

The complaint

Mr L complains that The Royal Bank of Scotland Plc ("RBS") won't refund payments totalling £29,000 made from his account that he says he didn't authorise.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mr L began investing in cryptocurrency after being contacted by a scam broker ("Prime Coin") in November 2022. He made an initial investment of £250 followed by a further payment of £1,000.

Mr L said the scammer was encouraging him to increase his investment by £20,000, which he refused. After requesting to withdraw his profits from the broker, he noticed that someone had accessed his RBS account and moved all his funds from his savings account to his current account, where three payments totalling £29,000 had then made to a Revolut account in Mr L's name, which he says he didn't open.

Mr L reported the fraud to RBS, but it said it wouldn't refund the payments as there was nothing to suggest the payments had not been authorised by Mr L. Unhappy with this, he referred the matter to our service.

Our investigator didn't uphold the complaint. He also didn't think there was enough evidence to suggest that the payments had been made by anyone other than Mr L, as there was seemingly no way a third party could have made them from his mobile banking app. He also didn't think the payments were unusual enough to have warranted an intervention by RBS. Mr L disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it.

The disputed transactions complained about took place from November 2022, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the one made from Mr L's account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it is more likely than not that Mr L authorised the transactions. In other words, I need to decide whether Mr L made the

transactions himself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments.

In this instance, the three disputed transactions were made from Mr L's RBS account. A payment of £19,200 was made on 28 November 2022, and then two further payments were made on 1 December 2022 for £7,300 and £2,500. All three payments were made to Mr L's Revolut account via his mobile banking app, after having been transferred from his savings account. And having considered the evidence, I'm satisfied the more likely explanation is that Mr L authorised the transactions. I'll explain why.

Mr L has said that he downloaded remote access software to his desktop computer. But that still doesn't explain how the scammer would have been able to gain access to his mobile banking app on his phone, which was where the payments were made from. He hasn't said that he gave anyone access to his mobile banking or shared his security/login details, so there's seemingly no way anyone else would've been able to access his mobile banking.

I also note that Mr L had logged in to his online banking during the three-day period in which the payments were being made, yet he didn't report the transactions until after the final payment had been made on 1 December 2022. It seems likely that Mr L would have noticed £19,200 missing from his account when he logged in, yet it wasn't reported at that particular time.

The payments made from Mr L's savings account to his current account were also made in separate increments over a few days, which wouldn't be consistent or typical of a scammer who had gained unauthorised access to an account, as they would usually attempt to take the money as quickly as possible before they're detected by the account holder. It also wouldn't be typical of a scammer to then transfer that money to another account held in Mr L's name, as it would still need to be transferred on again before it finally reached the scammer.

So, given Mr L didn't share his security details or give his device to anyone else, the only plausible conclusion is that either Mr L made the transactions himself, or gave his details to somebody else, thereby giving his consent and authority for payments to be made on his behalf. I appreciate that Mr L disputes this but given no one else had access to his details or device, there is no other more plausible explanation for how the payments could have otherwise been made.

As a result, I'm not persuaded RBS has acted unreasonably here by failing to treat the transactions as unauthorised in these circumstances.

Mr L also says that RBS should have contacted him about the payments when they were being made from his account. The largest payment made as part of the scam was for £19,200, which I acknowledge is a significant amount of money. However, I can see from Mr L's account statements that he had made similar or even larger payments that this in the months leading up to these transactions. So, I don't think any of the payments he's disputed ought to have triggered an intervention by RBS to question him about them, as they wouldn't have appeared out of character.

I appreciate this will likely come as a disappointment to Mr L, and I'm sorry to hear about the financial hardship he's experiencing. However, in the circumstances, I cannot fairly and reasonably hold RBS liable for his loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 February 2024.

Jack Ferris
Ombudsman