

The complaint

A company, which I'll refer to as 'R', complains that The Royal Bank of Scotland Plc ('RBS') won't refund the money it's lost to a scam.

Mr T is a director of R and brings the complaint on R's behalf.

What happened

Mr T has explained that he was the victim of a smishing attack in late 2023, during which he followed a malicious link and imparted personal information. Afterwards, he was contacted by a person pretending to work for a bank he holds an account with. They persuaded him that the money held in his own bank accounts, and the money held in R's account with RBS, was at risk. As part of the scam, Mr T sent £30,000 from R's RBS account to a new EMI account he'd set up in his own name. He then moved £29,000 from the new EMI account to an account held by a private individual ('the scammer').

Mr T reported the scam to RBS and complained that its systems failed to pick up on an out of character payment that was indicative of fraud. He said that, had RBS made an appropriate intervention, R's financial loss here would've been prevented.

RBS was able to recover a small amount of R's money, but it declined to reimburse the remaining loss. It said that the account R holds with it wasn't the point of loss, and it did speak to Mr T about the disputed payment, but it was unable to uncover or prevent the scam.

What did our investigator say?

Our investigator acknowledged that RBS could have gone further with its intervention, but he said that it wouldn't have uncovered the scam if it had done so. So, he didn't think RBS should be held liable for R's loss.

Mr T asked for an ombudsman to make a final decision, so the case has now 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.

Even though R has been scammed, it's common ground that the disputed payment here was 'authorised' under the Payment Services Regulations. RBS had an obligation to follow the payment instruction it received, and R is presumed liable for its loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think that RBS should:

- Have been monitoring accounts and payments made or received to counter various

risks, including fraud and scams, money laundering and the financing of terrorism.

- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

R's account is a business account, and it's to be expected that companies will make occasional high-value payments/payments that are higher value than usual, to new payees. The disputed payment wasn't part of a suspicious pattern of spending, and it didn't drain R's account but, considering the payment destination, and that it was the highest-value payment by far in recent months, I think it's reasonable that RBS intervened before processing it.

I've listened to a recording of the telephone conversation RBS had with Mr T when it intervened. RBS told Mr T that it was carrying out a security check because the disputed payment had been deemed high-risk. It then asked some questions which led to Mr T telling RBS that the payment was going to his own EMI account – which he had held for approximately a year and a half – so that he could use his card linked to the EMI account abroad and avoid incurring international charges whilst travelling. Mr T confirmed that he hadn't been pressured to make the disputed payment, and he hadn't been asked to lie to the bank about the payment purpose. He also confirmed that he hadn't been asked to make the payment in order to keep R's money safe and RBS warned him that criminals often ask victims to lie to their banks about this, but a genuine bank wouldn't ask its customer to send payments in order to protect their money and would never need a customer to assist it in investigating financial crime. Finally, RBS asked Mr T why he was using a new mobile device, and he told it that he'd smashed the screen on his phone in the gym so he was using an old device for the time being.

Mr T has said that banks need to ask open, probing questions when intervening, and they need to hold up customer answers to a reasonable level of scrutiny. I agree with this, and I would add that interventions should be proportionate to the scam risk. A bank has to strike a balance between adequately protecting its customers when it identifies a scam risk and unduly delaying payments and inconveniencing its customers. With that in mind, although I think there are more questions that RBS could've asked to test the story Mr T was telling it, I'm not persuaded it would be reasonable to expect RBS to have dug any deeper than it did or given any further warnings. I think the warnings RBS gave were proportionate, and that it was reasonable for RBS to be satisfied that R was not at risk of financial harm considering the information Mr T gave during the intervention call. I can't see that there was any concerning information imparted, or present in the details RBS had available to it about the disputed payment, that ought to have put RBS on notice that a scam may be underway and caused it to question Mr T further. And, even if it had, I think Mr T would have been able to circumvent most additional security questions that could've been asked with ease given what RBS knew about the disputed payment and considering the cover story Mr T was using.

I note that the EMI involved also intervened when Mr T sent R's money on to the scammer and it was given a different cover story which satisfied it that there was no risk of financial harm as well. And that Mr T proceeded in sending payments to the scammer despite the EMI's warnings.

Overall, I'm not persuaded in this case that RBS has made an error, or that it could

reasonably have prevented R's financial loss. So, I don't consider that it would be fair or reasonable to require RBS to reimburse R's financial loss.

Finally, I've thought about whether RBS could've done more to recover R's funds but given the nature of the disputed payment and the action the EMI took to recover R's funds, I don't think it could.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 22 May 2025.

Kyley Hanson
Ombudsman