

The complaint

Mr B is unhappy that Revolut Ltd won't reimburse money he lost as the result of a scam.

Mr B is professionally represented in bringing his complaint, but for ease of reading I'll refer to all submissions as being made by Mr B directly.

What happened

On 18 June 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.

On 9 December 2022, Mr B received a call from an individual purporting to work for Revolut, who Mr B holds an account with. Unfortunately, unbeknownst to Mr B at the time, the individual posing as a banking agent was in fact a fraudster.

The fraudster told Mr B there was suspicious activity on his bank account and that it had been hacked. Mr B was told that as a result of this hacking, his funds were in danger and would need to be moved to a new Revolut account immediately, before they were removed by the hackers.

Mr B went through, what he believed to be, a new Revolut account application on the phone with the fraudster, before transferring £8,135.80 (the entirety of his account funds) to the new account details provided.

Mr B input his own name as the payee, but could later see (after the scam had been uncovered) that the payment went to an account in the name of a business not known to Mr B. When Mr B attempted to make the payment, Revolut says he would have been presented with a 'confirmation of payee' message which said:

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

Revolut has also said that when adding the beneficiary's details, Mr B would've been provided with the following warning message:

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, fraudsters can impersonate others, and we will never ask you to make a payment.'

Mr B was required to acknowledge this message before proceeding with the payment. Revolut has said that following this warning, it conducted a further real-time fraud risk assessment, due to the payment being made to a new beneficiary. As a result, the transaction was held and Mr B received a set of Revolut's 'dynamic educational story messages', which provided some further general scam advice and how to protect yourself.

Lastly, Mr B was asked to provide the purpose of the payment he was making. He selected 'something else'. Following this selection, Mr B was presented with further warning messages which stated:

'Stop!

This transaction has been flagged as suspicious. Take a few minutes to consider the situation before parting with your money.

Don't ignore warnings

Scammers pressure and persuade you to ignore our warnings. If you are being told to ignore warnings such as this, then it's a scam.

We won't call you to move money

Revolut, banks and financial service providers will never ask you to move money to a different "safe" account.'

On 12 December 2022, Mr B contacted Revolut via 'live chat' to query how long it would take for his 'new account' to be visible on his banking app. Through further questioning over the next couple of days, it was identified that Mr B had fallen victim to a scam and a claim was raised by Revolut to investigate.

Following its review, Revolut declined Mr B's claim. In summary it said:

- *The payment was initiated and authorised by Mr B. Under regulations and in accordance with general banking terms, Revolut is required to execute the authorised payment without undue delay.*
- *It considers the systems it had in place for mitigating scam risks were proportionate and appropriate.*
- *Scam warnings were displayed to Mr B when making the payment, highlighting the risk of the payment, as well as the account name not matching its intended recipient.*
- *It doesn't consider Mr B acted with appropriate due diligence.*

Mr B referred his complaint to our service and one of our Investigators upheld it in part. She thought that the account activity on Mr B's account bore the typical characteristics of a safe account scam, and therefore considered that Revolut ought to have intervened further (for example, by live chat or via phone) before processing the payment. She thought that, had Revolut intervened further, the scam would have come to light and the loss would have been prevented.

The investigator also thought Mr B should be held partially responsible for his losses, as he didn't take steps to verify the individual who called him and took what he was told on face

value. She also thought the negative confirmation of payee result ought to have raised concerns for Mr B. So, the investigator recommended Revolut should refund half of Mr B's losses, with 8% simple interest on that amount, from the date of the transaction to the date of settlement.

Mr B accepted the investigator's view, but Revolut disagreed. In addition to the points made in its original submissions, in summary it said:

- The investigator's view didn't cover all points raised by Revolut that it considers key to the outcome of this complaint.
- Revolut recognises its obligations to have adequate procedures in place to counter the risk that it may be used to further financial crime, but that duty is not absolute and does not go as far as to require Revolut to detect and prevent all fraud. It must comply strictly and promptly with valid payment instructions and 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 for Revolut to refund its customers who have fallen victim to a scam. Our service appears to be treating Revolut as if it were a signatory to the Contingent Reimbursement Model (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. Mr B was grossly negligent by ignoring the warnings it gave and failing to carry out sufficient due diligence.
- Our service has reached irrational conclusions on the likely counterfactual outcome if different warnings had been given. In this case, a decision has been made on the basis that a warning provided was not enough. However, Revolut considers these warnings were proportionate – and that Mr B acknowledged the risks and decided to proceed.

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:

- Revolut should have recognised that Mr B was at risk of financial harm from fraud based on the characteristics of the payment he was making, and have made further enquiries regarding the nature of the payment, by using facilities such as its live chat.
- Once it had established the circumstances surrounding the payment, it should have provided a clear warning to Mr B.
- Had it done so, I think it's more likely than not that Mr B's losses would have been prevented.

- *In those circumstances, I consider it to be fair and reasonable to hold Revolut responsible, in part, for Mr B's losses.*
- *Mr B could also have done more to protect himself from the scam, by conducting further checks on the caller's legitimacy prior to making the payment. I therefore consider it fair for him to be held equally liable for his losses.*

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 Mr B 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 Mr B and the Payment Services Regulations to carry out his 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 Mr B'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 payment immediately¹. Revolut could comply with the requirement to carry out payments promptly while still making further enquiries, prior to processing 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 December 2022 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

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).

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.
- 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

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.

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

consider to have been the minimum standards of good industry practice in December 2022 (regardless of the fact the BSI Code has now been withdrawn).

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 December 2022 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 Mr B was at risk of financial harm from fraud and were the steps it took to warn him sufficient?

It isn't in dispute that Mr B has fallen victim to a cruel scam here, nor that he authorised the disputed payment he made to the fraudsters, but I've thought about whether Revolut should have reasonably intervened any further than it did and if so, what impact this intervention would have had.

I've considered Mr B's statements for the 12 months prior to the scam taking place. While the account was regularly used, I can see that payments to and from the account were relatively modest until around September 2022, when Mr B received inheritance payments into the account. From this date until the scam occurred, there were around five payment transfers of £1,000 or more made to other payees, only one of which exceeded the payment transfer Mr B made towards the scam (and was an existing payee of Mr B's). I therefore think the payment value of the scam payment Mr B made was relatively unusual in comparison to his usual account use.

However, I think the key indicators here that Mr B was at risk of financial harm from fraud were other factors surrounding this scam payment. Mr B set up a new payee, entering his own name as the beneficiary account holder. Revolut provided Mr B with a negative confirmation of payee warning, which it has emphasised would have warned Mr B about the legitimacy of this payment – but I think it equally ought to have been a concern to Revolut. This is particularly the case as Mr B was transferring the entirety of his account balance to an account he appeared to consider was his own, but was in fact in an unrelated business' name. I think these were two identifiable risk factors that Mr B was falling victim to a safe account scam – a scam technique commonly known to banking service providers by the time Mr B fell victim.

I think these factors combined – the larger than average payment value to a newly created payee, emptying the account balance to an account intended to be in Mr B's name, but actually being directed elsewhere – resulted in this transaction carrying a heightened risk of fraud, and that Revolut ought to have taken additional steps before allowing it to debit Mr B's account.

As I've already mentioned, Revolut did provide warning messages when Mr B made the scam payment. The first 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 Mr B'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 the payment presented.

Revolut also relies on the message that it says Mr B would have seen that advised him that the name on the recipient account didn't match the one he'd entered. Mr B has said that the fraudster told him to ignore the warning messages he saw, as the fraudster was calling from Revolut, which Mr B accepted. While I think this warning ought to have put Mr B on notice that something may be amiss, I've also factored in that this message isn't designed to provide a specific scam warning. I can understand why, in a pressured environment, on the pretence that you're speaking with a Revolut advisor, such a warning could be overlooked.

Lastly, the third set of warnings Revolut presented to Mr B did cover some relevant aspects of the scam he fell victim to, such as advising against ignoring warnings and advising to never move money to a “safe account”. However, I still don't consider this was a proportionate response to the risk that the payment presented. While I accept that Revolut has made attempts to prevent harm to Mr B from fraud, the warnings it provided weren't impactful enough to counter the information he was being provided with by the fraudster in what I can imagine was a highly pressured scenario.

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 better establish the circumstances surrounding the payment before allowing it to debit Mr B's account. I think it should have done this by, for example, directing Mr B to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding Mr B's payment, would the scam have come to light and Mr B's loss been prevented?

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

So, I've considered whether Mr B would have revealed that he was being asked to move money to a new account to protect those funds. Mr B hasn't said that he was given a cover story regarding the payment he was attempting – but as there was no human intervention throughout the scam, I accept this may be because the fraudsters did not consider it necessary. However, in the circumstances of this particular scam, the fraudsters had specifically stated that Mr B's account had been hacked by someone in another specified town (other than similar scam scenarios we see where the fraudster suggests the scam is occurring from within the bank's own workforce.) I therefore think that the fraudster was less likely to provide the customer with an additional cover story in this scenario, particularly if it wasn't concerned that Revolut would interact with Mr B in a bespoke way. Ultimately, as Revolut didn't question the payment, it can provide no compelling evidence that he would

have misled it about the purpose of the payment, or the surrounding circumstances – and so I'm persuaded

So, Revolut should, once it had established why Mr B was making the payment, have provided a very clear warning that explained, as a minimum, that it would never ask him to move money to a new account, that phone numbers could be spoofed and that he was falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Mr B to stop. He didn't want to lose the remainder of his inheritance and I can see no reason for him to have continued to make the payment if he was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding Mr B's payment, as I think it ought to have done, and provided a clear warning, Mr B's loss would have been prevented.

Should Mr B bear any responsibility for his 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 think it's fair that a deduction of 50% is made to the amount Revolut should reimburse.

While I don't doubt that fear and pressure would've played a significant role in Mr B's thought processes, at a time when he thought his family inheritance was at risk, I've also kept in mind that there were some elements to this scam that I think Mr B ought reasonably to have questioned further. While I don't think the confirmation of payee warnings Mr B was presented with were enough to 'break the spell' of this scam, I think they ought to have made Mr B aware that the account he was paying wasn't in his own name. Mr B says he was told to ignore the warning messages he was provided with. While I don't doubt the persuasive nature of these fraudsters and their ability to allay victims' concerns, I also think Mr B ought reasonably to have questioned this message further before proceeding.

The phone numbers Mr B received calls on from the fraudster both appeared on his phone as suspected 'scam' or 'fraud' numbers, which I think also ought to have alerted Mr B from the outset to proceed with caution. Upon checking both telephone numbers online, I can see other call recipients have left comments that these are numbers used by fraudsters, some of these comments pre-dating the scam Mr B fell victim to. Mr B has explained that at the start of the call, the fraudster asked Mr B to confirm some basic information for security purposes – however Mr B hasn't specified that he did anything himself to confirm the legitimacy of the caller in return.

Overall, while I can appreciate that for those unaware of this scam type, it can be highly impactful based on the sense of panic it can create, I think there were sufficient red flags here that Mr B ought to have proceeded with greater caution than he did. I therefore think it's fair for him to also be held equally liable for his losses.

Is it fair and reasonable for Revolut to be held responsible for Mr B'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 Mr B was at risk of financial harm from fraud and taken further steps to protect him.

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. In any event, while the proposals aren't yet in place, suggested requirements are that a consumer would be required to have not had regard through gross negligence, to a tailored, specific warning. I've already explained above why I don't think the warnings Revolut provided were sufficiently specific – and don't consider Mr B's actions in any event would amount to gross negligence.

My provisional decision

For the reasons I've explained, I'm provisionally minded to partially uphold Mr B's complaint about Revolut Ltd and instruct it to pay Mr B:

- 50% of the payment Mr B made to the fraudster (totalling £4,067.90)
- 8% simple interest per year on that amount from the date of the payment to the date of settlement.

Both Mr B 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 Mr B 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 partially uphold Mr B's complaint about Revolut Ltd and instruct it to pay Mr B:

- 50% of the payment Mr B made to the fraudster (totalling £4,067.90)
- 8% simple interest per year on that amount from the date of the payment to the date of settlement.

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

Kirsty Upton
Ombudsman