

Complaint

Mrs S is unhappy that Revolut Ltd didn't reimburse her after she fell victim to a scam.

Background

In May 2022, Mrs S fell victim to a scam. She received a phone call from someone who claimed to work for HM Courts & Tribunals Service. Unfortunately, that individual was a fraudster.

He told Mrs S that there were several criminal charges against her regarding her tax affairs. She was told that she could be arrested if she didn't pay what she owed. If arrested, she could lose her British citizenship. She was sceptical about the call and so terminated it. However, this individual called her persistently and stressed that the consequences of not paying could be severe.

He persuaded Mrs S that he was a legitimate employee of the court by asking her to search online for the number he was calling from. This showed that the number was for the Crown Court in Birmingham. Unfortunately, Mrs S wasn't aware that it was possible for phone numbers to be 'spoofed' in this way. The scammer sent her scans of seemingly official looking documents to back up what he'd said.

She was asked to download the Revolut app and open a new account. She was then told to make a payment of £1,299 to a specific payee. She was told this person was her court appointed solicitor. She was then asked to make a second payment to another payee of £2,499. Once again, she was told that this person was connected to her legal case. She attempted to make the transfer. I understand that she notified Revolut that the purpose of the payment was to move her money to a 'safe account.'

This attempted payment was stopped. Mrs S was contacted via the Revolut app and told by an agent:

"... I can see that our security system has held your transaction of 2,499.00 GBP to [the recipient] in pending because we think it may be part of a scam or fraud. We're trying to keep your money protected, please bear with us while we check some details to make sure you really want to make this payment."

She was asked if she'd installed any remote access software to her device and responded that she hadn't. She was finally asked whether she wanted to go ahead with the payment or not. She chose to cancel it. Shortly afterwards, she authorised a transfer of £2,500 to the same payee and for the same reason. This payment was processed without further questioning.

She was then asked to make a final payment which wasn't successful. At the scammer's request, she authorised a payment of £1,000 to a cryptocurrency wallet with a third-party business in her own name. These funds were then converted into Bitcoin and transferred on to the fraudster.

To make these payments, Mrs S borrowed money from her son. Once she realised that she'd fallen victim to a scam, she notified Revolut. It investigated her complaint but didn't agree to reimburse her. It said that it had provided her with clear warnings during the payment process. It also blocked the second payment of £2,499 because it thought that there were clear indications of a fraud risk. It didn't think it was required to do anything further when Mrs S reattempted the payment. She had already received the information about the fraud risk and proceeded on her own.

Mrs S was unhappy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. The Investigator said that Revolut ought to have been on the lookout for payments that were out of character and might have been indicative of an increased fraud risk.

The Investigator concluded that it ought to have intervened when Mrs S made the second payment in connection with the scam. It had intervened and prompted her to cancel an almost identical payment. But she didn't think it was adequate for Revolut to then have allowed a separate payment to the same payee to be processed without further questioning.

Since Revolut disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

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

It is common ground that Mrs S authorised the payment. Under the Payment Services Regulations 2017, she is presumed liable for the loss at first instance. However, this is not the end of the story. Revolut is an electronic money issuer. The regulator, the Financial Conduct Authority (FCA), has confirmed that all e-money issuers *"must comply with legal requirements to deter and detect financial crime, which includes money laundering and terrorist financing."*

Broadly summarised, the obligations on Revolut at the material time were to:

- monitor accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, with which banks are generally more familiar than the average customer.
- in some circumstances, irrespective of the payment channel used, take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I agree with the Investigator's conclusion that Revolut ought to have been concerned at the point Mrs S made the payment of £2,500. She'd told Revolut that the purpose of the payment was to move her funds to a safe account and this payment left a balance in her account of only £1. These were clear indicators of a potential scam risk and so Revolut shouldn't have processed this payment until it contacted Mrs S to satisfy itself that she wasn't at risk of financial harm due to fraud.

Revolut has argued that, by warning her about the potential scam risk when she attempted to make the payment of £2,499, it had discharged its obligations to her and so it didn't do anything wrong in allowing the later payment to go through.

I've considered that argument carefully, but I'm not persuaded by it. There is an asymmetry of knowledge between the parties here. Revolut ought to have known that there is no valid process for a customer to transfer their money to a "*safe account*" – so when Mrs S told it she was attempting to do so, it was on notice of the strong likelihood that she was falling victim to a scam.

I also found that the intervention that did take place on the earlier payment was quite superficial, particularly in view of the clear risk. She was asked whether she'd downloaded remote access software to her device. It doesn't appear that any further information was gathered. I think good practice required Revolut to ask her one or two additional open questions. On balance, I think it's likely she'd have explained the basis on which she was making the payment and Revolut could've warned her that it could only be a scam.

Revolut has said that it can't be taken for granted that Mrs S would've been candid with it about the reasons for the payment. It says that she lied about the payments to a friend and her son. I've not seen any evidence to suggest that she lied, although I recognise that she appears to not have told her son the reason why she needed to borrow money from him. However, I don't think it necessarily follows that Revolut wouldn't have been able to break the spell she'd been placed under by the scammers, particularly since the evidence suggests she hadn't been given a false cover story to explain the reasons for the payment if she was challenged.

I've also considered whether Mrs S can be considered partially responsible for her own losses here. In doing so, I've considered what the law says about contributory negligence but also kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. Having done so, I'm satisfied that she shouldn't be considered responsible. The scammers were able to persuade her of their legitimacy by spoofing the number of a genuine court and also sent her fake documentation to demonstrate the existence of the charges.

With the benefit of hindsight, it's possible to spot problems or discrepancies and some consumers wouldn't have been fooled by the scam. Nonetheless, I don't think she was credulous – for example, she initially refused to speak to the scammer at the point of the first phone call. It was only his relentless persistence that made her listen to what he had to say.

Overall, I'm not persuaded that her actions here demonstrate contributory negligence. I think she was simply the unwitting and blameless victim of a cruel and manipulative fraudster.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mrs S accepts my final decision, Revolut Ltd should pay her £3,500 without delay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 June 2023.

James Kimmitt
Ombudsman