

The complaint

Mr G complains that Revolut Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In May 2023, Mr G received a text message and then a phone call from someone who said they worked for an online marketplace. They told him his account with the marketplace had been compromised and someone had access to it, so they might also have access to his bank accounts. They then said they would open a new, secure account for him and that he should move his money there to keep it safe. And as Mr G believed the caller was genuine, he followed their instructions.

A number of payments were then made from Mr G's account with another bank into his account with Revolut, and then from his Revolut account out to another account. Mr G accepts he made the payments from the other bank to Revolut, but says he didn't make the payments out of his Revolut account. I've set out the payments made out of Mr G's Revolut account below:

Date	Amount
8 May 2023	£1,005
8 May 2023	£990
8 May 2023	£990
8 May 2023	£990
8 May 2023	£990
8 May 2023	£990
8 May 2023	£990

The caller then told Mr G they would be back in touch later with an update. But Mr G spoke to a friend of his, who suggested this could be a scam. And when he couldn't then get back in touch with the caller, Mr G reported the payments to Revolut as a scam.

Revolut investigated but said it had showed Mr G warnings and educational screens before allowing the payments to go through, but he had still continued with the payments. It didn't think it was at fault for processing the payments, so didn't agree to refund the money Mr G had lost. Mr G wasn't satisfied with Revolut's response, so referred a complaint to our service.

I sent Mr G and Revolut a provisional decision on 16 August 2024, setting out why I was intending to uphold this complaint in part. I explained I thought Revolut should have done more to address the risk of financial harm I think it should have identified and that, if it had done so, the scam would have been uncovered and Mr G wouldn't have made any further payments. But I also thought it was reasonable for Mr G to bear some responsibility for his loss. So I intended to require Revolut to refund 50% of the money Mr G lost as a result of the scam.

I said I'd consider anything further Mr G and Revolut sent in following the provisional decision, provided it was received by the deadline given. Mr G accepted the outcome from the provisional decision. Revolut didn't respond by the deadline given.

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.

As Mr G accepted the outcome from the provisional decision and Revolut didn't respond, neither has submitted any further evidence or arguments for me to consider. And so I still think the findings I set out in the provisional decision are correct, and for the same reasons. I've set these findings out again below.

Did Mr G authorise the payments out of his Revolut account?

Mr G has said he wasn't aware of the payments being made out of his Revolut account and didn't agree to them being made. He says he authorised the payments from his account with the other bank to Revolut. But he said he didn't access his Revolut account or give the caller any of his security details, and the caller told him to download an app which he thinks they may have used to access his Revolut account. He said he only found out about the payments when he later logged into his Revolut app and saw his balance was lower than he expected.

Generally a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer authorised the payments – for example, by making them themselves or telling someone else they could make them.

Deciding whether a customer has authorised payments is a two-part test. Firstly the payments must be authenticated, and secondly, the customer must have consented to the payments being made. And this doesn't necessarily require proving that the customer made the payments themselves, as it is possible for a customer to consent to someone else making payments on their account.

Revolut has sent us evidence which shows all of the payments were set up and confirmed using Mr G's mobile banking app. This means the payments were all correctly authenticated, and so I must also think about whether the evidence suggests it's more likely than not that Mr G consented to the payments.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr G said the caller told him to download an app which he thinks they may have used to access his Revolut account. But when Revolut asked Mr G to show it the app he had downloaded, he sent it a screenshot of an app which doesn't allow remote access to someone else's device. So I don't think this app can have been used by the caller to access Mr G's Revolut account, in the way he has suggested.

Mr G also said he didn't give the caller any of his security details. But, if that's the case, for the caller to have made the payments from Mr G's mobile banking app, they would have needed to guess his security details – which I think is unlikely.

And Revolut's evidence shows the payments were all made using the same device that was used to access Mr G's mobile banking app on other occasions both before and after these payments, and that the payments were confirmed using fingerprint identification.

So, based on the evidence I've seen and in the absence of any other plausible explanation, I think it's likely Mr G was aware of the payments being made from his Revolut account and consented to them being made. And so I think Revolut has acted reasonably in treating these payments as authorised.

Does Revolut have any other responsibility to protect Mr G?

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

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not

in any event mean Revolut was required to carry out the payments immediately¹. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in May 2023 fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances (irrespective of whether it was also required by the express terms of its contract to do so).

In reaching the view that Revolut should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMI's like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- 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)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

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/

³ Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

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 Code⁴, 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).

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in May 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does).

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

Revolut has said it showed Mr G a series of warning messages before he made the first payment here of £1,005.

When he first set up the new beneficiary for the payment, he was shown a warning which said:

“Do you know and trust this payee?”

If you're unsure, don't pay them, as we may not be able to help you get your money back.

Remember, fraudsters can impersonate others, and we will never ask you to make a payment.”

⁴ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

Then when he tried to make the first payment, Mr G was shown a series of educational screens which said:

"This transfer could be a scam.

Our system identified this transfer as suspicious, so we moved it to 'pending'.

Your transfer has a higher risk score than 99.2% of all Revolut transfers"

"Victims lose millions every year.

In 2020, in the UK alone victims lost £479m to bank transfer scams. It's important that you take care and do your research before making a payment as once funds have been received by a fraudster, they're difficult to get back."

"Fraudsters are professionals.

They'll try to trick you into sending them money by pretending to be someone you trust. They can make their calls, emails and advertisements seem legitimate."

Mr G was then asked to select the purpose of the payment he was making from a list of options Revolut gave him. And Revolut's evidence shows Mr G selected "Transfer to a 'Safe Account'".

But being asked to transfer money to a 'safe' account is a common and well-known type of scam, and there are very few legitimate reasons for selecting that payment purpose. So I think Mr G selecting this purpose put Revolut on notice that there was a high likelihood that the payment being made was part of a fraud or scam.

What did Revolut do to warn Mr G?

After Mr G selected this payment purpose, Revolut showed him a series of educational screens, which said:

"Safe account scam

Fraudsters could contact you pretending to be from Revolut or another financial institution. They may tell you to move money to a 'safe account' due to a problem with your account, such as fraudulent activity"

"Are you being scammed?

Financial institutions won't ask you to move money to a safe account, download software to allow them to access or view your device, ignore warnings, or share sensitive info".

Mr G was then given the option to either continue with the payment or cancel it. But as I think Revolut should have been on notice that there was a high likelihood this payment was part of a fraud or scam, I don't think it should have let the payment go through unless it had satisfied itself that the 'safe account' payment purpose had been selected by Mr G in error.

And while these educational screens do explain what the scam could look like and that financial institutions won't ask customers to move money in this way, I don't think they were proportionate to the risk the payment presented or went far enough to explain that, unless Mr G had selected the payment purpose in error, this was a scam and he should not proceed with the payment.

What kind of warning should Revolut have provided?

As it was on notice that there was a high likelihood that payment was part of a fraud or scam, I think Revolut should have carried out a human intervention with Mr G to gather further information about the circumstances surrounding the payment and establish whether he had selected this payment purpose in error.

And, unless Mr G's responses to that human intervention made it clear he had selected the payment purpose in error, I think Revolut should then have clearly warned him that the victim of a scam and not allowed the payment through.

If Revolut had taken the action described, would that have prevented the losses Mr G suffered?

I've not seen anything to suggest Mr G would have lied or tried to mislead Revolut if he was asked further questions about the payment. And I think the fact the 'safe account' purpose was selected here suggests Mr G would have been honest and given Revolut correct information about the circumstances surrounding the payment if he was asked.

So if Revolut had carried out a human intervention to gather further information about the circumstances of this payment, I think it would have found out that Mr G had been called by someone who said they worked for an online marketplace and told him his account was at risk. It would then have established that he didn't select the 'safe account' payment purpose in error and was the victim of a scam. So it could then have warned him that he was the victim of a scam and refused to allow the payment to go through.

And as Revolut is the expert in financial matters in the circumstances, I think its warning would have carried significant weight with Mr G. I haven't seen anything to suggest he would have attempted to continue making the payments if warned he was the victim of a scam. So I think it's likely he would have taken notice of Revolut's warning, realised he was the victim of a scam and agreed to cancel the payment. I also think Mr G would then not have tried to make any of the later payments either.

So if Revolut had carried out a human intervention to establish whether Mr G had selected the payment purpose in error, as I think it should have, I don't think Mr G would have lost any of the money he did from this payment or any of the later payments. And so I think it would be fair for Revolut to bear some responsibility for the loss Mr G suffered from these payments.

Should Mr G 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.

And while I appreciate Mr G has been the victim of a cruel scam, I do think there were a number of things about what was happening and what he was told that should have caused him significant concern.

Mr G was initially contacted by someone who said they worked for an online marketplace. But I wouldn't expect someone who worked for an online marketplace to know that Mr G's accounts with several other financial institutions were compromised, or to carry out the opening of a new bank account or the transfer of money between his existing bank accounts for him. So I think the caller suggesting this should have caused Mr G some concern.

The caller also appears to have told Mr G to move his money through several of his accounts before transferring it on to the new 'safe' account, rather than just transferring it directly to the new account. And they appear to have asked him to move the money in a number of smaller payments, rather than just in one large payment all at once. But if his money was at risk, I'd expect the best course of action would be to move the money all at once and as quickly and directly as possible. So I think being asked to move his money in this way should also have caused Mr G some concern.

Mr G was told the new 'safe' account he was moving the money to had been set up in his name. But the confirmation of payee check Revolut carried out showed that the name he had entered for the payment didn't match the name on the bank account it was being sent to. And I think this should have caused Mr G significant concern about whether what he was being told was true.

Revolut also showed Mr G a number of warnings and educational screens when he made the first payment. And while I don't think these went far enough to address the risk I think Revolut should have identified, I do think they should have caused Mr G significant concern about what was happening. The warnings said fraudsters may tell you to move money to a 'safe' account but that financial institutions won't ask you to do that.

I sympathise with the position Mr G found himself in and I appreciate that the caller knew some of his personal details and sounded very professional,, which will have made the call seem genuine. But I think there were a number of things here which should have caused him significant concern. And I don't think the parts of the scam which felt genuine should have been enough to overcome those concerns. So I think it would be fair for Mr G to bear some responsibility for the loss he suffered.

I therefore think it would be fair for both Mr G and Revolut to bear some responsibility for the loss Mr G suffered. And, based on what I've seen of the circumstances here, I think the responsibility for the loss rests relatively equally between Mr G and Revolut. So I think it would be fair for Revolut to refund 50% of the loss Mr G suffered.

Did Revolut do enough to try to recover the money Mr G lost?

We expect firms to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

But from what I've seen, the money Mr G sent was removed from the account it was sent to before Revolut was made aware of the scam. So nothing I would reasonably have expected Revolut to have done would have been able to recover the money Mr G lost. And so I don't think it would be fair to expect Revolut to do anything further to try to recover it.

My final decision

For the reasons set out above, I uphold Mr G's complaint in part and require Revolut Ltd to:

- Refund Mr G 50% of the money he lost from the payments he made as a result of this scam – for a total of £3,472.50
- Pay Mr G 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 October 2024.

Alan Millward
Ombudsman