

The complaint

Mr N has complained that Revolut Ltd registered a marker against him at CIFAS, the national fraud database.

What happened

In summer 2022, Mr N received and passed on £300, which was later reported as being the proceeds of a scam. He sent it to an individual on another continent, and also sent them substantial sums of his own money.

Revolut did not investigate things with Mr N. It closed his account and registered a marker against him at CIFAS. It also transferred £300 of Mr N's own money to the sending bank.

Mr N came to our service. He explained that he'd signed up to a crypto trading website and was contacted by a scammer promising large profits. He sent them his own money, but was told that before he could receive his crypto he needed to help them with some transfers. He was told the scammer had a friend working in blockchain who'd receive the money, sort out the tax, and refund Mr N's original investment along with doubling or tripling his money. The scammer also convinced Mr N to buy vouchers and send them the codes, in order to pay for the friend's service. Mr N said he thought the person he was speaking to was honourable, and didn't question what was really going on. He didn't understand that moving on money could be fraudulent. He only realised it was a scam when he spoke to his own friend about it. He explained he'd lost thousands of pounds of his own money.

Our adjudicator didn't uphold the complaint, as they felt Mr N should have been more vigilant, and because they didn't yet have evidence of what had been said.

Mr N asked for an ombudsman to look at things afresh. He sent his call and message history with the scammer, along with screenshots of where he'd forwarded the fraudulent funds, and evidence of him sending the scammer his own money and the voucher codes.

The complaint's been passed to me to decide.

I sent Mr N and Revolut a provisional decision on 16 May 2023, to explain why I thought the complaint should be upheld. In that decision, I said:

I need to consider whether this report to CIFAS was made fairly. On this point, Revolut needed to have more than just a suspicion or concern. It needs to be able to show that it had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities.

Importantly, Revolut needed to investigate things first, before adding the marker. CIFAS has guidance for cases such as this, which says: “given that consumers can act as a money mule unwittingly... it is required that members provide consumers the opportunity to explain the conduct before filing to the National Fraud Database.” It goes on to say that consumers should be given sufficient time to respond before making a submission to the fraud database, and that businesses should try more than one contact method.

However, as far as I can see Revolut did not investigate things with Mr N at the time or gather any detailed testimony or evidence from him. This is concerning. CIFAS markers can have severe effects, and must not be added without serious consideration. Revolut should know that both CIFAS and our service expect it to have investigated things with Mr N before adding this marker.

As Revolut didn’t investigate things with Mr N at the time, I don’t have any contemporaneous testimony to compare his current testimony to. And it’s difficult to see how Revolut could be satisfied that Mr N intentionally aided in fraud without properly looking into the matter first. So while I accept that Revolut may have had grounds to be suspicious or concerned, I don’t think it fulfilled the criteria of the evidence being so rigorous that it could confidently report Mr N to the authorities.

What Mr N’s told us is plausible, and fits with known methods of scams. It’s backed up by the screenshots and chat logs he’s sent us, showing that he really did send the scammer his own money as well as the money he was told to forward. I can see that the scammer referred to speaking with clients, promised Mr N he’d get his money back and more, and made excuses for issues such as “all this is happening because of new system updates at the database.” It looks like Mr N really thought he was dealing with crypto, and was being scammed himself – there’s no indication that he was knowingly aiding in fraud.

I can see that the fraudulent funds were all sent to an individual in another continent – the same individual that Mr N sent his own money to. As far as I can see, Mr N did not benefit from the fraud himself – in fact, he seems to be another victim of the fraud. Based on the evidence at hand, Mr N really did appear to not understand what was actually going on.

Mr N’s account had been open for quite some time before this incident, and it looks like it was otherwise a genuine account.

Lastly, I’ve not seen anything which satisfies me that Mr N knew he was helping to pass on the proceeds of fraud.

So based on what I’ve seen, I currently think it’s most likely that Mr N was an unwitting participant in passing on fraudulent funds. I certainly find that Revolut did not have enough evidence to record a CIFAS marker against Mr N, not least given its lack of investigation at the time. It follows that I currently think the marker must be removed.

I've also considered whether Revolut should have debited £300 from Mr N's account to return it to the sending bank. While there are terms about returning mistaken payments, I find that those don't apply here – as this wasn't an issue of a payment being made by accident, but a scam payment. I also accept that, generally speaking, banks should try to return money that was sent because of a scam. But before doing so, the receiving bank must first investigate and find out whether the recipient was acting fraudulently or not. While Revolut had an indemnity from the sending bank, that's just a promise between two banks – it doesn't allow a bank to debit a customer if they otherwise shouldn't.

Had Revolut investigated properly here, I think it would have become clear that Mr N was a victim of the scammer himself and was not intentionally committing fraud, and that he'd already forwarded the £300 on to the scammer. So Revolut did not have sufficient reason to take £300 of Mr N's own money and transfer it to the sending bank. And it did so without Mr N's consent – meaning this payment would normally be considered unauthorised. It follows that I currently think Revolut needs to reimburse Mr N for the £300 it debited, and compensate him for the time he's been without his money.

I've then thought about how Revolut closed the account. In much the same way that Mr N can broadly choose who he banks with, Revolut can broadly choose who banks with it. It closed the account under the terms and gave the appropriate notice. And Mr N said in his correspondence with Revolut that he was planning on closing the account anyway. So I don't think Revolut did anything substantially wrong there.

Lastly, I've thought about the trouble and upset that Revolut caused Mr N here. I understand that Revolut caused Mr N considerable distress and upset by treating him as a fraudster without investigating properly first, not least as it seems he was actually a victim of fraud himself. He's had to put quite a bit of effort into sorting this matter out, and I understand he's had issues holding a bank account or getting finance for many months because of the marker. I can see he was caused some real frustration by Revolut's poor communication and its repeated refusal to deal with him constructively. That needs to be put right too. Taking into account the impact that this has had on Mr N and our guidelines for compensation, I currently think Revolut needs to pay Mr N a further £400 compensation.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 13 June 2023. Mr N didn't add anything further. I'll talk about Revolut's reply below.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In response to the provisional decision, Revolut pointed out that Mr N had once referred to driving lessons, and that the scam victim from the sending bank thought they were paying the DVLA for a driving licence. It therefore suggested that Mr N might have been trying to buy an illegal driving licence, which would mean he was involved in fraud. Revolut asked us to look into that further.

I don't find this to be persuasive, nor very relevant. Just because Mr N and the other victim mentioned driving, it does not follow that Mr N was trying to illegally buy a licence.

I can't see that Mr N described this as a "driving lessons scam", as Revolut has now claimed. Revolut asked Mr N which documents were compromised during the fraud, and he replied: "driving lessons" – seemingly a misspelling of "driving licence". That doesn't mean he was trying to *buy* a licence; it would mean he was worried his licence was compromised. I can see that as part of the scam, Mr N was asked to upload his ID, and he did so.

Similarly, the other scam victim was trying to pay the DVLA, and their payment was intercepted. So while they were trying to buy a licence, they were trying to do so through the legitimate channel. There is no indication that they were trying to buy an illegal licence – in fact, the report states the opposite.

Revolut felt there wasn't sufficient evidence of an investment scam. But we have Mr N's clear and plausible testimony, which fits with how these scams work. The evidence he sent shows that he really did send the scammer his own money, the scammer referred to speaking with other clients and Mr N getting his money back and more, and the scammer made excuses for payment issues such as "*all this is happening because of new system updates at the database.*" Importantly, the onus was on Revolut to robustly evidence that Mr N knowingly moved on the proceeds of a scam. The onus was not on Mr N (or our service) to definitively prove something else happened. Revolut failed to evidence its original allegation, and has not presented any solid evidence which substantiates its latest one.

So based on the evidence and the balance of probabilities, I do not see a reasonable basis to find that Mr N was trying to buy illegal documents, and I have not found good reason to look into that further. And I've certainly not seen anything which satisfies me that Mr N knew he was passing on the proceeds of fraud. But it does seem both likely and plausible that Mr N was victim to an investment scam here.

Further, even if I were to conclude that Mr N was trying to buy an illegal licence, it's not particularly relevant in this case. This case is about whether Revolut was justified or not in registering this CIFAS marker against Mr N and taking his money, based on its assertion that he knowingly passed on a scam victim's money. It's not about whether Mr N was trying to do some other, unrelated illegal thing in the process. Revolut cannot impose CIFAS markers on customers for something it cannot robustly evidence they did, just because it loosely suspects the customer might have been doing *something else* illegal. And Revolut certainly cannot take customers' own money away on such a basis.

Revolut suggested it would be unfair to "reward" Mr N with compensation if he was actually trying to do something illegal. Again, it's worth reiterating that there's no substantial evidence here which shows Mr N was trying to buy an illegal licence, and the evidence at hand points to Mr N in fact being the victim of fraud. But even if I were to assume that Mr N tried to buy a fake document, it doesn't necessarily follow that I could not tell Revolut to compensate him. Compensation is not a "reward", it's there to try to put right the non-financial damage the business caused by the things it did wrong. As a reminder, Revolut:

- Disregarded its obligations and failed to carry out a reasonable investigation;
- Subjected its customer to a highly impactful fraud marker without a proper basis, when it looks like the customer had actually been defrauded themselves;
- Took its customer's money without consent and without any proper mandate or entitlement to the funds; and-
- Repeatedly declined to deal with its customer constructively.

Even at this late stage, Revolut has continued to make unfounded suggestions about its customer without providing solid substantiating evidence.

So having reconsidered the case, I have still found that Revolut handled this matter concerningly poorly. From what I can see, it was not justified in registering this marker, in taking Mr N's money, or in the way it treated him. It follows that this needs to be put right.

Putting things right

I direct Revolut Ltd to:

- remove any fraud markers it registered against Mr N regarding this situation;
- reimburse Mr N for the £300 it debited without his consent;
- pay simple interest to Mr N on that £300, at the rate of 8% simple a year, payable from the date it was debited until the date it's returned to him[†]. This is to compensate Mr N for the time he didn't have his money.
- pay Mr N £400 compensation for the trouble and upset it caused.

[†] HM Revenue & Customs requires Revolut to take off tax from this simple interest. Revolut must give Mr N a certificate showing how much tax it's taken off if he asks for one.

My final decision

I uphold Mr N's complaint, and direct Revolut Ltd to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 12 July 2023.

Adam Charles
Ombudsman