.

RBS are a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (the CRM Code). The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

However, the CRM Code does not apply to 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.

So, I can only apply the CRM Code to Mr A's payments or consider RBS's liability to him under the CRM Code, if I'm satisfied that the payments were made as part of a scam.

Unfortunately, based on the evidence Mr A has supplied I can't safely conclude that he was the victim of a scam, for the following reasons.

Mr A has told us that he doesn't have the full thread of Whatsapp messages with the seller but has provided two screen shots of messages which show the contact as "seller of Ford Kruga". Below is the content of those two messages, I've referred to the two parties as P1 and P2 - it appears that P2 is Mr A.

P1 – Fiesta is 850
P2 – Fiesta and Kuga reg. Fiesta year
P1 – Fiesta 2007 year
P2 – Kuga images. if I like Kuga maybe
P1 – MV13HWD
P2 – Okay I give you 1800 minus 550 paid. 1250 cash payment
P1 – impossible. Bro
P2 – Best price
P1 – The car is worth over 4500. I'm sorry. 2800.

There is then a break in the chain and the next screen shot shows the following messages.

P2 – Only need send images!
P1 – Of course – then two pictures of a white Ford
P1 - £375 now. Remain £1250 to pay. Pleasure. To do business
P2 - £1200 yes but needs MOT so it'll have full ticket right?

Based on these screen shots it appears that Mr A is buying a Ford Kruga for £1,800 and that he's already paid £550, with £1,250 remaining to be paid. This would mean the total purchase price was £2,300. However, Mr A is disputing payments totalling £3,000 and it's unclear why there is a difference between these two amounts. When I asked Mr A about this, he said he'd paid more before, but this isn't evidenced in the messages.

Mr A says he agreed to buy a 2013 white Ford Kruga and instead got a 2009 black Ford Kruga with serious mechanical problems. Having reviewed online pricing for a 2013 Ford Kruga, it appears that a purchase price of £3,000 is nearly half of the market value for that

car. When I asked Mr A about the low price of the car, he said that the car the seller referred to in the messages isn't the same car that Mr A agreed to buy. Mr A has referred to the seller providing a "newer running car". However, this isn't discussed in the messages we've been given. But the message does say the car they're discussing doesn't have a current MOT, which could explain why it would have such a low price.

I can see that the licence plate on the white Ford shown in the pictures on the Whatsapp message is registered to a black Ford, which is unusual as the pictures show a white Ford. Also, Mr A has provided a copy of a V5C in his name which has the registration details for a 2010 black Ford. But this information by itself, isn't sufficient to evidence that Mr A had agreed to buy a 2013 white Ford Kruga. Especially when taking into account Mr A telling us that the agreement with the seller was for a "newer running car" than they were discussing in the messages, which suggests the pictures in the message aren't for the car Mr A was buying.

Without seeing the full thread of the messages with the seller it's not clear what the details were of the car Mr A was buying, what condition it was in or what colour or year it was. The investigator asked Mr A for this information on more than one occasion, and I've also separately asked Mr A to provide the full thread of the Whatsapp messages, but he's told me they aren't available. I'm satisfied that Mr A has been given sufficient opportunity to provide all the evidence we've requested as well as any other information he would like considered as part of his complaint.

Based on the evidence and information we have been given, I'm not satisfied that I can safely conclude that the seller set out with the intention to deceive Mr A and can't fairly say Mr A was the victim of a scam. It's highly possible that this is a quality of goods issue, which would be considered a civil dispute not a scam. As I can't reach a conclusion that the seller set out with the intention to deceive Mr A, Mr A isn't entitled to a refund under the CRM Code.

But I have considered whether there is any other reason I could fairly ask RBS to refund him.

Can I fairly hold RBS liable to refund Mr A for any other reason?

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam. So, even if a payment isn't covered by the CRM Code, there are situations where we would expect banks to identify a scam risk and intervene, and in some cases expect the bank not to follow the customers payment instruction.

In this case, Mr A made a total of seven payments, across a period of nearly four weeks. The first payment was for £300 and the highest of the seven payments was for £1,975. Having considered the size of the payments and that they were spread over a four-week period, so not made in quick succession, I'm not satisfied that RBS should've identified a scam risk when Mr A made them. Having looked at Mr A's previous account usage, these payments weren't particularly out of character or unusual. As I'm not persuaded that RBS should've identified a scam risk, I wouldn't have expected them to intervene before following Mr A's payment instructions.

Based on what I've seen, I can't safely conclude that Mr A was the victim of a scam, so I can't fairly hold RBS liable for his loss or ask them to refund him. Mr A does have the option to pursue this matter through the courts as a civil dispute.

My final decision

My final decision is that I don't uphold this complaint against The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 August 2023.

Lisa Lowe
Ombudsman