

The complaint

Mr G complains that The Royal Bank of Scotland Plc ("RBS") has failed to refund £6,250 he lost to an investment scam in June 2022.

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 G fell victim to an investment scam in June 2022. He discovered the investment with the scammer ("B") via a YouTube video showing a celebrity talking about it on a TV show. After clicking on a link, he received a phone call from B who encouraged him to invest in cryptocurrency. Mr G proceeded to make two payments to the scammer from his RBS account of £5,000 on 2 June 2022 and £1,250 on 13 June 2022. Mr G realised he had been scammed when he was being asked to pay more money to withdraw his profits, and RBS refused to refund the money he had lost.

Our investigator didn't uphold the complaint. She didn't think Mr G had a reasonable basis for believing the payee was legitimate. The investigator also felt that Mr G would have likely ignored an effective warning as he said he would have chosen the payment option of "investing in cryptocurrency". As a result, she didn't think RBS was required to refund the payments under the Contingent Reimbursement Model (CRM Code). Mr G disagreed, so the matter was escalated to me to determine.

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

Having considered all the available evidence, I'm currently minded to uphold Mr G's complaint and intend asking RBS to refund 50% of the payments lost to the scam in line with the Contingent Reimbursement Model (CRM Code).

I agree with the investigator's conclusions in that I don't consider Mr G to meet the criteria of being considered 'vulnerable' under Code, and neither do I think he had a reasonable basis for believing the payments were part of a genuine investment opportunity.

However, I'm not satisfied RBS can fairly or reasonably rely on the exemption of Mr G having ignored an effective warning. Given the value of the payment and the fact it was going to a new payee, I think RBS ought to have provided an effective warning.

RBS has said that Mr G would have been provided with a warning if he had selected the correct option "investing in cryptocurrency". However, it has not been able to provide any evidence to demonstrate whether Mr G did indeed choose this option, or that he was even presented with any warning. Mr G says he can't recall whether he was presented with any option or given a warning. So, without any evidence to show

otherwise, I'm not satisfied that Mr G can be said to have ignored an effective warning as there's no evidence to suggest he was actually given one. So I don't consider it fair for RBS to rely on this exception to decline full reimbursement.

I therefore intend directing RBS to reimburse 50% of the payments Mr G made to the scammer, as well as 8% simple interest per year from the date his CRM claim was declined until the date of settlement.

I note there has been some discussion about whether an intervention from RBS would have been effective. But based on the value of the payments made, I'm not persuaded any intervention would have been required at all. The largest payment made was for £5,000, but I can see that Mr G had made payments from his account for over £4,000 just a few weeks before. So, I don't think any of the payments made as part of the scam were unusual enough to have warranted an intervention by RBS.

I invited further comments and evidence from both parties. Mr G accepted my provisional findings and proposals. RBS disagreed and maintained that its customers would be presented with a warning if they select the correct payment option.

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.

In its most recent submissions, RBS has said that a customer would have to choose a payment option in order to make a payment, and it has provided an example payment journey of what it says would have likely been presented if Mr G had chosen the correct payment option ("investing in cryptocurrency").

However, as I set out in my provisional findings, it still hasn't provided evidence of Mr G's particular payment journey to show that he was in fact presented with a list of payment options or a scam warning. RBS can only speculate that he would have been presented with such a warning, which I do not consider to be sufficient enough for it to establish that Mr G *ignored* an effective warning under the CRM Code.

Therefore, I see no reason to depart from the conclusions I set out in my provisional findings, and 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 50% of the payments Mr G made as part of the scam.
- Pay 8% simple interest per year from the date Mr G's CRM claim was declined until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 September 2023.

Jack Ferris
Ombudsman