

The complaint

Ms N is unhappy that Revolut Ltd won't reimburse money she lost as a result of a scam.

What happened

On 5 May 2024, I issued my provisional decision on this complaint. I wanted to give both parties a chance to provide any more evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

On 25 January 2023, Ms N received a text message which appeared to come from the Post Office. The message said that it needed to redeliver her package and that she needed to pay for redelivery. She clicked on a link and entered her Revolut card details and some other personal information in order to pay the £1.45 delivery fee. Ms N says while she thought that request was a little out of the ordinary, she was expecting a package that she really needed.

On 26 January 2023, she received a call from someone claiming to be Revolut. She asked the caller to call back as she was in a meeting. She spoke to the caller an hour later. While she was speaking to the caller she searched online and found that the number that she'd been called on was associated with Revolut. The caller claimed that someone had contacted Revolut and asked it to increase the value of the payment she'd made the previous day from £1.45 to £10,450. The caller asked whether it was Ms N who'd made this request, and she confirmed that she hadn't.

The caller explained that a new account would need to be opened for Ms N in order to protect her money. She received a call back from a private number (as she'd been told to expect) and was guided through the steps of making the payments to her 'new account'. Ms N recalls how the caller had very detailed knowledge of Revolut's app and processes.

Under the caller's instructions, she made two payments from her business account with Revolut, which are set out below.

<i>Payment number</i>	<i>Date and time</i>	<i>Recipient</i>	<i>Type of payment</i>	<i>Amount</i>	<i>Remaining balance</i>
<i>1</i>	<i>26 January 2023, 14:04</i>	<i>Third-party account</i>	<i>Transfer</i>	<i>£30,000</i>	<i>£2,067.19</i>
<i>2</i>	<i>26 January 2023, 14:15</i>	<i>Third-party account</i>	<i>Transfer</i>	<i>£2,067.19</i>	<i>£0</i>

Ms N input her own name as the payee, but could later see that the payments went to an account in the name of a limited company. When Ms N attempted to make the first payment, Revolut says she would have been presented with a message which said:

'Account name doesn't match. The recipient's bank said name [sic] you entered is not the name on account. Please double check the details and only continue if you are sure the recipient is trustworthy'

Ms N doesn't recall seeing this message.

I understand that following the transactions from her business account, she was told that she'd also need to move money from her personal account with Revolut. Ms N says this caused her to question the caller. In response and to try and allay her concerns, at 15:11 the caller sent her a text message which appeared in an existing chain of text messages from Revolut. It provided an 'authentication code' to apparently demonstrate the identity of the advisor she was speaking to.

She received another call, again from a spoofed Revolut number. That call dropped and she didn't hear back from the fraudsters. She describes being in a state of panic at this point. She checked her Revolut account and could see that it had no money in it, but she also didn't have access to her new account. Ms N reported the matter to Revolut as a scam at 15:22.

Revolut declined Ms N's claim, in summary it said:

- Although Ms N claims to have checked the number she was called from online, had she done this properly, she would have seen information to show that the number doesn't make outgoing calls.*
- Revolut provided a warning before she set up the new beneficiary, which Ms N didn't heed.*
- It also warned her that the account name she'd entered didn't match that on the recipient account.*
- She had time to reflect on what she was being asked to do as the events took place over around an hour and a half.*
- The account was a business account and the payments were not out of character – particularly as the payments in dispute went to another business account. It can't be expected to block a payment simply on the basis of value.*

Ms N referred her complaint to our service and one of our Investigators upheld it. They thought that Revolut should have provided better warnings to Ms N before she made the first payment and, if it had done, the scam would have come to light and the loss would have been prevented. They also thought that Ms N had acted reasonably. So, they recommended that Ms N be refunded in full and be paid 8% simple interest on that amount from the date of the transactions to the date of settlement.

Revolut didn't agree with our Investigator's assessment, in addition to the points it made in its original submissions, in summary it said:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of Philipp v Barclays Bank UK plc [2023] UKSC 25.*
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment ("APP") fraud. By suggesting that it does need to reimburse*

customers, it says our service is erring in law.

- Our service appears to be treating Revolut as if it were a signatory to the CRM Code.
- The Payment Service Regulator's ("PSR") mandatory reimbursement scheme will not require it to refund payments where the victim has ignored warnings with gross negligence. Ms N was grossly negligent by ignoring the warnings it gave and failing to carry out sufficient due diligence.

As no agreement could be reached, the case was passed to me for a decision.

What I've provisionally 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 in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having taken all of the above into account, for the reasons I shall set out below, I am minded to conclude that:

- When Ms N attempted to make the first payment to the fraudsters – that is the £30,000 payment on 26 January 2023 at 14:04 ("Payment 1"), Revolut should have recognised that Ms N could be at heightened risk of financial harm from fraud and it should have attempted to establish the circumstances surrounding that payment by, for example, directing Ms N to its in-app chat.
- Once it had established the circumstances surrounding the payment, it should have provided a clear warning to Ms N.
- Had it done so, I think it's more likely than not that Ms N's loss from that payment onwards would have been prevented.
- In those circumstances, I consider it to be fair and reasonable to hold Revolut responsible for Ms N's loss.

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.

- *The express terms of the current account contract may modify or alter that position. For example, in Philipp, the contract permitted Barclays not to follow its customer'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 duty to do so.*

In this case, the terms of Revolut's contract with Ms N at the time did expressly require it to refuse or delay a payment for a number of reasons. Those reasons included "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 Ms N and the Payment Services Regulations to carry out her 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 in Ms N's case, 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 January 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 that view, 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;*
- *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:

- *FCA regulated firms are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6)³.*

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/

- *Over the years, the FSA, and its successor the FCA, 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 here, but I nevertheless consider these requirements to be relevant to the consideration of a firm’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) and it has since been withdrawn, 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 the practices articulated in the BSI Code remain a starting point for what I consider to have been the minimum standards of good industry practice in January 2023 (regardless of the fact the BSI Code was withdrawn in 2022).*

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 January 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.*

Should Revolut have recognised that Ms N was at risk of financial harm from fraud and were the steps it took to warn her sufficient?

It isn’t in dispute that Ms N has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made to the fraudsters.

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.

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

Whilst I have set out in detail in this provisional decision the circumstances which led Ms N to make the payments using her Revolut account, I am mindful that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Ms N might be the victim of a scam.

I've only been provided with statements for Ms N's Revolut business account from August 2022, but it's evident that she used the account frequently and seemingly for everyday expenditure.

Ms N made some large transactions in the five or so months before the scam – a payment of over £15,000 to a solicitor in November 2022 and a payment of £10,000 around the same time labelled as 'GBP Taxes'. But, even compared to those larger payments, Payment 1 still stood out as being unusual – it was almost twice the amount of the next largest transaction to have taken place in the period I've seen and it reduced the balance of the account very significantly (a substantial balance had been maintained previously).

While Revolut puts significant weight on its claim that Ms N would have received a message informing her that the name she had entered did not match that on the recipient account, that was information it had too (particularly since it operated the account for the recipient) and I think it ought reasonably to have concerned Revolut that she'd entered her own name as the payee for a transaction which was being paid to a third-party account. Revolut also suggests that it could be reassured by the fact Ms N's account was a business account and that the recipient was a limited company. But, I can't see that Ms N's account had any significant history of making payments to other limited companies. This was the account of a self-employed person and it seems to have been used largely for personal expenditure.

Overall, I'm satisfied that Revolut should have identified Payment 1 as carrying a heightened risk of financial harm and should have taken additional steps before allowing it to debit Ms N's account.

As I've already mentioned, Revolut did provide a warning when Ms N was attempting to make Payment 1, that 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"*

While this warning does contain some information relevant to Ms N's circumstances, the 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. I don't consider it to be a proportionate response to the risk that Payment 1 presented.

Revolut also relies on the message that it says Ms N would have seen that advised her that the name on the recipient account didn't match the one she'd entered. Ms N doesn't recall seeing this message (despite otherwise quite detailed recollections) and I haven't seen evidence that it was actually provided. But even assuming that it was, the message isn't designed to provide a specific scam warning and doesn't do so.

Overall, I can't agree that any of the warnings provided were a proportionate response to the risk that Payment 1 presented. While I accept that Revolut has attempted some steps to prevent harm from fraud, the warnings it provided were too generic to have the necessary

impact, unless Ms N already had doubts about who she was speaking to (and, at the point of making the transactions, I haven't seen sufficient evidence that she had those doubts).

Having thought carefully about the risk Payment 1 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 Ms N's account. I think it should have done this by, for example, directing Ms N to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding Payment 1, would the scam have come to light and Ms N's loss been prevented?

Had Ms N told the genuine Revolut that she was being asked to move money to a new account in order to protect those funds, it would have immediately recognised that she was falling victim to a scam. It would have been able to provide a very clear warning and, given that Ms N had no desire to lose her money and nothing to gain from going ahead with the payments, it's very likely that she would have stopped, not followed the fraudster's instructions and her loss would have been prevented.

So, I've considered whether Ms N would have revealed that she was being asked to move money to a new account to protect those funds. Ms N says that she wasn't given a cover story, but I also accept that because there was no real scrutiny of the transactions by Revolut, this may not have been required. I've also noted that Ms N does appear to have questioned the fraudsters when they began to make enquiries of her personal account. My impression is that Ms N acted with caution throughout and there's nothing to show that wouldn't have been the case had Revolut asked her why she was making the payment or provided a warning.

Ultimately, as Revolut didn't question the payments Ms N made, it can provide no compelling evidence that she would have misled it about the purpose of the payments or the surrounding circumstances.

So, Revolut should, once it had established why Ms N was making the payments, provided a very clear warning that explained, as a minimum, that it would never ask her to move money to a new account, that phone numbers could be spoofed and that she was falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Ms N to stop. She didn't want to lose her life savings and I can see no reason for her to have continued to make the payment if she was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding Payment 1, as I think it ought to have done, and provided a clear warning, Ms N's loss from and including Payment 1 would have been prevented.

Should Ms N bear any responsibility for her loss?

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

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

The tactics employed by the fraudsters are common, but nonetheless captivating to anyone unfamiliar with them. The seemingly innocuous Post Office text message asking Ms N to pay

a very modest postage fee, was, when the calls later came, confirmation to Ms N that her account was really at risk.

Ms N was able to establish that the calls she received were from numbers genuinely associated with Revolut. While Revolut argue that had Ms N properly checked the number she would have seen that Revolut says it doesn't make outgoing calls from that number, simply searching online for the number (as might reasonably be expected in the circumstances), just shows that it is associated with Revolut.

I can also see that Ms N spent more than an hour on the phone to the fraudsters. I don't think that this gave her the chance to reflect on what she was being told, as she did afterwards when she failed to receive a call back from the fraudsters.

As I've already set out, I can't put significant weight on the warning Revolut provided prior to the scam taking place. The warning lacked sufficient context and prominence for me to fairly conclude that Ms N acted unreasonably by moving past it.

Assuming that Revolut did show Ms N a message which informed her that the name she'd entered as a payee didn't match that on the recipient account, I think that reasonably should have put her on notice that the account she was paying wasn't held in her own name. Ms N doesn't remember this warning, so it's difficult for me to understand why she moved past it, but even accepting that she likely saw this message, given the other sophisticated aspects of the scam, as well as the pressure that was being applied to Ms N, it doesn't lead me to conclude that a deduction should fairly be made to the amount reimbursed.

Overall, I don't think there should be a deduction to the amount reimbursed. Ms N clearly didn't want to lose her money. Her actions cannot be explained by carelessness or personal gain. There's little other explanation than that she believed what she was told by some very sophisticated fraudsters and in the circumstances I don't find her belief to be unreasonable.

Is it fair and reasonable for Revolut to be held responsible for Ms N's loss?

Revolut has argued in submissions to our service that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory and in circumstances where the CRM Code would not, in any case, apply.

I do not seek to treat Revolut as if it were a signatory to the CRM Code. I've explained the basis on which I think, fairly and reasonably, Revolut ought to have identified that Ms N was at risk of financial harm from fraud and taken further steps before Payment 1 debited her account.

Finally, the PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. For the reasons I've already explained, I don't think that Ms N acted unreasonably by moving past the warnings that Revolut provided.

My provisional decision

For the reasons I've explained, I'm provisionally minded to uphold this complaint about Revolut Ltd and instruct it to pay Ms N:

- The sum total of Payment 1 and Payment 2 - £32,067.19, less any amounts already returned or recovered*
- 8% simple interest per year on that amount from the date of the payments to the date of settlement*

Both Ms N and Revolut accepted my provisional 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.

As Ms N and Revolut have accepted my provisional decision, my final decision is the same as my provisional decision, which I've set out above.

My final decision

For the reasons I've explained, I uphold this complaint about Revolut Ltd and instruct it to pay Ms N:

- The sum total of Payment 1 and Payment 2 - £32,067.19, less any amounts already returned or recovered
- 8% simple interest per year on that amount from the date of the payments to the date of settlement

If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms N how much it's taken off. It should also give Ms N a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 10 July 2024.

Rich Drury
Ombudsman