

The complaint

Mr M complains that The Royal Bank of Scotland Plc (“RBS”) won’t refund the money he lost as a result of an investment scam.

He’s being represented by solicitors. To keep things simple, I’ll refer to Mr M throughout this decision.

What happened

The background to this complaint is known to both parties, so I won’t repeat all the details here. In summary, Mr M says:

- In September 2022, he came across an advert for a company called ‘Main-Bit’ on a well-known social media platform and which was seemingly endorsed by a celebrity. He filled in an online enquiry form and was called by someone claiming to be a representative of that company. After an initial start-up fee of £20 was paid he was contacted by a second individual he was led to believe would be acting as his account manager (the scammer).
- He began to develop what he thought was a genuine relationship with the scammer and, believing they’d be looking after his interests, was guided through the process of setting up a ‘trading account’ and crypto-wallets as well as downloading remote access onto his devices. A second scam company by the name of ‘AI Global’ was introduced later in the scam and presented as way to boost investments for high-value clients.
- A series of transactions (card payments/transfers) were made between September 2022 and July 2023 from his RBS account to his own external accounts and crypto-platforms he held with different companies, before the money was sent to the scammer. About £76,000 was lost in total by the time he realised he’d been scammed.

The scam was reported to RBS in August 2023. A complaint was raised in October 2023 and then referred to our Service. Our Investigator considered it but didn’t uphold it. She thought that although RBS ought to have done more to prevent the scam, it was unlikely it could have unravelled the scam and prevented Mr M’s losses given the evidence he’d misled RBS, more than once, as to the reasons for his payments when questioned.

As the matter couldn’t be resolved informally, 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.

Authorisation

It’s not in dispute Mr M was scammed and I’m sorry about the impact the whole experience has had on him. It’s also not in dispute he authorised the payments from his RBS account. So, although he didn’t intend the money to go to a scammer, under the Payment Services Regulations 2017, Mr M is presumed liable for his losses in the first instance. And as the

Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

Prevention

There are, however, some situations where I consider that a business, taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment – if, for example, it's particularly suspicious or out of character.

In this case, looking at the operation of the account, I think there came a point when RBS ought reasonably to have stepped in on concerns that Mr M could be at a heightened risk of financial harm – considering, for example, the value of payments and the activity on the account in January 2023. Like the Investigator I agree, even though the money was sent to an account in Mr M's own name, that the movement of funds and the amounts involved were unusual in comparison to his account history, such that RBS ought to have reasonably stepped in to find out more about the reasons for the disputed payments before processing them, as it did for some of his later payment attempts.

Causation

That said, even accepting RBS should have done more, it's also important for me to consider whether any intervention would have made a difference (and prevented Mr M's further losses) – and, on balance, I'm not persuaded it would have.

This is because it's agreed evidence Mr M provided RBS with misleading answers when it did question him about the nature of some of his transactions. For example, in a call with its fraud team in April 2023, he told RBS he was using the money to buy 'gold' (which I note was what he'd been told to say by the scammer), but also that he'd received the details of the 'investment' and of the recipient bank 'online' and his son had been helping him. There was no mention of a third-party individual asking him to make payment to an offshore account. In two further calls with the fraud team in August 2023, he told RBS he was sending money to a cousin in South Africa. I also can't overlook he's told us the scammer made him think that if he was honest about his intentions to invest, then the bank wouldn't allow the payment. And I can't overlook that when Mr M did report the scam to RBS in August 2023, he was upfront in saying he'd been telling the bank '*a pack of lies for obvious reasons*'.

I appreciate Mr M was guided by the scammer on what to do for his payments to go through without issue. And this is something that is again supported by his testimony to our Service where he's told us that he followed the scammer's advice to avoid detection on the basis that banks were 'anti crypto' and would restrict payments. But because, as the evidence shows, he was coached and seemingly prepared to mislead RBS about what was really happening if questioned, I'm not convinced, on balance, any intervention by RBS would have unravelled the scam or stopped Mr M from finding a way to go ahead with his payments.

In reaching this view, I've thought carefully about the point that earlier interventions could be more effective as a scam victim wouldn't have been as deep into the scam. I agree that's a relevant consideration. I also accept I can't know for certain how such an intervention would have played out. In this case though, and by January 2023, Mr M had already been dealing with the scammer for several months. He'd already 'invested' a significant amount and was reassured by the initial profits he thought he'd made. In addition, Mr M has himself described how he was taken in by what was a particularly elaborate scam and how, as is common with this type of scam, he was tricked into thinking he'd built a personal and trusting relationship with someone he believed was an expert broker. He's said he was largely an observer and happy for his 'investments' to be handled by who he thought was a genuine professional

from the outset, and that he didn't question their instruction as he believed they were acting in his best interests.

On balance, I think it's more likely than not Mr M was already under the scammer's spell and prepared to follow their instructions by the time the payments in January 2023 came about. And I've seen little to persuade me, against this backdrop and again taking into account how things played out when RBS did intervene, that an earlier intervention would have likely unravelled the scam or stopped him from making his payments.

This isn't a decision I've made lightly. I'm mindful Mr M lost a significant amount of money to a cruel scam and I'm again sorry that happened. But taking all the above into account, I'm not persuaded it'd be fair and reasonable to hold RBS liable for his losses in circumstances where it seems more likely than not he'd have followed the scammer's instructions and found a way to make payments irrespective of any intervention.

Recovery

I'm satisfied there was little RBS could have done to recover Mr M's funds once the scam was reported. For the card payments, a chargeback is unlikely to have been successful given that the merchant would have provided the goods and services as intended. And there was little prospect of recalling money sent via faster payments as we know those funds had been sent to Mr M's accounts and on to the scammer by the time the scam was reported.

Customer service

In his complaint to RBS, Mr M said he was unhappy about the treatment he received when he called to report the scam. He said RBS placed the blame on him for authorising the payments; his emotional state was affected as he was rudely dismissed, despite having just reported a life-changing event; and that no scam education was provided at the time.

I listened to a call from 29 August 2023 (when the scam was reported). And before issuing this decision both parties were made aware I was minded to award £100 to Mr M on the basis that RBS should have done more to support him, given he'd clearly been asking what it could do to help him at that point. I've not seen anything that changes my view on that.

I'm satisfied that – instead of simply telling Mr M there was nothing it could do and that he needed to find the crypto-providers himself – RBS could, for example, have helped him with a list of disputed payments and of the various providers to which the payments were sent, particularly when the scam had been going for such a long time and he was unsure about those details. I'm still satisfied it should also have sign-posted him to services for support emotionally and financially, recognising he'd just discovered he'd been the victim of such a cruel scam. I'm also satisfied RBS should have given scam advice, especially when Mr M suggested instructing a company to 'investigate' and the known risks associated with that.

I can understand why he felt dismissed and upset at the lack of help. And I don't agree with the suggestion RBS has shown it provided support by pointing to a previous intervention call or to the additional steps that were only taken off the back of a later formal complaint.

My final decision

For the reasons above, my final decision is that The Royal Bank of Scotland Plc must pay £100 to Mr M, in recognition of the lack of support it provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 October 2024.

Thomas Cardia
Ombudsman