

The complaint

A company which I will refer to as 'B' has complained that Revolut Ltd wouldn't reimburse the money they lost due to an authorised push payment scam. In summary, B say that Revolut failed to implement appropriate monitoring procedures to identify suspicious activity in its customer's account and failed to take adequate steps to retain and return their funds.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, as I understand it, B was in correspondence with their law firm in the US about the payment of legal fees to them in relation to an at-the-market offering and other legal matters. This included two invoices which B was due to pay to the law firm, totalling about \$210,000.

Unfortunately, unknown to both parties, their email chain was intercepted by a scammer who provided B with an alternative account detail for the payment to be made. This account was with Revolut. B made the payment in early October 2021, and the scam came to light two weeks later when the law firm chased B for payment. B alerted their bank who in turn contacted Revolut but unfortunately no funds remained in the recipient's account.

B complained to Revolut as above. Revolut did not uphold the complaint. In summary it said that it had acted in accordance with all of its legal and regulatory obligations as a receiving bank. One of our investigators reviewed the complaint and concluded that it should be upheld. They said, in summary:

Looking through the recipient's account, there were instances of suspicious activities on the account, but Revolut failed to identify them and take appropriate actions. While Revolut couldn't have reasonably known when the account was opened that it would be used fraudulently, the subsequent activity warranted further scrutiny on a number of occasions including in respect of the payment from B. So, it is fair that Revolut takes some responsibility for the loss incurred by B. However, there was some contributory negligence on the part of B. So, the fair outcome here is that the loss is shared equally by both parties.

Revolut did not agree with the investigator's opinion and the case was referred to me for a decision. I wrote to Revolut setting out my initial thoughts - expanding on the reasoning given by the investigator - citing some specific information about the recipient's account (which I am unable to share with B as it relates to third parties). I asked Revolut whether it would be willing to informally settle the dispute, but it did not agree. It set out its reasons and asked for a final determination.

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.

Revolut has an ongoing obligation to be alert to various risks in relation to accounts with it. Specifically, I'm mindful that it:

- must conduct their business with due skill, care and diligence;
- has a longstanding regulatory duty *“to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime”* (SYSC 3.2.6R of the Financial Conduct Authority Handbook);
- must fairly and reasonably been monitoring accounts and any payments made or received to counter various risks including anti-money laundering and preventing fraud and scams. At the material time, those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage risk, e.g. 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 am also mindful of what the Payment Systems Regulator has said about the role of receiving Payment Service Providers (PSPs) in relation to authorised push payment fraud. For example, in the “Which? authorised push payments super-complaint PSR response December 2016”, they have said:

“APP scams can be prevented by receiving PSPs monitoring inbound payments and intervening where they identify suspect transactions”

“We consider that receiving PSPs may potentially be able to do more in terms of proactively monitoring inbound payment activity to help prevent APP scams. ..”

“In terms of regulatory obligations, those PSPs that come under the FCA’s Handbook, such as banks and building societies, are obliged to have adequate policies and procedures to counter the risk that they might be used for financial crime, including fraud.”

“Since PSPs face ongoing duties to prevent financial crime (SYSC 6.3.1 and SYSC 6.3.3), the need to conduct customer due diligence checks does not end once the account is open. An account that passed all the appropriate checks when it was opened may be used for fraudulent purposes at a later date. “

Ultimately, it is a matter for Revolut as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where a complainant complains to us that Revolut didn't do enough to prevent their loss, I will look into the circumstances of the case and decide based on what I have seen, whether, in that case, Revolut could have fairly and reasonably done more.

Revolut has provided relevant information to our service to allow us to investigate this. I am limited as to how much information I can share because it relates to a third-party account. But I'd like to assure that I've carefully reviewed everything before reaching my decision.

Having reviewed the submissions, I am of the view that Revolut could have done more here to help prevent the loss to B.

The recipient's account was opened about two months prior to B's payment. The account opening documentation show that the customer was a limited company, and it was incorporated a few days before the account was opened. The company's business was given as repairer of luxury watches.

In the first couple of weeks since the account was opened there was hardly any activity. Then the account started receiving series of large payments.

As I understand it, each time when these payments came in Revolut carried out an Enhanced Due Diligence (EDD) check. It queried the incoming payment with their customer who provided some evidence to support it.

I think Revolut did well to question their customer. It was newly opened account by a young owner purportedly operating in luxury goods. And soon after the account was opened, it started receiving very high value payments from abroad. All of this taken together could be an indicator of suspicious activity.

However, I consider that on those occasions Revolut missed opportunities to detect the scam. I have explained this in detail to Revolut in my letter. As I said I am limited as to how much information I can share here because it relates to a third-party account. But by way of an example, on two occasions when Revolut questioned the incoming payments, its customer told Revolut that they were repayments of some large 'buy now pay later' loans, which they provided to the payer.

The customer gave Revolut copies of 'loan agreements' as evidence. I have considered this evidence. Firstly, there is no reference at all to any goods or services being sold in those agreements. This was somewhat unusual as a proper loan agreement would clearly set out the reason for the loan being provided. Secondly, the loan agreements were dated (and so the loans were supposedly provided by Revolut's customer), well before the customer (the company) was even formed. The Companies House records show that Revolut's customer was incorporated only in August 2021, but the loan agreements were dated 2018 and 2020. There is no evidence that Revolut questioned this anomaly.

In addition, on all the occasions when Revolut intervened and questioned its customer, it would have (or ought to have) seen that the names of the intended payees were quite different to the name on the account. In fact, the payee names were different on different occasions. There is no evidence that Revolut questioned this too with its customer.

In this regard, Revolut told us that it would be reasonable to assume that a genuine business entity might have more than one associate. Therefore, the intended beneficiary specified in the payment instruction would not be a cause of concern, especially in cases where the business owner can provide supporting evidence. Revolut also told us that it could not be held liable if its customer provided it with falsified invoice and it accepted them with the belief that they were legitimate.

I am not persuaded by this. Firstly, there is no evidence in this customer's Company House records of any associated company. Secondly the point of querying its customer was to ensure that there were no concerns with the receipt, and to look out for any signs that might indicate risk of scam or fraud. Revolut should be aware of common scams including email invoice interceptions. It is common on such scams for there to be a mismatch between the beneficiary information included with a payment instruction and the recipient account holder. So, I don't think Revolut could automatically assume that the intended payees were associates of its customer. A quick internet search would have shown that those intended payees were based abroad, some of them large companies, engaged in an entirely different businesses to watch repair. So, I consider that Revolut ought to have questioned this with its

customer and sought evidence of any association with these intended payees. Had it done so, I can't see how the customer would have been able to persuade Revolut that all these intended payees were its associated companies. Thirdly, as I have illustrated earlier, some of the evidence provided by the customer did not stack up on the face of it, so it is reasonable to conclude that Revolut could have done more rather than simply accepting what its customer said. Revolut should also be alert to the possibility of evidence being fabricated.

It was in these circumstances, the payment from B arrived. As I understand it, Revolut once again carried out an EDD. Here again Revolut could have seen that the intended payee was a limited partnership, and a quick internet search would have shown that this intended payee is an international law firm headquartered in New York. I am not persuaded that Revolut's customer could have given a reasonable explanation as to why a watch repairer was receiving a payment intended for an international law firm had Revolut questioned this.

Revolut's customer produced an 'invoice' which showed that they purportedly sold multiple luxury watches to B. However, the customer was purportedly a watch repairer not a seller of high-end watches. I think there is nothing automatically suspicious about a customer whose stated business was watch repair in occasionally trading in watches. However, in order to sell the watches, it is reasonable to expect that the customer bought them firstly. But there was no activity on the account evidencing purchase of the watches by the customer. There is no evidence that Revolut questioned this either.

In addition, I also agree with the investigator that the rapid dispersal of funds soon after they were received from B ought also to have raised concerns.

In summary, I have taken into account what Revolut has said. I consider that it acted correctly by questioning its customer about the source of funds. But I do think that it did not adequately test the evidence provided by its customer. Generally, when there are concerns about a payment (or payments), the recipient's provider tends to thoroughly investigate the matter. Had Revolut done so, it would have meanwhile received the scam notification (in relation to another transaction), and that would have eventually led to it returning B's funds to B.

Taking all of the above into account, I consider that Revolut missed an opportunity to help prevent the loss to B. So, it is fair that it compensates B for their loss.

That said, I agree with the investigator – for the reasons they have explained - that there was contributory negligence on the part of B. In particular, I consider that the scammer changing the bank details twice and giving incoherent explanation for the change was suspicious and B ought to have done more to ensure that the payment was being made to the right party. However, this does not negate the fact that Revolut too missed an opportunity to prevent B's loss, as described above.

In the circumstances I consider it fair that the loss is shared equally between Revolut and B.

Putting things right

As I understand it, B paid \$210,333 to the scammer and none of this could be recovered. For the reasons given, this loss should be borne equally by Revolut and B. This means Revolut should reimburse \$105,167 to B.

From what I understand, the funds were lost from a business current account, which likely earned little interest. But the relevant question is the opportunity cost of the lost funds to B. In this case, I cannot be certain about the cost to B of being deprived of the money because it might have used the funds in a variety of ways. It is however clear to see that this was a large sum of money, and the loss has had a big impact on the company. In the circumstances, without any compelling reason to depart from our usual approach, I consider it fair and reasonable that Revolut pay B simple interest at 8% p.a. on the sum reimbursed. Interest should be paid from the date Revolut was advised of the scam to the date of settlement.

My final decision

My final decision is that I uphold the complaint. In full and final settlement of it, Revolut Ltd should pay B 50% of the loss they incurred together with simple interest at 8% p.a. on that amount. Interest should be paid from the date Revolut was advised of the scam to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 11 December 2023.

Raj Varadarajan
Ombudsman