

The complaint

Mr C is unhappy Revolut Ltd (“Revolut”) won’t reimburse him for the money he lost when he fell victim to a safe account scam.

What happened

The details and facts of this case are well-known to both parties, so I don’t need to repeat them at length here.

In short, Mr C says he fell victim to a safe account scam. On 20 October 2023, he says he received a call from someone claiming to be from the Revolut’s fraud team. Mr C says he asked for proof that the caller was from Revolut and he says he received an automated recorded message confirming that the caller was from Revolut. Mr C says that this did not persuade him, so he asked for further proof. Mr C was then sent a message that appeared to be from Revolut also confirming that the caller was genuine.

Mr C says the fraudster knew his personal details, including his name, account number and telephone number. The fraudster most likely knew the details as Mr C had unknowingly fallen victim to a ‘phishing’ scam text around a week before.

Mr C explained he was informed that his account had been compromised and he needed to authorise two payments in order to secure his funds and identify people trying to scam his account. The payments he made on the advice of the scammers were £11,885 to an online store on 21 October 2023 and a payment to a bar for £1,249.98. He says he was told that he would be refunded by Revolut the next day.

Mr C realised he was the victim of a scam shortly after. Mr C then reported the matter to Revolut to see if it could help recover his funds. Revolut logged and raised two chargebacks the one for £11,885 was defended and Revolut did not pursue it further. The second chargeback was defended but due to some inconsistencies in the details given in the chargeback claim, Revolut eventually decided to refund the second transaction.

I issued a provisional decision on 2 October 2024 in which I said the following

“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 C 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 C 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.

¹Whether 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 immediately. 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 October 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;*

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).

- *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 customer’s accounts and scrutinise transactions.*
- *The October 2017, BSI Code , 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 Duty , 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” .*

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 October 2023 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;
- 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;²
- 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 C was at risk of financial harm from fraud?

In this instance the first payment of £11,885 was a considerably larger payment than was usual for Mr C's account. Mr C had made similarly large transfers before but, for a payment it was unusual and almost completely cleared the account balance. So I think it would have been reasonable for Revolut to have recognised that Mr C was at risk of financial harm. Having thought carefully about the risk this payment 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 C's account. I think it should have done this by, for example, directing Mr C to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr C suffered from payment 1?

Had Revolut intervened, I see no reason why Mr C would not have told Revolut that he was being asked to authorise two payments apparently by Revolut's own fraud team, in order to 'protect the funds' in question and to help Revolut identify fraudsters. It would have been able to explain that the instructions he'd received were not in fact from Revolut. And given that Mr C had no desire to lose his money and nothing to gain from going ahead with the payments, it's very likely that he would have stopped, and not followed the fraudster's instructions and his loss would have been prevented.

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

⁴ 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.

So, I've considered whether Mr C would have revealed that he was being asked to authorise two payments to protect the funds in his account. Mr C says that he wasn't given a cover story, but I also accept that, because there was no real scrutiny of the transactions by Revolut, this may not have been required. I've also noted that Mr C does appear to have questioned the fraudsters when they began to make enquiries of his personal account. My impression is that Mr C acted with caution throughout and there's nothing to show that wouldn't have been the case had Revolut asked him why he was making the payment or provided a warning.

Ultimately, Revolut didn't question the payments Mr C made. And I've seen no compelling evidence to indicate that Mr C would have misled Revolut about the purpose of the payments or the surrounding circumstances, had it intervened.

So, Revolut should, once it had established why Mr C was making the payments, provided a very clear warning that explained, as a minimum, that it would never ask him to authorise payments he did not make in order to 'protect his account', that phone numbers could be spoofed and that he was likely falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Mr C to stop. He didn't want to lose his savings and I can see no reason for him to have continued to make the payment if he was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding Payment 1, as I think it ought to have done, and provided a clear warning, Mr C's loss from and including Payment 1 would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that a comparatively small amount of the funds, £800, was transferred into Mr C's account from a different account provider.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr C might have been at risk of financial harm from fraud when they 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 Mr C 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 C'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've also considered that Mr C 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 C could instead, or in addition, have sought to complain against those firms. But Mr C has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr C's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; as far as I'm aware 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 what is fair and reasonable in the given circumstances.

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 C's loss.

Should Mr C 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 I consider to be fair and reasonable in the circumstances of this complaint.

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.⁴

The tactics employed by the fraudsters are common, but nonetheless captivating and alarming to anyone unfamiliar with them. Mr C was told that his account was at risk and he had to authorise two payments to help protect his account and help Revolut identify the scammer. So, whilst I think that in some instances it would seem unusual to authorise payments to protect an account, I think the added explanation that this would help Revolut identify the scammers sufficiently explained this.

Mr C asked for proof that the caller was from Revolut and he received an automated call and a text which was received in his usual texts from Revolut from a number genuinely associated with Revolut. So in the circumstances, I can't reasonably conclude that Mr C had acted negligently, given that he'd taken steps (albeit unsuccessful ones) to try and verify that it was Revolut that he was speaking to.

Because of this, I don't think that it would be fair to say that a deduction should be made to the amount to be reimbursed to Mr C. Mr C clearly didn't want to lose his money. His actions cannot be explained by carelessness or that he made the payments for personal gain. There's little explanation as to why he made the payments other than that he genuinely believed what he was told by some very sophisticated fraudsters and in the circumstances I don't find his belief to be unreasonable.

Putting things right

For the reasons I've explained, I'm currently minded to uphold this complaint about Revolut Ltd and intend to instruct it to do the following:

- *Refund payment 1; (as payment 2 has already been refunded)*
- *Pay 8% simple interest per year on both payments, calculated from the date of both the payments, to the date of settlement for payment 1, and to the date that payment 2 was refunded for payment 2.*

If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from the compensatory interest part of the redress, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs, if appropriate."

Mr C agreed with my provisional decision. Revolut did not respond with any additional points.

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

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 reviewed the evidence afresh, as neither party has provided any new information for me to consider, I see no reason why I should reach a different outcome to the one I reached in my provisional decision.

In summary, I'm satisfied that, in the circumstances that Revolut should have intervened during payment 1 and had it done so the scam would have been stopped. I also don't think that Mr C contributed to his own loss.

So I uphold this complaint.

Putting things right

For the reasons I've explained, I uphold this complaint about Revolut Ltd and instruct it to do the following:

- 1) Refund payment 1; and
- 2) Pay 8% simple interest per year on both payments, calculated from the date of the payments, to the date of settlement for payment 1, and to the date that payment 2 was refunded.

If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from the compensatory interest part of the redress, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

Because of the reasons given above and in my provisional decision, I uphold this complaint. I therefore require Revolut Ltd to do what I have outlined above to put matters right, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 November 2024.

Charlie Newton
Ombudsman