

The complaint

Mr H 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 H says he fell victim to a safe account scam. On 5 September 2023, he says he saw an attempted payment for £750 show on his banking app which he declined as he did not recognise it. He then received a call from the account providers’ fraud team that I will call D, when it was in fact a scammer that I will call B.

Mr H says the fraudster knew his personal details, including his name, account number and telephone number. Mr H explained he was informed that his account had been compromised and he needed to send his funds to a Revolut account which he would have to open and then on from there in order to protect his funds. Mr H made 2 payments one of £3,000, which was converted into crypto and then on to a third party. A second payment of £1,000, which was to a crypto exchange and then on to B. Mr H realised he was the victim of a scam shortly after. Mr H then reported the matter to Revolut to see if it could help recover his funds. Revolut subsequently declined to refund the payments.

I issued a provisional decision on 29 November 2024. In my provisional decision I set out which parts of the complaint I can and can’t look out as neither party objected to this aspect of my decision, I will not address this again in this decision. In relation to the merits of this complaint 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 is that an Electronic Money Institution (“EMI”) such as Revolut is expected to process payments and withdrawals that a customer authorises it to make. This needs to be done 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 H 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 H and the Payment Services Regulations to carry out Mr H's instructions promptly, except in the circumstances expressly set out in its contract. This 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 September 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 such circumstances, it became obliged to refuse or delay the payment if it suspected the payment was being made as part of a scam. 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 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 despite 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, as set out in 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 September 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 September 2023, Revolut had a system whereby, if it identified a scam risk associated with a card payment through its automated systems, it could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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/

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 September 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 September 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.*

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)

- *Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.*
- *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 September 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;*
- *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 September 2023, Revolut should in any event have taken these steps.

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

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

In this instance the deposit and subsequent conversion to crypto of £3,000 was large enough that I think it would have been reasonable for Revolut to have recognised that Mr H was at risk of financial harm. Having thought carefully about the risk this transaction presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the transaction, before allowing it to be processed. I think it should have done this by providing an in app tailored warning dependent on the payment reason that Mr H would have provided.

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

Had Revolut intervened, I see no reason why Mr H would not have given the real reason he was making the transaction. That he was converting fiat currency into crypto to send to a safe account to protect his money. I note that the investigator said that as Mr H was being guided on the phone he likely would have been told not to select the real payment reason by the scammer. However, I think that he would have selected the real reason and had he done so, I think he should then have been provided with a warning. Had that happened, I believe it would have stopped Mr H. Alternatively, had the scammer told him not to answer the question honestly, I think that this probably would have raised sufficient suspicions for him not to have proceeded.

As Mr H had no desire to lose his money and nothing to gain from going ahead with the payments, I think it's very likely that he would have stopped, and not followed the fraudster's instructions and his loss would have been prevented – had a reasonable intervention taken place.

Ultimately, Revolut didn't question the payments Mr H made. And I've seen no compelling evidence to indicate that Mr H would have misled Revolut about the purpose of the payments or the surrounding circumstances, had it intervened. I say this especially as he gave the reason "transfer" for why he opened the account - which shows that he was answering questions honestly.

So, Revolut should, once it had established why Mr H 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'. I also think that it could've explained that phone numbers could be spoofed and that he was likely falling victim to a scam.

I think, on the balance of probabilities, had that happened, its likely to have caused Mr H 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 H'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 the funds were transferred into Mr H'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 H 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 H 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 H'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 H 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 H could instead, or in addition, have sought to complain against those firms. But Mr H 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 H'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 H's loss.

Should Mr H 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.

The tactics employed by the fraudsters are common, but nonetheless captivating and alarming to anyone unfamiliar with them. Mr H was told that his account was at risk and he had sent funds to Revolut and then onwards to help protect his account. So, whilst I think that in some instances it would seem unusual to transfer money out of an account to 'protect an account', I think the added explanation that this would help protect his funds after him seeing a payment that he had not authorised is not completely unreasonable.

So in the circumstances, I can't reasonably conclude that Mr H had acted negligently. 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 H. Mr H 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."

Mr H responded and agreed with my provisional decision. Revolut did not add any further points prior to the deadline set out in my provisional 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.

Having reviewed everything, as neither party has provided any new information, I see no reason to reach a different outcome to the one I reached in my provisional decision.

So, in summary I think that Revolut should have intervened during the conversion to crypto currency surrounding transaction 1 and this would have stopped the scam.

Putting things right

To resolve this complaint Revolut Ltd should:

- Refund payment the payments Mr H lost to the scam.
- Pay 8% simple interest per year on the amount due to Mr H calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

Because of the reasons given above and in my provisional decision, I uphold this complaint and require Revolut Ltd to put things right in the way I've set out above, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 January 2025.

Charlie Newton
Ombudsman