

## **complaint**

Mr G has complained The Royal Bank of Scotland plc returned money to the sender of a payment made to buy bitcoins. This left him without either the bitcoins or £10,000 he'd received in payment. They also rejected his request to make a £50,000 payment to buy bitcoins a couple of months later.

## **background**

In December 2017 Mr G sold £10,000 worth of bitcoins and received payment into his RBS account. Within a few days of the credit, the sender's bank (who I'll call B) advised the payment was disputed by B's customer. Despite Mr G providing evidence to RBS that the money was his, RBS felt they had no choice but to return it. They did this in January 2018 after firstly removing the money from Mr G's account.

In February 2018 Mr G wanted to make a CHAPS payment for £50,000 to buy bitcoins. RBS wouldn't allow him to do this as they stated they wouldn't permit a *"payment request for cryptocurrency that exceeds the amount received into the account for benefit or wages"*.

Mr G couldn't resolve his concerns with RBS and brought a complaint to the ombudsman service to cover both of these issues.

Our adjudicator at the time felt that RBS had done nothing wrong. They were able to set their own guidelines for what type of payments they would, or wouldn't, allow their customers to make. He noted that just shortly after this RBS changed its policy to ensure their customers couldn't use an RBS credit card to buy cryptocurrency. He also agreed they were right to return the money to B.

Mr G disagreed with this outcome. He's asked an ombudsman to consider his complaint.

I completed a provisional decision on 12 March 2021. I didn't believe RBS had authority to return £10,000 to B so would now have to refund Mr G.

Mr G accepted this outcome. No response was received from RBS.

I now have all I need to complete my 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.

Having done so, I've reached the same conclusion I did in my provisional decision. As I received no dissenting comments, my findings follow to explain why I've reached the decision I have.

There are two aspects of this complaint and I consider both of these.

### *RBS sending £10,000 back to sender*

As businesses know, in broad terms, where we're satisfied the consumer is coming to the table with clean hands (so, for example, is not the perpetrator of any type of scam), we're

likely to say the mandate (the account terms and conditions), Payment Services Regulations and industry guidance, prevent the consumer's bank from debiting their account.

So, where the consumer is also the victim of a scam or involved in a civil dispute, we don't think the business should be debiting their account.

I've considered how this approach relates to Mr G's complaint. I've reviewed the evidence presented to us by Mr G. This included screenshots related to his original sale of bitcoins and includes the evidence he also presented to RBS.

Mr G received the funds on 7 December. B notified RBS on 14 December that their customer had been defrauded. RBS went back to B to check on some aspects of this. On 18 December they removed funds from Mr G's account. After receipt of an indemnity from B for these funds, £10,000 was returned to B on 29 January 2018.

From what I've seen RBS accept the evidence showed Mr G was a genuine party to a transaction selling bitcoin where most likely he was defrauded (as was the party who sent the £10,000). I say this because although RBS initially blocked Mr G's account from further use, they removed these blocks after he'd provided them with evidence to show he'd been a genuine party to a bitcoin sale.

RBS told us *"it was considered that although Mr G's evidence proved him to be genuine, there could still be a victim of crime within the trail of the payment"*.

Their argument for returning funds to B is that they had to honour B's request to return the funds, although do not specify why. I suspect this was because they received an indemnity from B. I can see from their notes the money wasn't returned until this had been received.

However an indemnity is just a promise between the two banks that the receiving bank will have protection if they chose to send the money back. It doesn't create any obligation that they *have* to send the money back.

In RBS's final response to Mr G, RBS provided no reasoning why they'd returned the funds, other than to say Mr G's best way forward was to tackle the sender as they could do nothing further. It's certainly true that once they'd returned the funds to B, there was probably little they could do in discussion with B to get back any funds. However RBS could have considered whether they acted in line with the mandate they held with Mr G.

### *The bank's mandate*

The primary duty of a bank is to follow their customers instructions and make payments as instructed, in line with the mandate. The bank's payment obligations only arise if the payment instruction complies with the mandate.

The mandate is usually the terms and conditions of an account. This is often the main factor to consider in these cases. If there isn't a term which allows the bank to act in this way, then we're satisfied they have no basis by which to debit the consumer's account.

RBS provided us with a copy of the terms and conditions that related to Mr G's account. These date from June 2017 and were in force when RBS returned £10,000 to B on 18 December 2017. I've seen nothing within those terms and conditions which entitle RBS to

remove funds from the Mr G's account in this way, or show the bank acted in line with the mandate when removing the money from the account.

### *Payment Services Regulations*

The PSRs require the payer to give consent to the execution of a payment transaction by employing the form and procedure agreed between them and the bank. The payer is the one who has to give consent, this can't be done by a third party. If the payer doesn't give consent, the transaction will be considered as unauthorised.

So, where the consumer (payer) hasn't given consent for the business to withdraw the funds from their account to send back to another bank, I can consider this transaction as unauthorised.

RBS hasn't shown that Mr G gave consent which would allow them to return £10,000 to B. In fact Mr G's testimony is that RBS didn't even confirm to him this was what they were doing, despite him having thought he'd shown the funds were his.

### *industry guidance and best practice*

The *Authorised Push Payment (APP) Voluntary Best Practice Standards* produced by UK Finance sets out standards for sending and receiving firms to follow when processing a claim for an APP scam. This guidance came into force from October 2017. I believe this just sought to codify what was already good industry practice at the time.

This guidance only applies to APP scams. But from what I know of B's customer, I believe this would fit his situation where he believed he was helping out a friend and both authorised and made the transfer to Mr G.

I've reviewed the principles within the best practice.

These dictate that when the receiving bank – RBS in this case – is put on notice that their customer may have perpetrated an APP scam, it should investigate whether their customer is involved and has received the funds fraudulently. If the consumer can show otherwise and disputes the claim, the receiving bank is under no obligations to return the funds to the sending bank. I've already referred above to RBS's evidence where they confirm they believe Mr G was genuine. This means I see no reason under these standards that RBS had to send funds back to B.

It has long been a factor in other industry payments-related best practice that mechanisms to return funds are not to be used where fraud, as in this case, was the issue.

Having considered all the issues relating to RBS's return of £10,000 to B, I believe this was done without Mr G's consent. RBS will therefore need to repay this money to him and add 8% simple interest from 18 December 2017.

### *RBS refusing to allow Mr G to make £50,000 CHAPS payment to buy bitcoin*

RBS has told us that "no payment request for cryptocurrency that exceeds the amount received into the account for benefit or wages" would be accepted. I've seen nothing in their terms and conditions which specify this. Nor does this seem to take into account those customers where no regular salary (or benefits) are received.

In any case at the time Mr G wanted to make this payment, his current account had considerable funds well in excess of the amount of the payment he wished to make.

RBS has said this refusal is in line with the decision they made from February 2018 to restrict *“the use of its credit and charge cards across Retail, Business Banking, Commercial & Corporate franchises to purchase cryptocurrency”*. RBS has given us the notice they shared about this aspect which is dated 16 February 2018.

RBS rejected Mr G’s request for a CHAPS payment on 5 February 2018 which pre-dates this policy change.

Some of the other points RBS has made are relevant I believe. It was felt by RBS – along with other banks at the time – that customers who were trading cryptocurrency were subject to an unregulated and volatile market. It’s certainly true that customers who’d received funds from the sale of bitcoins were more at risk of the person they were trading with registering complaints about non-receipt of funds or being victims of fraud. This is evidenced by what had happened to Mr G in December 2017.

I’m also aware that RBS had noted the recent growth in transactions on Mr G’s account. They’d already made decisions to block his account – in line with the terms and conditions. I believe they were starting to be concerned about the value and volume of cryptocurrency transactions. If a number of people Mr G had traded with all decided to simultaneously query payments sent to him, then this may have caused him issues. RBS would have needed to ensure Mr G had suitable funds available.

This situation is what RBS characterised to us as being *“outside our risk appetite”*. They’ve also drawn attention to the fact Mr G was using his personal bank account for trading bitcoin which it could be argued amount to using it for business purposes. So I believe it’s quite likely they’d have been considering taking further action to block transactions (which they did later in 2018).

As was stated by our adjudicator in his view *“banks are required to undertake ongoing due diligence of accounts they operate. This is both to ensure adherence to legal and regulatory requirements and to help protect customers and the bank against loss”*.

I believe taking this all into account RBS’s action is in line with Mr G’s terms and conditions at the time. These stated:

- “2.2.4 We may delay or refuse to act if;
- (a) we reasonably believe that you did not give the instruction:
  - (b) we reasonably suspect fraud or it is prudent in the interests of crime prevention or compliance with sanctions laws:
  - (c) your instructions are unclear, incomplete or not in the required form:
  - (d) complying would be contrary to law, regulation or any applicable code:
  - (e) it would cause you to exceed any limit or restriction which applies to your account: or
  - (f) the payment is not in Sterling, unless we agree otherwise.”

Therefore I believe this allows RBS to refuse to make a payment as Mr G requested.

I appreciate that Mr G was given confusing information from RBS about why they’d refused to action his payment request. I’m sure this can’t have helped. However I am satisfied they’ve not done anything wrong overall.

**my final decision**

For the reasons I've given, my final decision is to instruct The Royal Bank of Scotland Plc to:

- Repay £10,000 to Mr G; and
- Add 8% simple interest a year from 18 December 2017 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 May 2021.

Sandra Quinn  
**ombudsman**