

complaint

Mr A complains The Royal Bank of Scotland Plc (RBS) won't refund money that was spent on a gambling website. He says he didn't spend this money.

Mr A is helped in his complaint by a family member. But, for ease, I'll refer to most things as though Mr A has said them himself.

background

The details of what's said to have happened here are well known to both Mr A and RBS. So I hope both parties will accept the following as a brief summary.

Mr A contacted RBS when he saw money had been taken out of his account and spent on a gambling website. He says he didn't do this. RBS looked into things but didn't refund any of the money. The bank said:

- This was the third time Mr A had claimed to be the victim of fraud for such spending. The two previous claims had involved two different debit cards (so it seemed unlikely this would be an opportunistic fraud);
- It was unlikely to be fraud because there seemed to be no benefit to a fraudster – as any winnings would be paid into Mr A's bank account;
- There was no dispute Mr A had an account with the gambling company concerned; and
- Mr A still had the debit card used to spend the money – and it had been used to carry out genuine spending between those transactions Mr A was now disputing (meaning somebody would have had to take Mr A's card and return it to him, without him realising – on multiple occasions).

RBS then carried out a review of its banking relationship with Mr A and gave him the required notice to close his account.

Mr A wasn't happy with RBS' response to what had happened. So he contacted us.

One of our adjudicators looked into things for Mr A. But, in summary, she agreed that RBS didn't have to refund Mr A any of the money. In coming to this conclusion, the adjudicator considered the requirements of the Payment Services Regulations (PSRs) – as these set out what's needed for a bank to hold a customer liable for spending in circumstances like this.

She asked RBS for detailed records of how the disputed spending had been authorised. That showed the vast majority had required validation from information on the card itself. This had been provided when the betting took place and Mr A said he'd had his card at all times.

The gambling company had already refunded a small number of transactions it couldn't confirm had been validated in this way. But the bank's records showed Mr A's genuine card (and security information) had been used for all the other transactions – both the disputed ones and those Mr A confirmed he had made. So this made it extremely unlikely somebody unknown to Mr A would have carried out the spending.

RBS' records showed that more than one device (mobile phone, tablet or computer) had been used to make the bets. But this – of itself – didn't mean Mr A hadn't made them. Many of the internet (IP) addresses used to carry out both the disputed betting have also been used for genuine spending by Mr A.

The adjudicator agreed with RBS that it was hard to see any benefit to a fraudster in making the bets, as any winnings would be paid into Mr A's bank account. Mr A said it was easily possible for somebody to access his account with the gambling company and change the details for where the winnings could be paid. But the gambling company said this wasn't the case – and that any new bank account would need to be registered with it first.

Mr A's representative said he'd stopped using gambling websites earlier in 2018 – so he couldn't have carried out this particular block of betting. But the adjudicator noted when Mr A had been given a new debit card (after this incident) his bank statement showed that new card had also been used for gambling (albeit with a different company). And Mr A hadn't disputed that new spending.

Mr A's representative explained his particular circumstances, which they thought demonstrated Mr A simply couldn't have carried out the betting. They also said Mr A had requested RBS change his account. Had this been done, the fraud wouldn't have happened.

The adjudicator didn't think this information changed her overall conclusion. It didn't override the clear evidence provided by the bank (and the gambling company).

As Mr A still didn't agree with the adjudicator's view, his complaint has been passed to an ombudsman to review. So I've been asked to do this and issue a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I can see Mr A – and perhaps more so, his family member – feels very strongly about what's happened here. And that's not surprising. There is over £1,000 involved. So Mr A's bound to be concerned.

And I'm very sorry to hear of Mr A's particular circumstances. These can't have helped matters. I hope he continues to get the support he needs.

But I'm afraid I have to tell Mr A that I agree with the adjudicator that RBS doesn't have to refund him any money. Indeed, there's not a great deal I can add to what the adjudicator has already said. I think she set out the position quite thoroughly.

Having said that, it's important I reassure Mr A that I've looked at his complaint afresh and considered everything he and RBS have said.

There's no dispute Mr A had an account with the gambling company concerned. And he's used that account before – and indeed similar companies in the past, and also since this unfortunate incident.

I've looked at RBS' records. They support what the adjudicator's said. Apart from the spending which the gambling company has a concern might have been made using Mr A's debit card – which it's refunded direct to Mr A's bank account anyway – all the spending has been carried out using his genuine card and supported by the relevant security information.

I note at one point Mr A suggested the betting may have been carried out by somebody he lived with. Putting to one side the fact Mr A shouldn't really leave his bank card in a place where somebody could just pick it up and use it, there's still the issue of that other person gaining any benefit from using it on Mr A's account with the gambling company. It says somebody would have to register a new bank account with it before any winnings could be paid into it.

That didn't happen. And it's also unclear how that other person would have been able to access Mr A's account with the gambling company. I accept people often save account information and passwords on their mobile devices (and computers). But that still means the other person involved here would also need to have access to both Mr A's bank card and at least one of his devices where this information was stored.

It would also be quite a coincidence for that person to get both Mr A's debit card and a device not long after Mr A had received a large credit into his RBS account. I'm not sure how that other person would have known about this credit.

The adjudicator set out in some detail where and how some of the transactions on Mr A's RBS account were carried out – referring to times when his online/mobile banking was accessed and the IP addresses involved.

I've no reason to doubt what Mr A's representative says about his particular circumstances. But I've reviewed the above information and agree that it's a bit surprising he didn't see the disputed spending and/or his bank balance reducing. It does appear Mr A was accessing his online/mobile banking at times when his representative said this wouldn't be possible.

When I combine all of the information, it points to Mr A carrying out the betting himself. I realise that's a difficult message to give – not only to him but to his family member that's supporting him. But I hope I've explained it's where the available evidence leads me.

In coming to this conclusion, I've considered carefully the requirements of the PSRs, and the guidance of the Financial Conduct Authority, around authorisation of spending. And, on this occasion, I'm satisfied RBS can hold Mr A responsible for it.

I realise both Mr A and his representative will be disappointed with my decision. And Mr A may want to take the matter further through other routes. But my decision brings to an end what we, in trying to resolve his dispute with RBS informally, can do for him.

I'm really sorry we can't help Mr A any further on this and hope he continues to get the support he needs to address his particular circumstances.

my final decision

For the reasons I've given, my final decision is that I don't uphold Mr A's complaint and The Royal Bank of Scotland Plc doesn't have to refund him any money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A, or his representative, to accept or reject my decision before 22 November 2019.

Andrew Davies
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