

The complaint

Mr D is unhappy that The Royal Bank of Scotland Plc ('RBS') decided not to refund him after he says he was the victim of an authorised push payment ('APP') scam.

What happened

The details and background of the complaint are set out in detail in the Investigator's findings – so I won't repeat them in detail here.

In summary, I understand it to be as follows. Mr D employed the services of a company, whom I'll name 'M', for the purchase and installation of some windows and a door.

Mr D has advised he had been recommended M by a friend, their reviews looked good, and they had been on Grand Designs and had an article written about them. Mr D has advised they also came in cheaper than competitors. Mr D contacted M and subsequently received an invoice setting out the works which were to be completed across four stages.

Mr D made the first payment of £2,208.60 on 28 June 2022 to facilitate the survey, drawings, and design work. This led to M visiting the property, carrying out a survey and taking measurements. Subsequently the drawings were made with Mr D's architect approving them for manufacture.

On 15 July 2022, Mr D made a further payment of £2,208.60 for the commencement and sourcing of materials and production.

Ultimately, there were delays, and Mr D and his architect tried liaising with M. Reasons were provided by M as to the cause of the delay being the specific requirements of the order. Mr D frustrated that numerous deadlines had passed – and as it was approaching winter, tried to cancel the order. As Mr D never received the goods ordered, and hadn't been refunded, he considered that M never intended to carry out the works and M had therefore acted fraudulently, and he had been the victim of a scam.

Mr D through joining a social media group, found further examples of other customers who said they had also been left out of pocket as a result of the actions of M.

Mr D logged the matter with 'Action Fraud' and also complained to RBS to see if it could recover or re-imburse him his funds. RBS looked into the matter and ultimately declined re-implementing Mr D as it considered the matter was a private civil dispute between Mr D and M and no bank error had occurred.

Unhappy, Mr D referred the matter to our service. Mr D remained of the opinion that M was acting fraudulently. Broadly summarised, Mr D advised that he was part of a wider group on social media where there had been lots of victims and there was an ongoing police investigation into the director of M. Mr D also advised that some consumers had been refunded by their banks and the ombudsman service has concluded this was a scam in other cases.

One of our Investigators looked into things and was of the opinion that RBS hadn't acted unfairly in its answering of the complaint. She didn't think she could fairly say that RBS ought to treat Mr D's claim as a scam. She acknowledged that while Mr D hadn't received the goods and services he had paid for, she was unable to conclude this was because M had intended to defraud Mr D from the outset. Our Investigator highlighted that firms could fail to perform their obligations under contract for various reasons such as falling into financial difficulty. So, a failure to provide goods and services is not itself enough to show intent to defraud its customer.

Mr D didn't accept the Investigator's findings and asked for an ombudsman to review the complaint.

Broadly summarised, Mr D further advised:

- RBS now know M was a fraudulent scam – and have recently reversed their decisions and reimbursed several customers.
- The receiving firm (the beneficiary bank where M held its account) have reimbursed victims who banked with them.
- Other victims had provided M with payments, with M not providing the goods and services, up to a year prior to him making his payments, which he says shows M was acting dishonestly.
- The director of M has a track record of suspicious business practices.
- There is an ongoing investigation, and the National Crime Agency has taken over 20 statements from separate victims. And there are 'Active Fraud' and Trading Standards' investigations open for M, looking into their activities.

As the matter hasn't been resolved, it's been passed to me to decide.

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'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here and that's to determine whether RBS has acted fairly in its answering of the complaint that the matter was a civil dispute. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm very sorry to hear of what's happened to Mr D, I can see he made payments in good faith to M and got nothing in return. So, I can certainly understand Mr D's sense of frustration about the matter and why he would consider that M, to his mind, defrauded him.

However, not all cases where individuals have lost sums or haven't received the goods or services they have paid for, are in fact fraudulent and/or a scam.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It isn't in dispute that Mr D authorised the payments that left his account. The starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But Mr D says that he has been the victim of an APP scam and that M's intent from the start was to defraud him.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary CRM Code, which RBS was signed up to and was in force at the time Mr D made his payments.

And outside of the CRM Code, RBS also has wider obligations to fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment method used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the CRM Code is quite explicit that it doesn't apply to all push payments, for example it doesn't cover civil disputes. It says;

"DS2(2) This code does not apply to:

(b) 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."

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Our Investigator felt the payment Mr D made formed part of a civil dispute and, as such, is not covered by the CRM Code. Mr D disagrees. He feels M scammed him.

In order to conclude that the payments Mr D made were part of a scam, I'd need to be reasonably satisfied from the available evidence that M was not legitimate and had set out with intent to defraud Mr D. But I'm not persuaded, based on what I've seen, that I can safely conclude that this is the case here.

It's important to note that I am not deciding a dispute between Mr D and M – I don't have the power to look into a complaint about M. My role is limited to deciding the dispute between Mr D and RBS. So, I need to decide whether RBS acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Mr D has been the victim of an APP scam, I need to look to the definitions set out in the CRM Code.

"DS1(2)

(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person;

or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

And the FCA handbook glossary which says:

“A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.”

Looking to these definitions I firstly need to consider the purpose of the payment and whether Mr D thought this purpose was legitimate. Which I'm satisfied he did. I have seen the invoices for the payments Mr D was required to make to M and I have no reason to conclude he didn't think this was a legitimate agreement between the two of them.

Next, I need to consider the purpose the recipient (here that is M) had in mind, at the time of the payments and whether this was broadly in line with what Mr D understood to be the purpose of the payments. Mr D's agreement was for the supply and installation of windows and a door. Mr D paid for the first stage, which led to M visiting the property and taking measurements. And this subsequently led to drawings and plans being made – which Mr D's architect agreed to. Mr D then made the second payment which was meant to allow for the sourcing of the materials and the windows and door being manufactured. And this is where the delays and problems arose. But I have to be mindful that the CRM Code doesn't 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.”* So, just because there was a failure to provide the goods and services, doesn't automatically mean M wasn't a legitimate supplier and was acting fraudulently and never intended on providing the goods or services.

There is evidence that M had been operating for some time, being incorporated in late 2018, and many customers received what they paid for. There will of course be limited information available to me regarding M's intended purpose of Mr D's funds. I don't have access to the wider contracts M entered into or have the detail of how M was operating. As I said, I'm not investigating M and there is only certain information both I and the Investigator have had access to in the course of this investigation.

However, what I have seen is:

- I have reviewed the receiving account statements. Whilst I can't go into detail, for data protection purposes, I can see that multiple payments, across an extended period of time, relate to the activity M claimed to be undertaking. There's only so much weight I can place on this as I can't question M or interrogate M's actions, payments or contracts etc. But it doesn't persuade me that M took Mr D's payment with the intention to not provide the services promised, certainly when I consider this alongside the other evidence.
- M did provide goods and services to a number of customers over a significant period of time. Whilst some, or even many customers, may not have received all of those goods and services or they had issues with the quality of them, this doesn't in and of itself lead to a finding that this was an APP scam.

- The company's history, profile and presence does not support that it set out to scam customers from the start. I accept that a good business can go bad and that can be for reasons of fraud. But the evidence I have seen so far, does not persuade me that's the most likely explanation here.
- A business can stop trading or not provide goods and services for any number of reasons. One of which I accept could be that it was operating as a scam, but there are a number of other genuine reasons as well – for example falling into financial difficulties, cash flow or production problems, staffing issues, cost increases etc. In order to make a finding that RBS, under the CRM Code, is responsible for Mr D's losses here I'd have to be persuaded that the most likely explanation was that M's purpose was to not provide the goods or services. The long-standing history of the company and the other evidence I have seen does not persuade me that is the most likely explanation.

Whilst I do not doubt that Mr D has not got what he paid for and he has suffered a loss, that in and of itself is not enough to say he's been the victim of an APP scam. And he may have a contractual claim in law against M. But here, I have to decide Mr D's claim with RBS under the CRM Code.

I appreciate Mr D has mentioned there is an on-going police investigation into M (and its director). That may reveal M was committing a crime or carrying out fraud, but the investigation isn't concluded and there's no guarantee the police investigation would lead to a clear finding that Mr D was the victim of an APP scam. And it is also my understanding that no charges, at present, have been brought against M and its director.

And that's not to say that with further evidence or when a police investigation has concluded – which might provide new material evidence about M's actions and intentions, that the outcome here might be different. But I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that Mr D has been the victim of an APP scam.

Whilst the conclusion of a police investigation would likely be helpful, I cannot keep the complaint open for an indefinite period of time, whilst M is investigated by the police. It's my role to review if RBS considered Mr D's scam claim, correctly under the CRM Code, at the point it was raised. And I'm satisfied that it did.

If new material information comes to light, at a later date, then Mr D can bring a new complaint to RBS. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is a civil dispute. And RBS' decision under the CRM Code was therefore correct.

As RBS didn't need to consider this as an APP scam then it didn't need to go on to contact the recipient account provider. It didn't need to intervene with the payment either, and even if it had I don't think it would have made a difference given that M appeared to be a legitimate company and had many other customers over a number of years. So, neither Mr D nor RBS would have reason to think this was likely to be a scam at the time the payments were made.

I've seen no other reason to make an award for redress, and I'm satisfied that RBS correctly considered Mr D's claim.

Mr D has referred to other banks refunding customers which indicate acceptance of it being a scam. I can't comment on how another bank or firm wishes to engage with their customers complaints or the reasons why they may have chosen to reimburse their customers. Other banks may have decided to refund consumers for a variety of reasons. But here RBS has decided not to, and I can't say that it was unfair or unreasonable for it to do so. Also, a bank or firm choosing to re-imburse its customer doesn't set a precedent in terms of our service's consideration of this complaint and has no bearing on the outcome of this complaint.

Mr D has also mentioned complaints resolved by our service in other consumers' favour. I can't divulge the details of those cases. But I can say that I am aware of other cases involving M. And I've reviewed this complaint alongside the information we have about M, and I've looked at all the available evidence when deciding the outcome, alongside the relevant considerations of the CRM Code. I would also like to add, each case is reviewed on its own merits and whilst other complaints may have been resolved informally, or at different stages, I've considered the information available to me, at this point in time, when reaching my decision.

Summary

To my mind, I can't safely say that at the time Mr D made payments to M, there was clear intent by M to defraud Mr D. Moreover, it seems more likely M was a failing business that was trying to keep operating. I'm therefore satisfied RBS acted fairly in its answering of the complaint in advising that the matter is a civil dispute between Mr D and M, and the CRM Code doesn't apply in this instance. I am also satisfied that there wasn't anything else RBS could have done to either prevent the loss or recover the funds.

I realise that my decision will be disappointing for Mr D. But overall, for the reasons I've explained I can't fairly or reasonably ask RBS to refund the money Mr D has lost.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 April 2025.

Matthew Horner
Ombudsman