

## The complaint

Mr A complains that The Royal Bank of Scotland Plc (“RBS”) has failed to refund £10,200 he lost to a safe account scam.

## What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will provide a brief summary and focus on giving the reasons for my decision.

Mr A fell victim to a safe account scam on 18 May 2022 when he made two payments to a new payee from his RBS account. He sent a payment of £8,600 at 11:07 followed by another payment of £1,600 at 12:25. This was following a phone call from what Mr A believed to be his bank, but was in fact a scammer, who said that his account had been compromised and his money was at risk. Mr A later discovered he had been scammed, and RBS refused to refund the money he had lost.

Our investigator didn’t uphold the complaint. She thought it was likely that Mr A had authorised the payments from his device but didn’t think he had a reasonable basis for believing the payee was legitimate. The investigator also said that Mr A had chosen the incorrect reason for making a payment, which would have prevented RBS from providing an effective warning. As a result, she didn’t think it was required to refund the payments under the Contingent Reimbursement Model (CRM Code). Mr A disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in August 2023. I said I was minded to uphold it and set out the following reasons:

*Mr A initially claimed that he didn’t authorise the payments as he downloaded Anydesk onto his phone, which then enabled the scammers to make the payments from his mobile banking app. But RBS has shown that the payments were made via Mr A’s Apple device, and Anydesk would have only allowed screen sharing from an Apple device. So, it seems unlikely the scammers would have been able to gain control or remote access of his device and make the payments without him knowing.*

*Mr A later said that he was panicked, and everything has become a ‘blur’. He said he was confused with Face ID coming up, and that he was not sure how the payments were being made. But he has also said that he remembers the scammer referring to a “dummy account” for his money to be sent to. Given Mr A would have likely been in control of his device – and given he was aware of money being moved to a “dummy account” – I consider it more likely than not that he was aware that payments were being made from his account. And I’m satisfied he likely authorised these payments himself, albeit I accept this would have been under the instruction of the scammers under the guise of keeping his money safe.*

*Our investigator considered RBS’s liability to refund the payments under the CRM Code (which RBS is signed up to) and concluded that no refund was due, as it could*

*rely on two of the exceptions for reimbursement. And having reviewed the evidence, I'm satisfied that at least one of the exceptions would apply as I don't think Mr A had a reasonable basis for believing the payee to be genuine, for reasons which I'll go on to explain. But even if RBS could also rely on the second exception regarding its provision of an effective warning under the Code, I'm satisfied RBS still ought to have prevented the scam in line with normal APP considerations and its obligations outside of the Code. I'll explain why.*

*I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as RBS that Mr A's account was being subjected to unusual and uncharacteristic activity. The first payment Mr A made as part of the scam was for £8,600 at 11:07, followed by a second payment of £1,600 at 12:25. The largest payment Mr A had made from his account in the 12 months leading up to the scam was for just over £5,000, which was made to a regular payee that he often sent money to. So, when he came to make a payment of £8,600 to a new payee, this marked a significant escalation in the value of payments that were considered normal for Mr A's account, such that it should have been considered unusual and uncharacteristic. I'm therefore satisfied there were reasonable grounds for RBS to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).*

*If RBS had contacted Mr A and questioned him about the payment, it would have likely discovered that he had been speaking to who he thought was his bank and that he was being told to move his money to a safe account, which RBS would have immediately recognised as a scam. RBS could have told him that it had not contacted him with any such instructions, and I'm satisfied the scam would have likely been revealed and any loss prevented. So, but for RBS's failure to act on clear triggers of potential fraud or financial harm, Mr A would probably have not lost his money. I therefore intend asking it to refund both payments he lost as part of the scam.*

### Contributory negligence

*Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). I've considered whether Mr A could fairly be held partly responsible for his loss, and I'm satisfied he should share blame for his loss in these circumstances.*

*I understand that safe account scams are often successful because they create a high-pressured situation where the customer feels inclined to act quickly to protect their money. But even in this context, a customer would still be expected to question whether the caller was genuine until they'd been given enough reason to believe they were.*

*In this case, Mr A has said that he believed the caller to be from his bank simply because they knew his name, phone number and who he banked with. I don't think this is enough in itself to believe that the caller was genuinely phoning from his bank, as this information could have potentially been obtained from other sources. There is also the fact that Mr A thought he was paying a dummy account yet must have seen that he was actually sending money to an individual named "Danut Cristescu". But it doesn't seem that he questioned this either.*

*As a result, I'm satisfied it would be fair and reasonable for compensation to be reduced by 50% as a result of Mr A's negligence that contributed to his loss.*

I invited further comments and evidence from both parties in response to my provisional decision. Both RBS and Mr A responded accepting my proposal.

### **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.

Given that both parties are in agreement with my provisional decision, I see no reason to depart from the conclusions set out above.

It follows that I uphold this complaint.

### **My final decision**

For the reasons given above, I uphold this complaint and direct The Royal Bank of Scotland Plc to:

- Refund both payments Mr A made as part of the scam, less a 50% deduction in recognition of his contributory negligence.
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 September 2023.

Jack Ferris  
**Ombudsman**