

The complaint

Mr R complains that Revolut Ltd (“Revolut”) won’t refund the money he lost as part of a scam.

What happened

The background to this complaint is well known to both parties, so I’ll only refer to some key events here.

In 2023, Mr R saw an advert in which a well-known financial celebrity appeared to endorse a company that I will call B. Mr R completed an enquiry form and was contact by a representative of B.

Mr R made 13 transfers to five different accounts totalling over £65,000 in May 2023. Mr R says he realised that he had been scammed when he spoke to his daughter about his “investment”.

He made a complaint via a representative to Revolut and requested that the above transactions be refunded. It declined to do this.

One of our investigators looked into this matter and he thought that Revolut should have intervened during transaction 1 and had it done so, it would have prevented the loss Mr R suffered and that it should therefore refund all of the transactions. He did though say that there should be a deduction of 50% as he thought that Mr R was equally liable for his loss. Revolut did not agree and therefore this complaint has been passed to me to issue a 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.

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 in 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 R 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 R 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 May 2023 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

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/>

- 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 Revolut’s obligation to monitor its customers’ 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. So I think 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 May 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;

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

- 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 R was at risk of financial harm from fraud?

I think payment 1, ought to have warranted an intervention from Revolut. The payment was to an internationally held account albeit still with Revolut, it was a new payee and the payment was concerning enough to have been flagged by Revolut's own system as suspicious.

Considering all of those factors together, I think that the payment carried an elevated risk of financial harm from fraud and I'd have expected Revolut to have provided a warning that was proportionate to the risk that the payment presented.

I've gone onto consider whether the warnings that Revolut did give were proportionate to the risk the payment presented. I don't think they were. I'll explain why.

Revolut says it provided a warning to Mr R. The warning would have been displayed when Mr R was creating a new payee, it read:

"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"

It also says that it displayed a warning that said that the transaction was suspicious, that it had declined it to protect Mr R and gave a link to an external blog about fraud. I don't think that this was sufficient.

What should Revolut have done?

I've thought carefully about what a proportionate warning considering the risk presented would be in these circumstances. In doing so, I've considered that many payments that look very similar to this one will be entirely genuine.

Revolut was clearly suspicious about payment 1 given that it initially stopped the payment. Having thought carefully about the risk Payment 1 presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr R's account. I think it should have done this by, for example, directing Mr R to its in-app chat to discuss the payment further.

If Revolut had intervened, would that have prevented the losses Mr R suffered from payment 1?

Mr R's case had many features that are common to this type of scam. Mr R had seen an advert on social media for an unregulated investment company which was fronted by a celebrity. He'd been given access to a trading platform and a broker and had made an initial deposit which appeared to be growing in value. There were also negative reviews for B online, so I think that had Revolut asked questions about the payments that Mr R was making I think it would have been clear that he was being likely being scammed.

I think therefore had Revolut intervened during payment 1 the scam would have been uncovered and Mr R would not have made the payment in question or the following payments.

Is it fair and reasonable for Revolut to be held responsible for Mr R's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that the funds sent to Revolut went from an account that Mr R held with another provider first.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr R might have been at risk of financial harm from fraud when he made payment 1, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses the Mr R suffered.

The fact that the money used to fund the scam came from elsewhere does not alter that fact and I think Revolut can fairly be held responsible for Mr R's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I'm also not persuaded it would be fair to reduce Mr R's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm for all the payments that relate to the scam and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr R's loss from payment 1 - subject to a deduction for Mr R's own contribution, which I will address below.

Should Mr R bear any responsibility for his 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 instance, Mr R did not seem to do any detailed research on B, as there were many negative reviews about B online. He also allowed remote access to his computer, which no real investment company would do and he says he was promised monthly returns of 10-20% a month which is unrealistic and should have highlighted that B was not legitimate. Given this I think that Mr R is equally liable for his loss and there should be a 50% reduction in the redress.

I've considered whether Revolut could have recovered any of Mr R's payments. But given the timescales involved, I don't think that any recovery could have been made. In relation to the Contingent Reimbursement Model it does not apply in this instance as Revolut are not part of that scheme.

Putting things right

Because of the reasons given above, Revolut Ltd should do the following to put matters right.

- Refund all the transactions with a 50% deduction.

- It should also pay 8% simple interest, per year, on this amount, from the date of each payment, to the date of settlement (less any lawfully deductible tax).
- Deduct from this any amount already refunded or recovered.

My final decision

My decision is that I uphold this complaint in part and require Revolut Ltd to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 November 2024.

Charlie Newton
Ombudsman