

The complaint

X complains that Revolut Ltd won't refund money he lost after falling victim to a scam.

What happened

In 2022, X received a text message saying he was eligible for an energy bill rebate. X followed the link which took him to what appeared to be a legitimate government website. X put in his personal details and those of the debit card he held for an account with another bank – which I'll refer to as D. Shortly after, he realised it was a scam and cancelled his debit card.

The next day X received a call from someone who said they worked for D. They told X that his account with D had been compromised due to sharing his card details and that three direct debits had been set up on his account. The caller questioned what other banks X held accounts with, and he told them about his Revolut account. X was told that he needed to transfer the balance of his accounts with D to his Revolut account and then onto the account of a senior member of their fraud team.

X says that he had some concerns, but he received a message from Revolut which confirmed he was talking to D. X says this message appeared in the same thread of genuine messages he'd previously received from Revolut, which persuaded him to make the payment.

As a result, in September 2022, X moved £8,500 from his account with D, to his Revolut account. X then made two payments from his Revolut account to the account details given by the caller. The first payment was for £30, the second payment was for £9,243. X tried to transfer a further £4,000 from his account with D, but D blocked the payment and contacted X which uncovered the scam. These funds were never transferred to X's Revolut account.

When X made the payments from his Revolut account, the second payment of £9,243 was blocked. X contacted Revolut and they initially suggested he try reinstalling the app. After the payment still wouldn't go through, they suggested X delete it from his end and try making it again. X tried to make the payment for a second time (while still on the in-app chat with Revolut) and it still wouldn't go through. Revolut told X it was frozen because they thought it might be part of a scam or fraud. In order to release the payment, they asked X some questions. Revolut also asked X if he wanted them to decline the transfer, so he could take some time to consider if he wanted to transfer to this beneficiary. X said no, and the payment was released.

Within an hour of the payment being released, X realised he'd been the victim of a scam and reported it to Revolut. X asked Revolut to refund him the money he lost, but Revolut declined. They said they had flagged the payment as risky and asked X questions as a result, but X had assured their agents he trusted the beneficiary and wanted to proceed despite the warnings.

X wasn't happy with Revolut's response, so he brought a complaint to our service.

An investigator looked into his complaint but didn't uphold it. The investigator said that based on the cover story X was given, it was unlikely Revolut could've uncovered the scam.

X disagreed with the investigator's opinion and asked for an ombudsman to review the case. Having reviewed the case, I reached a different answer than the investigator. So, I wanted to share my reasoning and give both parties a chance to respond before I issued a final decision. So, I issued a provisional decision.

My provisional decision

In my provisional decision I said:

As Revolut aren't a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), I can't apply the code to these payments or consider Revolut's liability under that framework.

In broad terms, the starting position is that Revolut are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

But I would expect Revolut to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears unusual and out of character. In situations where potential fraud is identified, I would expect Revolut to intervene and attempt to prevent losses for the customer.

The first payment that X made was for £30. Based on the size of the payment and that it wasn't unusual compared to X's previous account use, I wouldn't have expected Revolut to have been concerned about the payment or intervened. On that basis, I can't fairly ask them to refund X for the first payment.

However, Revolut blocked X's second payment as they identified it as potentially indicating that X may've been at risk of financial harm from a scam. So, I've considered the steps Revolut took as a result.

Revolut say they asked X a number of questions including: the purpose of the payment, whether he'd been told he was the victim of fraud and rushed into making the payment, whether he'd been told to ignore scam warnings, whether he was paying someone he didn't know or hadn't met, and whether he was threatened with the risk of additional fines. X said no to all of these questions and told Revolut that he was making the payment to repay a debt to a family member.

However, in these circumstances, Revolut should've asked open and probing questions, not closed questions where the answer was yes or no. The sort of questions I think Revolut should've asked could include: what he had borrowed the money for, why he had transferred funds into his Revolut account rather than just paying it directly from the other account. I think that if Revolut had probed it's more likely than not that the scam would've been uncovered. Part of the reason I say this is that shortly after X made the payment from his Revolut account he tried to make a further payment from his account with D. This payment was blocked by D, and D contacted X to discuss the payment. As a result of the questions D asked, the scam was uncovered, and no further payments were made. This suggests to me that similar questioning by Revolut is more likely than not to have had the same outcome and prevented X's loss.

Revolut say that if they had asked more questions that X would've lied. But, in the case of safe account scams, consumers are often told to lie which Revolut should've been alive to. Especially as X initially chose a payment purpose of "safe account" before choosing a different payment purpose. Also, the movement of the money matched what we'd see in a safe account scam with X transferring money into his account then transferring the entire account balance out.

For all of the reasons I've given above, I intend to ask Revolut to refund X's second payment.

But, I've also considered whether X took sufficient steps to mitigate his loss and whether he should share liability for his loss with Revolut.

X says he was sceptical when he was initially asked to transfer funds from his account with D to his Revolut account, and then onto a new account in his name. X says he didn't want to transfer funds to an account he didn't have control over. In response he asked the caller to verify themselves, and they sent him a text which appeared in the thread of genuine messages from Revolut he had received previously. However, I think X should've been concerned when Revolut blocked his payment and asked additional questions about why he was making the payment. If the caller was in contact with Revolut, it wouldn't make sense as to why the payment would be blocked or why he would have to talk to another person in Revolut to release it. Also, I think the questions that he was asked and the warning he was shown by Revolut, should've made him further question what he was being asked to do.

On that basis, I think it's fair for X to share the responsibility for his loss with Revolut on the second payment and I intend to ask Revolut to refund 50% of that payment. Revolut will also need to pay interest on the refund at the rate of 8% simple per year, calculated from the date the payment was made until the date of settlement.

Responses to my provisional decision

X responded to the provisional decision accepting my recommendation.

Revolut however didn't accept the recommendation and raised the following points:

- All points that Revolut have raised (including those in response to the view) should be addressed and justification should be provided.
- Revolut does not owe a duty to prevent fraud and scams. In particular, Revolut points to the terms and conditions of X's account.
- Revolut has an obligation under the PSR's to execute authorised payment instructions from customers, and to do so promptly.
- Revolut recognises its obligations to put in place adequate procedures to counter the risk that it may be used to further financial crime (and has such systems and controls in place), but that duty is not absolute and does not go as far as to require Revolut to detect and prevent all fraud, particularly in the face of authorised customer instructions.
- Revolut's duty to execute valid payment instructions does not require them to assess the commercial wisdom or potential for financial loss of a proposed transaction. Revolut referred to the Supreme Court's judgment in *Philipp v Barclays Bank UK plc*.
- Revolut is not subject to the rules of the CRM Code and is not subject to mandatory reimbursement rules.
- Under the PSR's Revolut are exempted from refunding a customer if they have been grossly negligent, which X was in ignoring warnings provided by Revolut or through their lack of care.

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.

My role as an ombudsman is to get to the heart of the matter and address what I consider to be the crux of the complaint. This means that I may not address each individual point raised by either party, however I have considered all of the evidence provided by both parties in reaching my decision on this case. I will explain the decision I've reached and the reasons why, which may mean that not all individual points are addressed.

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 X 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 X 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 September 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 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).
- 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 nevertheless consider these requirements to be relevant to the consideration of

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/

Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code³, 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).

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 September 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 X was at risk of financial harm from fraud?

I'm not satisfied that Revolut should've made further enquiries before following X's payment instruction for the first payment, due to the size of the payment and because it wasn't unusual compared to X's regular account activity.

However, Revolut identified a scam risk when X made the second payment and took the decision to block the payment so they could ask X questions about the payment purpose – which is the action I would've expected in the circumstances.

What did Revolut do to warn X?

When X was making the second payment, as part of the process he saw a number of screens, which included one that suggested there was a 99.2% chance that his payment was a scam.

X was asked for the purpose of the payment and selected "transfer to a safe account". He was then asked on another screen "Are you being pressured via phone, call, sms or email?" (with a yes or no selection option) and the wording "Revolut will never ask you to move money to a safe account".

This was followed by a screen which said, "Were you called unexpectedly?" (with a yes or no selection option).

³ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

Ultimately Revolut declined X's second payment and transferred him to a specialist via their in-app chat. In the chat X told Revolut the purpose of the payment was "it's a debt in [sic] repaying to a family member". Revolut then asked X the following questions. I've provided X's responses in italics:

Have you been asked to install any apps (example names provided)? *No I haven't*
Are you currently on the phone to someone who is asking you to transfer money? *No*
Would you like me to decline the transfer for you, while you take some time to consider if you would like to transfer to this beneficiary? *No I want it to go through*

In response to X's responses, Revolut processed the payment.

What kind of warning should Revolut have provided?

Based on X initially selecting a payment purpose of "transfer to a safe account", then telling Revolut that it was to repay a debt, I think Revolut should've asked open and probing questions to identify the true purpose of the payment.

Especially as Revolut should've been aware that customers are often given cover stories, although in this case X says he wasn't given one. And, because X had provided conflicting information about what the payment purpose was.

I think if Revolut had asked open and probing questions, it's more likely than not X would've told them that he was moving the money to a safe account (in line with the original payment purpose he selected).

Having identified that X was making a payment to what he considered was a safe account, I think Revolut should've provided a warning specific to a safe account scam. This should've highlighted the key features of safe account scams to bring it to life for X. Revolut say they provided a link to their blog where they educate customers on the different types of possible scams in further detail. However, I'm not satisfied that would've sufficiently brought to life the risks or explained why Revolut was so sure that X might be the victim of a safe account scam.

I think this would've been proportionate in the circumstances based on Revolut having identified a scam risk and transferring X to a specialist team member due to their concerns that X might be the victim of a scam.

If Revolut had provided a warning of the type described, would that have prevented the losses X suffered on the second payment?

I think it's more likely than not that X wouldn't have proceeded with making the payment and his loss could've been prevented if an appropriate warning had been given. I say this taking into account that D was able to prevent further loss when they also stopped a payment and contacted X to ask questions and provided a scam warning.

Due to D's interaction with X, no further payments were made. So, I'm satisfied that it's more likely than not that Revolut providing an appropriate scam warning about safe account scams would've had the same effect and prevented X's loss on the second payment.

Should X bear any responsibility for their 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.

In this case, X had some concerns when he was first asked to move money between his accounts, which the scammers allayed when they sent him a text which appeared in a genuine thread of messages he'd received from Revolut.

However, I think once Revolut stopped X's payment and told him that there was a high risk he was the victim of a scam, X should've done more to check what he was being told by the scammers. If he had asked Revolut during the in-app chat about the story he was given by the scammers, I think it would've quickly unravelled the scam.

I don't think that in these circumstances, where X already had some concerns and was then presented with warning signs by Revolut that they also had concerns, that he acted reasonably in proceeding with the payment without making further checks about what he was being told by the scammer. So, I think it's fair for X to share responsibility for his loss with Revolut.

On that basis, Revolut should refund 50% of the second payment that X made. As X has been deprived of the use of that money, Revolut should pay simple interest of 8% per year on that refund, calculated from the date of the payment until the date of settlement.

Putting things right

To put things right I require Revolut Ltd to:

- refund 50% of payment two (which equates to £4,621.50), and
- pay interest on that refund at 8% simple per year, calculated from the date X made the payment until the date of settlement*

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

My final decision

My final decision is that I uphold this complaint against Revolut Ltd and require them to compensate X as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 13 September 2024.

Lisa Lowe
Ombudsman