

## The complaint

Mr D complains about the actions of The Royal Bank of Scotland Plc (RBS) when he lost money to a scam.

Mr D is being represented by a claims management company but for ease of reading I'll only refer to Mr D in the decision.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In March 2020 Mr D met someone online and spoke with them for a number of weeks. Mr D was told by the third party that they were a trader and felt like he was in a relationship with this person. Mr D decided to start investing with the help of this third party and set up an account with a genuine crypto exchange. He was also given access to an online trading account where he was able to see his trades and the profit that was being made.

In September 2020 Mr D attempted to access his trading account but couldn't. He also lost contact with the third party which is when he realised he had been scammed. So, Mr D contacted RBS who investigated the claim. Mr D told RBS that he made the following payments as a result of the scam;

Date	To	Amount
28 June 2020	Crypto exchange	£200
28 July 2020	Crypto exchange	£1,000
31 July 2020	Crypto exchange	£1,000
04 August 2020	Crypto exchange	£1,000
13 August 2020	Crypto exchange	£1,000
15 August 2020	Crypto exchange	£1,000
19 August 2020	Crypto exchange	£1,000
20 August 2020	Crypto exchange	£1,000
21 August 2020	Crypto exchange	£1,000
01 September 2020	Crypto exchange	£1,000
02 September 2020	Crypto exchange	£1,000
03 September 2020	Crypto exchange	£1,000
04 September 2020	Crypto exchange	£1,000
05 September 2020	Crypto exchange	£1,000
06 September 2020	Crypto exchange	£1,000
07 September 2020	Crypto exchange	£1,000
08 September 2020	Crypto exchange	£1,000
09 September 2020	Crypto exchange	£1,000
10 September 2020	Crypto exchange	£1,000
11 September 2020	Crypto exchange	£1,000
12 September 2020	Crypto exchange	£1,000
14 September 2020	Crypto exchange	£1,000

	Funds still in crypto account	£4,457.90 (CREDIT)
		<b>Total £16,742.10</b>

But RBS decided it hadn't done anything wrong so wouldn't be offering Mr D a refund. Mr D remained unhappy, so he brought his complaint to this service.

Our investigator thought the complaint should be upheld in part. She said by the time the £1,000 payment was made on 07 September 2020 RBS should've stepped in and asked Mr D questions about why he was making the payment and if it had she felt the scam would've been uncovered. She added that RBS should deduct from any refund the funds still left in Mr D's crypto currency account and a 50% reduction for Mr D being partly responsible for his loss.

RBS accepted the investigator's opinion. But Mr D disagreed and asked for an Ombudsman's review. He said the £1,000 payment on 21 August 2020 was unusual and suspicious and should've been stopped by RBS for further questions. He said that was the third payment over three days to a genuine crypto exchange with money going into the account also increasing which was out of character for him. And if that payment had been stopped and questions asked then the scam would've been uncovered earlier.

### **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.

Having done so, I've reached the same conclusion as our investigator so I'll be upholding this complaint in part. And for largely the same reasons. I'm sorry to hear that Mr D has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

It is common ground that Mr D authorised the scam payments of around £21,000. I accept that these were authorised payments even though Mr D was the victim of a scam. So, although it wasn't his intention to pay money to the scammers, under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr D is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for RBS to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

RBS's first obligation is to follow the instructions that Mr D provides. But if those instructions are sufficiently unusual or uncharacteristic for the account, I'd expect RBS to intervene and to ask their customer more about the intended transaction before processing it. I'd also expect RBS to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payment. There might also be cases where it's appropriate for RBS to refuse to follow the instruction if there are good grounds to believe it is being made as a result of a fraud or scam.

The investigator felt the payment of £1,000 on 07 September 2020 was unusual enough for RBS to stop and ask further questions. Mr D feels RBS should've stopped the £1,000 payment on 21 August 2020. I've considered the points Mr D has made about an earlier intervention. But having considered the payments made and his previous account activity I agree with the investigator that the payment on 07 September 2020 was the more unusual activity where it would've been reasonable for RBS to step in and ask further questions. I'll explain why.

I've reviewed the account statements for the twelve months prior to the scam payments, which I consider gives a good sample size to assess what was typical activity for the account. The account was typically well managed and maintained a credit balance. And I note Mr D had made payments previously ranging from around £3,689 in September 2019 to £4,940 in December 2019. I've also noticed that at the beginning of the scam the payments were made gradually with three payments being made in just over a month.

The frequency of payments started to increase with six being made in August 2020. But by the time £1,000 was made on 21 August 2020 I don't think this frequency was sufficiently unusual or suspicious. And I've noted there was still around £14,000 left in the account after that payment. However, the frequency then increased again in September with a £1,000 payment being made every day. After seven days I think the frequency (every day) as well as the pattern (Crypto) was enough that RBS should've been concerned and stopped the payment on 07 September to ask why they were being made.

RBS and Mr D don't disagree with the investigator that an intervention on this date would more than likely led to the scam being uncovered and Mr D listening to any warnings he was given. To be clear, I agree that an intervention would've been listened to by Mr D especially about romance scams and that the situation Mr D found himself in was something that RBS would've been seeing frequently.

#### *Did Mr D act reasonably?*

The investigator thinks that Mr D should bear some responsibility for failing to do his own due diligence and for making payments after he was contacted by the crypto exchange about some concerns it had about where he was sending his crypto.

I've considered this carefully. I think it would be fair for a deduction of 50% to any award here. That's because there were some warnings online on review websites about the scam merchant Mr D had been referred to by the scammer he met online which mentioned the exact circumstances of this scam. And it appears Mr D was contacted by the crypto exchange with concerns it had about where he was sending his crypto to and asked for more details to check he wasn't being scammed – but Mr D continued to make payments after that point.

#### *Recovery*

I've considered whether RBS acted reasonably when it was made aware of the scam. RBS said to this service that it didn't contact the genuine cryptocurrency exchange because Mr D confirmed his funds were sent to a wallet in his name before being forwarded to the scammers. So, RBS wouldn't have been able to recover any of his funds. So, I don't think it treated him unreasonably here.

#### **Putting things right**

Mr D paid a total of £7,000 on and after 07 September 2020 to the crypto exchange. There was £4,457 left in his account when the scam was uncovered which can be deducted from

this amount leaving £2,542 minus 50% leaving £1,271.05 to be refunded with 8% simple interest per year from the date of the each payment to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint in part. The Royal Bank of Scotland Plc must do the following;

- Refund Mr D from the payment on 7 September 2020 onwards (less the funds still in his crypto account) less 50% for contributory negligence.
- Pay 8% simple interest per year on this amount from the date of the loss until the settlement has been paid

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 May 2024.

Mark Dobson  
**Ombudsman**