

The complaint

Mr S complains that Revolut Ltd ('Revolut') won't reimburse the funds he lost when he fell victim to a scam.

What happened

Mr S says that on the evening of 25 March 2022 he clicked on a link in an email he received about a delivery. He provided information and paid a small fee. The following day he received a call from someone who said they were his credit card provider. Mr S didn't know at the time, but the call was from a scammer.

The scammer told Mr S that the delivery email had been sent by a scammer and as a result of clicking on the link his phone was infected with malware. He was asked whether he had mobile banking apps and was told to expect a call from Revolut to sort things out.

Mr S then received a call from someone who said they were from Revolut (but was also involved in the scam). When Mr S asked how he could verify the caller was from Revolut he was told to check the number, which matched the number he found online. Mr S was asked to log into his Revolut account from his computer and to download a screen sharing application to allow the scammer to help him to check for malware. The scammer told Mr S there were pending transactions that would be cancelled and that other banks he had accounts with were also on the line so that they could resolve things too.

During the call Mr S provided passcodes given to him by Revolut. His funds were transferred from other accounts to his Revolut account and then £10,270.99 was transferred from his Revolut account to a safe account.

Mr S said that the scammer(s) distracted him by asking him to stay away from his compromised phone so it couldn't affect his computer and by asking him to complete an Action Fraud report. Ultimately the scammer said Mr S needed to contact another bank he held an account with and hung up. At this point Mr S realised he was the victim of a scam and contacted Revolut.

After investigating what had happened Revolut referred to its terms and conditions and said it wasn't responsible for reimbursing Mr S. It also said it had attempted to recover Mr S' funds but hadn't been successful.

Mr S was unhappy with Revolut's response and brought a complaint to this service. He feels Revolut failed to adequately protect him when the transaction was made.

Our investigation so far

The investigator who considered this complaint recommended that Revolut refund 50% of Mr S' loss, plus interest. On balance she felt that Mr S authorised the transaction from his Revolut account. The investigator went on to explain that the transaction was unusual and out of character given the normal operation of the account. She gave a number of reasons including the value, the fact the payment was to a new payee, the payment totally drained Mr S' account, followed two large credits and triggered a confirmation of payee no match result. There was also a high volume of activity on another of Mr S' Revolut accounts that doesn't form part of this complaint.

The investigator noted that Revolut blocked the transaction but said it didn't go far enough. She said Revolut hasn't evidenced the payment reason Mr S chose or the warning given but if Mr S chose paying a safe account, Revolut should have known the payment was fraudulent and not released it. In the opinion of the investigator, had Revolut intervened appropriately the scam would have been uncovered. But the investigator felt that Mr S should share responsibility for his loss.

Revolut didn't agree with the investigator's findings. I have summarised the main points it made below:

- This service is permitted to depart from the law but where we do should explain that we have done so and explain why. If we apply the law or legal duties, we should apply it correctly and if we err in law, we are susceptible to judicial review on the grounds of error in law in relation to our identification of what the law is (as well as perversity and irrationality).
- Revolut is bound by contract, applicable regulations and common law to execute valid payment instructions. The duty is strict and there are only limited exceptions. Revolut referred to specific terms in its terms and conditions and went on to say that although the relationship between a payment service provider (like Revolut) and a customer is one of contract, such contracts are performed in a heavily regulated legal environment. The most significant legislation is the Payment Services Regulations 2017 which impose obligations to execute authorised payments promptly. By suggesting that it needs to reimburse customers, it says our service is erring in law.
- This service has overstated Revolut's obligations. Revolut recognises its obligations and has put adequate procedures in place. But the duty is not absolute and doesn't require Revolut to detect and prevent all fraud.
- It does not need to concern itself with the wisdom or potential for financial loss of a customer's payment instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- Our service appears to be treating Revolut as if it were a signatory to the Contingent Reimbursement Model Code.
- The Payment Service Regulator's ("PSR") future mandatory reimbursement scheme will not require it to refund payments made in these circumstances either.
- Revolut gave appropriate warnings which were negligently ignored by Mr S. When asked for a payment reason Mr S chose safe account transfer and was provided with a tailored warning that covered number spoofing, that Revolut will never contact a customer without verifying in the app first, or tell a customer to move money or ignore a warning.
- Further/different intervention wouldn't have made a difference as Mr S ignored targeted warnings Revolut gave.
- Mr S didn't complete his due diligence. Revolut cited many of the reasons the investigator set out in her view.

As no agreement could be reached, the case was passed to me for a final decision. I issued a provisional decision on 8 October 2024 in which I said I was provisionally minded to require Revolut to refund 50% of Mr S's loss plus interest. In the "What I've provisionally decided – and why" section of my provisional decision I said:

"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, 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.

Did Mr S authorise the transaction from his Revolut account?

Like the investigator, I'm satisfied that although Mr S didn't intend that his funds were transferred to a fraudster, he authorised the transaction I am considering here. I appreciate that recollections fade over time so have placed more weight on the information Mr S gave to Revolut when he reported the scam. At that time, he said, "*The scammers made me believe the transfer was to a new account for me*" and, when referring to his summary of events, Mr S said, "*it does not for example explain how I was tricked into authorising the payment*".

Mr S also said,

"And the one payment I [made], from my personal revolut (sic) account , was made to a new account for me they made me set up. Because all the time I believed they were from Revolut I listened to them. So I feel I am the victim of authorised push payment fraud and I hope to be able to recover the funds on that basis."

So, I consider it more likely than not that Mr S authorised the transaction from his Revolut account (but without realising his funds would end up in the hands of a scammer).

Position in respect of authorised transactions

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 Mr S 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 Mr S 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 March 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)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”*.

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/

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.

- 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 Revolut'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), 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 March 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 S was at risk of financial harm from fraud?

After considering Mr S' statements for the twelve month period before the scam and the other information available to Revolut at the time the transaction was made, I'm satisfied Revolut should have recognised the risk of financial harm.

There were a number of unusual factors about Mr S' payment request. It was higher in value than previous transactions on Mr S' account and was to a new payee. Added to these points, Revolut was aware that when the new payee was added there was a confirmation of payee no match, and that the transaction totally cleared Mr S' account balance. These factors are strongly indicative of a safe account scam, so I consider Revolut ought reasonably to have taken additional steps before processing it.

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

Once an agent of Revolut looked into the transaction Mr S sought to make they would also be able to see that the reference was Mr S' full name, which is also consistent with a safe account scam.

Revolut recognised the risk as it blocked the transaction and asked Mr S the reason for it.

What did Revolut do to warn Mr S?

When Mr S set up the new payee, he was provided with confirmation that the recipient's bank had confirmed the name he entered wasn't the name on the account (confirmation of payee no match). The message advised Mr S to double check the details and only continue if the recipient was trustworthy. Mr S proceeded and was provided with a new payee warning which 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, fraudsters can impersonate others and we will never ask you to make a payment."

Mr S was then provided with a screen that asked him to beware if, amongst other things, he'd been instructed by someone he doesn't know to move money from his account or told his account is at risk and to move funds to a safe account.

Revolut says that as the transfer was suspicious, it was sent to pending and Mr S was asked for the purpose of the payment. It says he chose the payment reason "*Transfer to a 'Safe Account'*" and received a warning that said,

"This transaction can be a scam

Please beware if you've been:

- 1. Contacted unexpectedly by HMRC or other Tax Authority*
- 2. Asked to make an immediate payment*
- 3. Threatened with additional fines or being arrested*
- 4. Asked to ignore this warning*

Mr S was given the option to read about scams in Revolut's blog and/or to get scam advice before having to choose whether to cancel the payment or make it.

In response to the investigator's view Revolut said it provided Mr S with a different warning. This warning said there was a high probability the payment related to a scam and advised him to be aware that fraudsters can fake phone numbers; that Revolut will never contact him by phone without first verifying itself via the app; that Revolut and other banks will never ask him to move money to a safe account, and that Revolut and other trusted organisations will never ask him to ignore the warning.

I asked Revolut to confirm which warning it provided to Mr S with evidence, but it hasn't responded.

Revolut has also said it emailed Mr S with scam advice. In particular, Revolut says it sent an email on 3 February 2022 which highlighted the scam he fell victim to. This email explained

that Revolut will never ask a customer to move their money and that Revolut would never make contact without verifying itself by sending a message in the app. Revolut referred to a further email it sent on 17 March 2022 which provided “*tips on avoiding scams this tax season*”.

What kind of warning should Revolut have provided?

Given the risk factors I have referred to above, Revolut should not have processed Mr S’ payment request until it was satisfied he wasn’t at risk of financial harm. When given a choice of payment reasons Mr S chose payment to a safe account. So Revolut was on notice that he was falling victim to a scam. And other factors were consistent with a heightened risk including the no match confirmation of payee results and the fact Mr S’ account balance was totally drained.

Given what Revolut knew about the transaction Mr S was making, and what it ought to know about how scams of this nature unfold, I’m not satisfied that the on screen warnings it provided went far enough. Put simply, I don’t consider Revolut should have processed the payment until it had taken appropriate steps to satisfy itself that Mr S chose an incorrect payment reason. It could have done this by directing Mr S to its in app chat to discuss the payment further or by calling Mr S (after completing its usual verification).

I’m also not satisfied that the email information provided by Revolut changes anything here. The email about safe account scams was sent over seven weeks before Mr S fell victim to the scam. In any event, scams of this nature rely on the fear of losing money and the need to act quickly without recalling information like that provided by Revolut in its February email. The content of the other email isn’t relevant to this scam.

If Revolut had provided a warning of the type described, would that have prevented the loss Mr S suffered?

As I have said above, there were multiple features that strongly indicated Mr S was falling victim to a safe account scam. If Revolut had communicated with Mr S via chat or in person and asked a specific question about why he was transferring a large sum from his account, I’m persuaded he’d have provided honest answers and the scam would have been uncovered. Mr S wasn’t given a cover story and, when asked for a payment reason, said he was transferring funds to a safe account. He also wanted to protect his funds and had nothing to gain from going ahead with the payment. If he had been asked to elaborate, I think Revolut would rapidly have uncovered that Mr S was in the process of being scammed.

I appreciate that Mr S had lengthy calls with the scammers so Revolut may not have been able to speak to him immediately. But if the payment remained blocked Mr S would have needed to contact Revolut to discuss it, and the PSRs allow enough time for this to happen.

Revolut has argued that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory. I have no intention of treating Revolut as if it was a signatory to the CRM Code. I’ve explained in some detail the basis on which I think, fairly and reasonably, Revolut ought to have identified that Mr S was likely at risk of financial harm from fraud and the steps it should have taken before allowing the payment to leave his account.

I also acknowledge the PSR's proposed mandatory reimbursement scheme for authorised push payments would not require Revolut to reimburse Mr S in these circumstances. But, 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.

Overall, I'm satisfied that Revolut should fairly and reasonably have intervened further and established why Mr S chose the safe account payment reason. If it had done so, it is more likely than not that the scam would have been exposed and Mr S would not have lost funds from his Revolut account. In those circumstances I am satisfied it is fair to hold Revolut responsible for some of his loss.

Should Mr S 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's fair and reasonable in the circumstances of this complaint.

I agree that there were some convincing aspects of this scam, such as the fact that the scammer was able to spoof a Revolut number. I'm also aware that scams of this nature rely on the victim being worried about their funds and acting without too much thought. But I think there were some odd features of this scam which ought reasonably to have concerned Mr S and led him to question what he was being asked to do.

It seems odd that Mr S' credit card provider knew about an email sent by an entirely unrelated company. And I question how Mr S' credit card provider was able to arrange a call with Revolut. Mr S also says he believed agents from both banks he transferred money into his Revolut account from were also involved in the call. I think it would be unusual for banks to work together in this manner. So the initial premise of the scam doesn't seem plausible. I'm also mindful of the fact Mr S was persuaded to transfer funds from other accounts to his Revolut account, which he was also led to believe was compromised, before being moved to another account. I think it was odd to transfer funds to an account that was said to be compromised.

By the time Mr S made the payment from his personal account he had already made payments from his business account and passed on passcodes to the scammer. The messages he received from Revolut showed these transactions were going to individuals.

Mr S also knew that the £10,270.99 payment wasn't going to an account in his name, as he received a confirmation of payee no match result. And, although I'm not persuaded Revolut went far enough when it provided warnings to Mr S, it's clear that Revolut raised the possibility that Mr S might be falling victim to a scam. I understand that the scammer(s) worked hard to distract Mr S, but consider there was enough going on by the time Mr S made the payment I am considering to lead him to question what he was being asked to do.

Overall, I'm satisfied that a 50% deduction is fair and reasonable.

Could Revolut have done anything more to recover Mr S' loss?

Revolut has provided evidence to show that the full amount Mr S lost was moved out of the payee account very shortly after it was received, and before Mr S reported the scam to Revolut. In the circumstances, I don't consider Revolut could have done anything more to recover Mr S' funds.

Even though Mr S' full payment left the payee account Revolut says it returned £10.41 to Mr S' account in September 2022. I've not seen any evidence of this but if Revolut has refunded £10.41 it should deduct this amount from Mr S' loss before making the 50% deduction.

Overall, I don't consider the warnings Revolut provided went far enough. At the same time, I consider Mr S should take some responsibility for his loss. So, I'm provisionally minded to require Revolut to refund Mr S 50% of the transaction less interest as set out below."

Responses to my provisional decision

Mr S seemed to broadly agree with my provisional decision. He made the following points:

- There was unusual activity on his business account at the time which should have added to his risk profile and warranted more action on Revolut's part.
- He didn't see Revolut's warnings while the scam was happening, probably because he was being distracted by the scammer.

Revolut didn't respond.

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.

Having carefully reconsidered this case and taken into account the additional points raised by Mr S, my final decision is the same as my provisional decision, and for the same reasons. I have reproduced the relevant section of my provisional decision above so will not repeat it here, expect to say that my reasoning is the same. Overall, I think Revolut should not have proceeded with Mr S' payment until it was satisfied that he wasn't at risk of financial harm. Had Revolut asked questions in its chat or spoken to Mr S, the scam would have been uncovered and his loss prevented.

I still think a 50% deduction to reflect Mr S' actions is fair in the circumstances of this case, and for the same reasons. I appreciate the scammer distracted Mr S but there were lot of unusual aspects that I set out in my provisional decision.

My final decision

For the reasons stated I uphold this complaint and require Revolut Ltd to:

- Refund 50% of Mr S' loss (after taking into account any amount recovered and returned to him, if applicable); and
- Pay interest on the above amount at the rate of 8% simple per year from the date the payment was made to the date of settlement.
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If Revolut Ltd considers it is required by HM Revenue and Customs to take off income tax from the 8% simple interest award, it should tell Mr S how much it has taken off. It should also give Mr S a certificate showing this if he asks for one, so he can reclaim tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 November 2024.

Jay Hadfield
Ombudsman