

The complaint

Mr W is unhappy with Revolut Ltd ("Revolut") as it won't refund the money he lost to a third party scam.

What happened

In October 2019, Mr W was in the process of buying a property when he received an email from who he thought was his solicitors but, unbeknown to him, was in fact a scammer. The scammer requested a deposit payment of £37,500. Mr W says he didn't notice at the time, but the email address was almost identical to the emails he'd previously received from his genuine solicitor. He said the attachment of the deposit request looked professional, featured the company logo and was identical to previous correspondence with the genuine firm.

Mr W had previously spoken with the genuine firm via email, and it wasn't unreasonable for him to receive the deposit request in this way. The deposit request was for 10% of the house purchase price and the payment request was to a UK account which he was expecting. Overall, Mr W said the situation didn't concern him. So, on 30 October 2019 Mr W transferred the deposit of £37,500 as requested.

Mr W subsequently visited the property for another inspection and informed the building company that he'd made a 10% deposit. The building company informed him that they hadn't requested a deposit from the solicitor yet. Mr W then realised that he'd been scammed and contacted Revolut on 10 December 2019 to notify it of what had happened.

Revolut looked into the matter but didn't refund Mr W. It said it had no reason to suspect that the payment was being made as a result of fraud. Revolut said the transactions on Mr W's account centred around the sale and purchase of a property. And the account wasn't used like a typical account for day-to-day expenses, so there were no routine daily purchases that could establish a baseline for identifying unusual payments.

Revolut also said that Mr W's actions amounted to gross negligence as he didn't contact his solicitors directly to confirm the payment request. It also argued:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of APP fraud.

Our investigator upheld the complaint in full. She felt that Revolut ought to have been concerned about the payment and intervened and asked Mr W more about it before it processed the payment, and if it had, it would likely have uncovered the scam and Mr W wouldn't have lost the money. She didn't think Mr W had acted unreasonably in the

circumstances and recommended Revolut refund Mr W in full, along with interest. She also considered Revolut should pay Mr W £250 for the distress and inconvenience it had caused.

Revolut didn't agree. It said the regulatory landscape was different in 2019 and it feels this case has been judged on today's standards. It was a new bank in 2019 and did not have processes in place that it has now.

As the complaint could not be resolved informally, it's 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 W 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 W 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 October 2019 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;
- 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 in October 2019, I am also mindful that:

- Electronic Money Institutions like Revolut were 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 were required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements included 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

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/>

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 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, and it remains a starting point for what I consider to be the minimum standards of good industry practice at the time (and was in force at the time this transaction was made).

Overall, taking into account relevant law, regulatory 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 2019 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 did/does).

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

It isn't in dispute that Mr W has fallen victim to a cruel scam here, nor that he authorised the payment he made by transfer to a third-party scammer.

Whilst we now know the detail about the circumstances which led Mr W to make the payment using his Revolut account and that the money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether the payment presented an increased risk that Mr W might be the victim of a scam.

The account had been opened in February 2019 and had rarely been used. The only significant transfer was one into the account for 474,400.27 USD on 3 September 2019 and this was converted to GBP on 21 October 2021. The scam payment in question was made on 30 October 2019. Revolut did in fact use the in-chat app on 4 September 2019 to ask Mr W about the purpose of the incoming payment on 3 September 2019 as part of its 'standard security check'. And when Mr W explained it was from a house sale and redundancy, Revolut asked for evidence and continued to do so until it was satisfied the transfer into the account was genuine.

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

But the outgoing payment that followed on 30 October 2019 was not subject to any checks or warnings. I agree with the investigator – this was a remarkable transaction and there had been no other transactions in the limited activity that preceded this outgoing payment.

Overall, (taking into account this transaction took place in October 2019) I think Revolut ought to have identified that Mr W might be at a heightened risk of fraud that merited its intervention.

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.

Having thought carefully about the risk the transaction 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 W's account. I think it should have done this by, for example, directing Mr W to its in-app chat to discuss the payment further – as it had done so some weeks earlier when a large sum entered the account.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr W suffered from the £37,500 payment?

I've thought carefully about the regulatory landscape in 2019 and whether it would have been reasonable for Revolut to uncover the facts that subsequently came to light.

Had Revolut made further enquiries as I've suggested above (as it had done with the incoming payment several weeks before), I think Mr W would have told Revolut that he was transferring money to his solicitors for a deposit on a new property. Mr W wasn't given a cover story and he genuinely thought he was paying a deposit on a new property. He seems to be honest and straightforward – so would have answered Revolut's questions truthfully and, more likely than not, spoken of the email requesting the deposit. He might even have shown it to Revolut, (as he had shared evidentiary documents regarding an incoming payment several weeks earlier). So, I'm satisfied that he would've been cooperative and was more likely than not to have been open to answering questions about the intended purpose of the payment.

I think Revolut might reasonably have made further enquiries for example – it could have asked Mr W for details of the solicitor, property, correspondence and whether he'd been expecting to pay the deposit. The emails mirrored the solicitor's genuine emails and so this might not have obviously presented as a scam to Revolut by studying the correspondence alone.

But invoice interceptions email scams were prevalent at the time, and I think it reasonable that Revolut tell Mr W to contact the beneficiary over the telephone rather than by email to check the payment details. It could have explained that fraudsters can intercept emails from solicitors and change the account details to their own. And explain that scam emails often look genuine.

I think, on the balance of probabilities, that's likely to have caused Mr W to stop and check. I think he would likely have called the solicitors as recommended and this would have

uncovered the scam. I can see no reason for him to have continued to make the payment if he was presented with a warning of this nature.

Should Mr W 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.

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

The tactics employed by the fraudsters are common, but nonetheless captivating to anyone unfamiliar with them as was the case here. This wasn't a case of someone foreseeing some sort of harm and taking the risk nevertheless, careless as to the consequences for himself or those to whom he owes a duty of care, e.g. by taking inadequate or no measures to avert it. Mr W simply had no idea that he was being scammed. He received a convincing email purporting to come from his solicitors, and he was expecting this sort of communication to pay an initial deposit.

As a layman, he had no reason to doubt the email – and wouldn't necessarily know that invoice scams are common (indeed he has confirmed he was unaware of this type of scam). It was not Mr W's fault that he was duped into sending the money astray, and it's clear that he was totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. Accordingly, I am satisfied there was no contributory negligence on this occasion – Mr W was simply the unwitting and blameless victim of a clever fraudster. I don't find his belief to be unreasonable.

Did Revolut do enough to try and recover Mr W's funds?

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness, I've considered Revolut's actions once it had been put on notice that Mr W was a victim of fraud. Revolut is generally expected to assist its customers in recovering funds lost in a scam.

Mr W made the payment on 30 October 2019 and reported the matter several weeks later on 10 December 2019. From the in-app chat, I can see Revolut confirmed to Mr W it had reached out to the beneficiary bank soon after Mr W had reported the matter, but Revolut was later told that no funds remain. This isn't unusual as most scammers remove funds within hours. So, I don't think Revolut could have done anything further to recover Mr W's funds.

Putting things right

In order to put things right for Mr W, Revolut Ltd should:

Refund Mr W in full – so £37,500.

Because Mr W has been deprived of this money, I consider it fairest that Revolut add 8% simple interest to the above from the date of the transaction to the date of settlement.

If Revolut is legally required to deduct tax from the interest it should send Mr W a tax deduction certificate so he can claim it back from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint and I require Revolut Ltd to put things right for Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 October 2024.

Kathryn Milne
Ombudsman