

The complaint

Mr S is unhappy Revolut Ltd won't reimburse him for the money he lost when he fell victim to a scam.

What happened

Mr S fell victim to a safe account scam. He received a message which appeared to be from his credit card provider – "A" – asking if he had made a specific transaction. Mr S didn't recognise the transaction, so he contacted A on the number in the text message. He was then told that his banking details may have been compromised and that his various bank accounts could be at risk. He was given what he was told was a reference number issued by the Financial Conduct Authority (FCA), and was then told he'd receive a call from his main bank account provider, "B". Mr S then received a call which appeared to come from a legitimate phone number associated with B. They reiterated that his accounts were at risk, and took him through a verification process which included a text message which appeared to come from the FCA. Mr S was told that to protect his money he needed to move it from B, to his Revolut account, and then on to a new account that had been set up for him elsewhere. Unfortunately, and unknown to him at the time, Mr S was actually speaking with fraudsters. The account he was moving his money to was not in his name and he did not have access to it.

Believing that he was genuinely dealing with a legitimate banking institution, Mr S ended up moving significant funds into his Revolut account. From there, Mr S made three payments to the beneficiary account details provided by the scammer. In total, Mr S transferred £25,300.

After around three hours talking with the scammers Mr S was concerned about repeated calls he'd been unable to answer from his wife, and about the work he was supposed to be doing at the time, and so he ended the call. He told the scammers he would go to his local branch of B the next day if any more money needed to be transferred. On speaking with his wife, Mr S then realised that his account with B had not been compromised, he had been the victim of a scam.

Mr S contacted B and Revolut to explain what had happened. Ultimately, B decided to refund 50% of Mr S' loss, as it agreed that it should have taken steps to intervene in the payments he was making. But Revolut told Mr S that it wouldn't be reimbursing him for any of the payments he had made from his Revolut account. Revolut explained it felt it had provided adequate warnings before allowing the payments to go through.

Unhappy, Mr S referred the matter to our service. One of our Investigators looked what had happened, but they did not think Revolut had done enough, they considered that by the time of the last payment to the scam (which was for £25,000) Revolut should have taken more direct action to intervene, rather than relying on written warnings, So they recommended that Revolut refund the remaining 50% of Mr S' loss for the last payment he made to the scam. The Investigator did not consider that it was fair to make any deduction to this refund for contributory negligence on Mr S' part.

Revolut disagreed, it maintains that it gave appropriate warnings given what it knew about the payment at the time, it has also noted that there were red flags which should have put Mr S on notice that something untoward could be going on.

As no agreement could be reached this case has now been passed to me for a 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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that an Electronic Money Institution ("EMI") such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a legal duty to do so.

In this case, the terms of Revolut's contract with Mr S modified the starting position described in *Philipp*, by expressly requiring Revolut to refuse or delay a payment "*if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks*".

So Revolut was required by the implied terms of its contract with Mr S and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not

in any event mean Revolut was required to carry out the payments immediately¹. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in June 2023 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

In reaching the view that Revolut should 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, I am mindful that in practice all banks and EMI's like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments;
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with “due skill, care and diligence” (FCA Principle for Businesses 2), “integrity” (FCA Principle for Businesses 1) and a firm “must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems” (FCA Principle for Businesses 3)³.
- Over the years, the FCA, and its predecessor the FSA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by firms to counter financial crime, including various iterations of the “*Financial crime: a guide for firms*”.
- Regulated firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship). I do not suggest that Revolut ought to have had concerns about money laundering or financing terrorism here, but I

¹ The Payment Services Regulation 2017 Reg. 86 states that “the payer’s payment service provider must ensure that the amount of the payment transaction is credited to the payee’s payment service provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

² For example, Revolut’s website explains it launched an automated anti-fraud system in August 2018: https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/

³ Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

nevertheless consider these requirements to be relevant to the consideration of Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code⁴, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in June 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had 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, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

What did Revolut do to warn Mr S and what should it have done?

The first two payments Mr S made to the scam from his Revolut account were for only small amounts, £100 and £200, so I don't think these would have flagged as potentially concerning to Revolut. But the third payment Mr S made, which was for £25,000, was significantly higher than any payments Mr S had previously made and was noted by Revolut as being more suspicious than the vast majority of the payments it made.

As a result, this £25,000 payment was flagged by Revolut and it did provide some warnings. The question I must consider is whether those payments were adequate in the circumstances of this case, or whether Revolut should have done more.

⁴ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

Revolut did provide a warning when Mr S was setting up the scam account as a new payee. This warning said:

“Do you know and trust this payee?

If you're unsure, don't pay them, as we may not be able to help you get your money back. Remember that fraudsters can impersonate others, and we will never ask you to make a payment”

But this warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case.

Mr S also received a warning that the name associated with the account he was paying did not match with what he had put for the payment – his own name. But Mr S says that the scammers had explained this might happen, so he was not alarmed by this message. And, as Revolut has noted, the message stated that Mr S should only proceed if he was “sure the recipient was trustworthy”, and given how convinced Mr S was that he was dealing with B's fraud team (who he would consider trustworthy) I can see why this would not have stopped him from proceeding.

Revolut then also provided an additional warning about the third payment Mr S made, for £25,000. This message stated that the payment might be a scam, and asked Mr S to select a purpose for the payment. He chose 'something else' and was then shown some education screens about common scams, this warning included some information about safe account scams, even though Mr S hadn't chosen that as the reason for the payment. But while this warning did include some information relevant to what was happening to Mr S, I don't think it went far enough in the circumstances of this case.

Given the significant value of the payment that had been flagged, and the fact that Revolut was aware the recipient account name did not match with what Mr S thought it should be, I think it would have been clear to Revolut that this payment represented a significantly increased risk of financial harm. So, I consider it would have been reasonable at this stage for Revolut to intervene directly in that payment, rather than relying on any written warnings. Having thought carefully about the risk the payment presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr S's account. I think it should have done this by, for example, directing Mr S to its in-app chat to discuss the payment further.

And I think that kind of direct contact with Mr S would likely have made the difference here. While there's obviously a balance to strike, Revolut ought fairly and reasonably to have satisfied itself that Mr S hadn't fallen victim to a scam, and I'm persuaded it could've done this by asking a few open-ended questions.

I've not seen anything to suggest that Mr S was told to lie to Revolut, so I think if he had been asked what he was doing he would have explained that he was being advised by B to move his money through Revolut to keep it safe. And, given how familiar Revolut would have been with safe account scams by that stage, I think this would have rung significant alarm bells and, more likely than not, led to the scam being uncovered and Mr S not making the £25,000 payment.

Is it fair and reasonable for Revolut to be held responsible for Mr S' loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mr S' funds were moved from his account with B, to Revolut, before being moved on to the scammer.

But as I've set out above, I think that Revolut still should have recognised that Mr S might have been at risk of financial harm from fraud when they made the £25,000 payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Mr S suffered. The fact that the money used to fund the scam came from elsewhere does not alter that fact and I think Revolut can fairly be held responsible for Mr S' loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered that Mr S has only complained about Revolut to our service. Mr S did though also raise a complaint about what had happened with B, and it decided to refund 50% of Mr S' loss, to recognise its part in what happened here. And Mr S could have sought to complain to our service about B as well as about Revolut. But Mr S has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr S' compensation in circumstances where: the consumer has only complained to our service about one respondent from which they are entitled to recover their losses in full; and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position. In any case, I have of course taken account of the fact that B has already refunded 50% of Mr S' loss.

Ultimately though, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr S' remaining loss from the third payment he made to the scam.

Should Mr S bear any responsibility for his losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

Having done so I'm satisfied that it would not be reasonable to make any deduction from the amount reimbursed.

I say this because there are several features of this particular scam that meant it was particularly convincing from Mr S' perspective. Specifically:

- Mr S received the original message from the scammers as part of an existing message thread from his credit card provider.
- The call he received purporting to be from B appeared to come from a legitimate number associated with that bank.
- Mr S received what appeared to be a message from the FCA with a verification code, adding a layer of legitimacy to what was going on.
- The scammers appeared to know exactly what was going to happen at each stage of the payment process and so could lead Mr S through what was happening.

All the actions Mr S subsequently took must be seen in that context – i.e. that he sincerely believed he was following the instructions of a legitimate bank's fraud team, who had told him that they were trying to protect his money. Given this background, and the enormous pressure Mr S was under to do what he was told by the scammers to keep his money safe, I can see why he took the actions she did. So, I don't think he was partly to blame for what happened. It follows that I don't consider it fair to say Mr S should bear responsibility for some of the loss here.

So, in summary, I consider that Revolut could have done more to protect Mr S from the risk of financial harm at the time of his last payment to the scam, for £25,000. Had Revolut contacted Mr S directly and asked some open questions about what was happening, I'm persuaded it is more likely than not the scam would have come to light, and Mr S wouldn't have lost out on the £25,000 he ended up transferring. But given that Mr S' other bank, B has already refunded 50% of this amount, I am satisfied it is fair for Revolut to refund the remaining 50%.

Putting things right

To resolve this complaint Revolut should now:

- Refund 50% of the third payment Mr S made to the scam – representing a refund of £12,500
- Pay 8% simple interest per annum on that amount from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. Revolut Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 September 2024.

Sophie Mitchell
Ombudsman