

The complaint

Mr P complains that Revolut Ltd hasn't protected him from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr P has explained that in August 2023 he made four card payments totalling £18,000 from his Revolut account as a result of a safe account scam. As a result of the scam, Mr P first transferred £18,000 into his Revolut account from his account with a third-party bank who in this decision I'll call "S", before then making the four card payments totalling £18,000 out of his Revolut account which he then lost to the scammers.

Mr P subsequently realised he'd been scammed and got in touch with Revolut. Revolut said Mr P authorised the four card payments through the 3D Secure system, that chargebacks failed, and it didn't think it had done anything wrong – so it didn't reimburse Mr P's lost funds, and Mr P referred his complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for 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 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 P 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*".

In this respect, section 20 of the terms and conditions said:

"20. When we will refuse or delay a payment

We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

- *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 P and the Payment Services Regulations to carry out his instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in August 2023 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required to act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in August 2023 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.

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;¹
- 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.

For example, it is my understanding that in August 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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"*.

¹ 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/

- 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 Code², 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).
- Since 31 July 2023, under the FCA's Consumer Duty³, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *"consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers"*⁴.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 August 2023 that Revolut should:

² BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

³ Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

- 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in August 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Mr P was at risk of financial harm from fraud?

As a result of being scammed, Mr P made four card payments totalling £18,000 from his Revolut account, all to the same merchant, within a space of just 70 minutes. The first payment was for £5,000; the second payment, instructed just two minutes later, was for £5,000; the third payment, made 65 minutes later, was for £4,000; and the fourth and last payment, made three minutes later, was for £4,000.

Mr P's Revolut account had been in operation since 2018. As our Investigator said, in the year prior to this scam, the largest payment Mr P had made from his Revolut account was for £2,055.19 (in June 2023) and it was rare for him to make payments over £200. I agree with what our Investigator thought about this. I think that the pattern of the scam payments ought to have placed Revolut on high alert that Mr P was at risk of financial harm from fraud or a scam. And I think the first of these payments, at £5,000, for an unusual and uncharacteristically large amount, and to a merchant I cannot see he'd paid before, reasonably ought to have been enough to spark Revolut's first concern.

What did Revolut do to warn Mr P?

Revolut has said that Mr P had to authorise these card payments through the 3D Secure system but that, when this was done, it didn't intervene in the payments or warn Mr P about the possibility he was falling victim to a scam.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's primary duty to make payments promptly.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with other firms, has developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by August 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by August 2023, on identifying a heightened scam risk, a firm such as Revolut should have taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

In this case, Mr P was falling victim to a safe account scam – he believed he had been contacted by Revolut itself, and he was tricked into believing both his Revolut account and his separate account held with S were compromised, such that he should move funds from his account with S to his Revolut account, and then from his Revolut account to the “safe account” by way of the card payments.

As such, I'd have expected Revolut to have asked a series of simple questions in order to establish that this was the risk the payment presented. Once that risk had been established it should have provided a warning which was tailored to that risk and the answers Mr P gave. I'd expect any such warning to have covered off key features of such a scam, such as someone calling claiming to be from Revolut, saying that his account was compromised and that they therefore needed to make payments out of his account. I acknowledge that any such warning relies on the customer answering the questions honestly and openly, but I've seen nothing to indicate that Mr P wouldn't have done so here.

As I've set out, I accept that under the relevant card scheme rules Revolut cannot delay a card payment, but in the circumstances of this case, I think it is fair and reasonable to conclude that Revolut ought to have initially declined the first payment in order to make further enquiries and with a view to providing a specific scam warning of the type I've described. Only after that scam warning had been given, if Mr P attempted the payment again, should Revolut have made the payment.

And as I've set out above it did have systems in place by August 2023 to decline card payments and provide warnings of a similar nature to the type I've described.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr P suffered from the first payment?

I agree with what our Investigator said about this. We've asked S whether it intervened in any of the payments Mr P made from his account with S into his Revolut account. S has said that it didn't. And I'm persuaded that had Mr P been provided by Revolut with a warning about safe account scams, which I'm satisfied he should have been had Revolut done what I think it should have, there's no reason to believe he wouldn't have responded positively to it – realising that the key features of typical safe account scams were very similar to what the scammer had discussed with him already. It follows that I'm persuaded that had Revolut done what it reasonably ought to have done in this case, Mr P wouldn't have proceeded with the first payment nor any of the subsequent ones.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr P first moved the £18,000 from his account with S to his Revolut account before sending it on from there, by card payments, to a merchant who in this decision I'll call "Z".

I have carefully considered Revolut's view on multi-stage fraud. But as I've set out in some detail above, I think that Revolut still should have recognised that Mr P might have been at risk of financial harm from fraud when he made the first payment from his Revolut account, 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 Mr P 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 P's loss in such circumstances. I've also considered what Revolut has said about the merchant Z, namely that this appears to be a legitimate merchant, but I agree with our Investigator that this doesn't change things particularly since the scammers appear to have set up these circumstances and there has been no dispute the money was ultimately lost to the scam. And I don't think there is any point of law or principle that says that a complaint should only be considered against the firm that is the origin of the funds.

I've also considered that Mr P has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr P could instead, or in addition, have sought to complain against those firms. But Mr P has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr P'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 (and so is unlikely to recover any amounts apportioned to that firm); 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 P's loss from the first payment onwards.

Should Mr P bear any responsibility for his losses?

I've thought about whether Mr P should bear any responsibility for the loss of the £18,000 I've said Revolut should have prevented. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

In this case, I think it's fair to say Mr P was put under pressure to act quickly. He's explained that the scam was set up by a link he received by text message to reschedule a delivery, and that he'd been awaiting a delivery of a genuine parcel so this didn't seem untoward; he thought the text was from "Evri" because the text message mentioned them, and they were to be delivering his expected parcel; so he input his details for a £0.00 payment as the process for rescheduling the delivery date was free. And it seems clear the scammers subsequently used the information they obtained from Mr P from this to then call Mr P, which Mr P says he answered because it was from a UK number, and convincingly and cleverly impersonate Revolut and trick him into thinking his account had been compromised. Mr P has said it sounded like they were calling from an office environment, which made him think the call was genuine and professional.

I've considered what Revolut has said about this, including what it has said about the process of moving his funds first from his account with S, first to his Revolut account, and then onto Z. It says this ought to have looked highly unusual. And it's also pointed to Mr P agreeing to the scammers' request to download remote access software so they could 'assist' him. But, overall, I am satisfied from what I've seen that Mr P felt under pressure to act quickly, that he was tricked by resourceful and clever scammers; he's said he doesn't really remember anything about Z, he just did what he was told to protect his account, or so he thought; and that, bearing in mind he was unwittingly tricked by the scam into thinking his account was at risk, I can't fairly say he acted with such carelessness, or disregard, that a deduction for contributory negligence would be appropriate here. So whilst there may be cases where a reduction for contributory negligence is appropriate, I'm satisfied this isn't one of them.

Could Revolut have done anything to recover Mr P's money?

There's no real need for me to address recovery here, because for the reasons I've already explained, I'm persuaded Revolut should fairly refund to Mr P the full £18,000 he's lost. But for the sake of completeness, as these were debit card payments, the only potential avenue for recovering them, after they were sent, was via the chargeback scheme. However, the card payments were made to Z (and not directly to the scammers), so Revolut could only have processed chargeback claims for Mr P against Z (and not the scammers). But, for the reasons already explained by our Investigator, I don't think Mr P would have had any reasonable prospects of success if Revolut processed chargeback claims against Z. So, I can't say that Revolut unreasonably hindered recovery of the payments after they were made.

Interest

I consider 8% simple interest per year fairly reflects the fact that Mr P has been deprived of this money and that he might have used it in a variety of ways. So Revolut should also pay Mr P interest on the payments calculated at 8% simple per year from the date of the payments to the date of settlement.

My final decision

For the reasons explained, I uphold this complaint and I require Revolut Ltd to pay Mr P:

- £18,000; plus
- interest on this amount calculated at 8% simple per year from the date of the payments to the date of settlement (if Revolut deducts tax from this interest, it should send Mr P the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 October 2024.

Neil Bridge
Ombudsman