DRN-5141808

The complaint

Company T, a limited company, complains that The Royal Bank of Scotland Plc (RBS) hasn't reimbursed it for payments it made to what Company T now believes to have been a fraudulent investment scheme.

Company T brings its complaint with the benefit of professional representation. For ease, I will treat any submissions from Company T and its representative as being one and the same and attribute them to Company T throughout.

What happened

In 2017, one of the directors of Company T says he learned of an investment opportunity with another company (which I will refer to as 'H').

Between June 2017 and 2 May 2018, Company T made four payments towards this investment from Company T's RBS business account by bank transfer, and a cheque payment to another company (also now believed to have been a fraudulent investment arrangement).

A sixth and final payment comprises Company T's complaint, this being made on 26 September 2018 by bank transfer in connection with H's investment scheme.

Initially, all appeared to be legitimate, and Company T received regular monthly payments representing the return from the investment with H.

However, in 2019, the expected monthly returns ceased. The final payment received by Company T in respect of its investments was in May 2019.

A few months later, in August 2019, the High Court ruled that H should be wound up under the Insolvency Act. The joint liquidators reported in October 2020 that unsecured creditors were owed over £41m, and this left a deficiency of at least £40m. A trading account held by H was reported by the joint liquidators to have a nil balance despite having been listed by H as holding around £580,000. Based on the latest report from the joint liquidators earlier this year, it is unclear what, if any, funds will be available to distribute to unsecured creditors such as Company T.

In April 2024, Company reported to RBS that the payments it had made in 2017 and 2018 had been the result of a scam (an Authorised Push Payment scam or APP scam).

RBS declined to reimburse Company T and did not uphold its complaint. The bank issued its final response on 28 June 2024. In this it said (in summary) that due the passage of time since the payments had been made, there was very little still held on record from the time. It did not think the payments made after the first payment would have stood out as unusual. In relation to the first payment (the largest), RBS said its records showed it had raised an alert about the payment at the time but no longer held records as to what had happened subsequently. RBS said it found nothing to show it was in error when it had made the payments it had been instructed to make by Company T.

Company T did not accept this outcome. It referred the complaint to this service.

Our Investigator was told by RBS that it considered the complaint about the first five payments was outside the jurisdiction of the Financial Ombudsman Service to consider. RBS provided evidence showing it had not received Company T's complaint until 7 May 2024.

All bar the final payment had been executed more than six years before that complaint had been raised. And Company T reasonably had become aware of a possible cause for complaint more than three years prior to the complaint being received. RBS did not consent to the Financial Ombudsman Service considering the merits of that part of the complaint.

The Investigator considered the evidence and said that the complaint in so far as it concerned the first five payments was made out of time, given these were dated more than six years prior to receipt by RBS of Company T's complaint, and the complaint had also been made more than three years after Company T acknowledged becoming suspicious about the investment – in May 2019. There had been no exceptional circumstances to explain that delay. He concluded that under relevant rules[1] this part of Company T's complaint fell outside the jurisdiction of the Financial Ombudsman Service. As such, he said we could not comment on the merits of that part of the complaint.

But the Investigator found the events surrounding the execution of the sixth, final payment (in September 2018) fell within the relevant timescales and that the Financial Ombudsman Service was able to consider the merits of Company T's complaint in so far as it concerned that payment.

However, ultimately the Investigator didn't find RBS had been at fault in processing Company T's payment instruction in respect of this final payment. He didn't consider this final payment would have appeared to RBS to have presented a heightened risk of loss through fraud or scam at the time. He said this in light of the history of Company T's account, and noted that the company had made similar payments related to this same investment scheme over a period of more than one year. In that context, the sixth payment did not stand out as unusual. On top of this he noted other similar sized payments in the account history.

In short, he didn't find RBS had been at fault in processing Company T's payment instruction, and didn't require RBS to refund or compensate Company T for any other reason.

Company T didn't accept this outcome. In summary, it argued that the other similar sized payments referred to by the Investigator had been made to well-known and established entities including HMRC. These should not be compared to the disputed payment. While Company T accepted the first five payments were out of time and could not be considered, they should not be ignored when thinking about Company T's ability to have prevented the loss that resulted from payment six.

In light of this disagreement, the complaint has been referred to me to reach a final decision.

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.

[1] Available here https://www.handbook.fca.org.uk/handbook/DISP/2/8.html.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

At the outset, I note that both parties accept that I do not have jurisdiction to consider the complaint concerning the making of the first five payments. For the avoidance of doubt, I agree with our Investigator that the complaint about these payments was received by RBS out of time and this was not as a result of exceptional circumstances. I do not have the power to consider that part of the complaint further.

I will instead focus, in what follows, on the complaint concerning the sixth payment (the final payment made to this investment scheme from Company T's RBS account).

In broad terms, the starting position at law is that a bank such as RBS is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the relevant Payment Services Regulations and the terms and conditions of the customer's account.

These payments pre-date the introduction of the Contingent Reimbursement Model Code or the later APP Scam Reimbursement Rules. Neither has retrospective effect, and therefore these reimbursement schemes do not apply to Company T's payments.

With that being said, I'd expect (as a result of longstanding regulatory expectations and requirements as well as what I consider to have been good industry practice at the time) banks to have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

In particular, where a payment instruction appeared significantly unusual and out of character for the account, I could expect a bank to have had concerns about the possibility that payment might be liable to lead to loss to its customer through fraud or a scam.

Company T argues that the sixth payment should have prompted such concern on RBS's part at the time.

I've carefully considered the evidence available to me. But I am not persuaded I can reasonably find RBS to have been at fault when it did not trigger its fraud alerting system at the time Company T instructed it to make this payment.

This payment was not for an amount that stood out particularly in the context of other payments made by Company T over the previous year.

That history at the point of payment six included the previous payments made by Company T to the investments with H and others. I cannot consider whether there was fault in allowing those earlier payments – that part of the original complaint falls out side my jurisdiction. But I cannot ignore the existence of those payments in the pattern of account usage that would have been apparent to RBS at the point of the payment I am considering in September 2018. I find that payment would not have been one that stood out when set against the account history at that point.

While I have noted the argument raised by Company T about other payments being to well-known legitimate entities, these payment amounts were not significantly different in size. The distinction being drawn is about the degree to which the bank would have recognised these

as widely used and trusted payees. But a small business making a payment to another company is not inherently something I could say ought to have concerned RBS. Simply put, I don't think it would have been apparent on the face of Company T's instruction that the payee might not be a legitimate entity, or that the payment was otherwise likely connected to fraud or a scam.

Banks have to strike a fine balance in making the decision to intervene in payment instructions made with the valid authority of an account signatory. As I've mentioned above, the starting position at law is that the bank is expected to make the payment accordance with that instruction. It is generally required to do so without delay.

Where the account holder is a business customer, the risk of delaying processing the instruction could lead to significant financial consequences for that business customer (jeopardising a business deal for example). I cannot fairly find the bank at fault in not intervening unless there was sufficient reason for it to have held suspicions. I don't find that applied here.

All considered, I do not find RBS was at fault in making the 26 September 2018 payment. And I do not find it responsible for any resultant losses incurred by Company T.

RBS acted appropriately when the matter was reported in 2024. By that point, more than five years on, I find there was no realistic prospect of recovering any funds. The companies connected to the purported investment had long since become insolvent or dissolved.

In summary, for the part of Company T's complaint I have the jurisdiction to consider, I do not find RBS at fault. I make no award.

My final decision

For the reasons given above, I do not uphold Company T's complaint about The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Company T to accept or reject my decision before 28 July 2025.

Stephen Dickie
Ombudsman