

The complaint

Mr P is unhappy Revolut Ltd declined to reimburse him for the money he lost when he fell victim to a scam.

What happened

Mr P is represented in this complaint by a claims management company, for simplicity I will refer to Mr P throughout this decision, even when referencing what his representatives have said on his behalf.

Mr P fell victim to a safe account scam. He was contacted by an individual claiming to work for his credit card provider (which I'll call "A") who asked him about unusual transactions on his card and told him his accounts with various banks were at risk. He was told he'd be contacted by someone from his main bank account provider, "H", and when he spoke with someone claiming to be from H he was told that he needed to move his money into his Revolut account and then from there on to a new account with H which had been set up under an alias. Unfortunately, and unknown to him at the time, Mr P was actually speaking with fraudsters.

Believing that he was genuinely dealing with a legitimate banking institution, Mr P moved significant funds into his Revolut account. From there, Mr P made a payment for £19,800 to the beneficiary account details provided by the scammer. When the alias account did not appear on Mr P's banking app, as he'd been told it would, he realised he had been scammed, and contacted Revolut to let it know.

Revolut logged the fraud and contacted the business the funds had been sent to, to see if any funds remained that could be recovered. Ultimately though, Revolut told Mr P that it wouldn't be reimbursing him for the payment he had made from his account. Revolut said it had provided Mr P with a warning as well as with general scam information, but that Mr P had chosen to go ahead and had authorised the payment.

Unhappy, Mr P referred the matter to our service. One of our Investigators looked what had happened, but they did not feel Revolut had done enough to intervene given the size of the payment Mr P was making. They considered that Revolut should bear some responsibility for Mr P's loss, but felt that responsibility should be shared with H and with Mr P. So, they recommended that Revolut refund part of Mr H's loss, plus interest.

Revolut accepted the Investigator's findings, but Mr P did not, he did not think it was fair for him to bear responsibility for some of his loss given the circumstances of the scam he fell victim to.

I issued my provisional decision on this complaint on 19 September 2024, explaining why I felt that Mr P should not share responsibility for his loss here. Mr P accepted my findings, Revolut has not made any further comments following 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.

In my provisional decision I explained the following:

"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".

So Revolut was required by the implied terms of its contract with Mr P 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

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).

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 February 2024 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)*
- 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 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*

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”

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 Duty⁴, 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"⁵.*
- *Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency 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.*

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 February 2024 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.*

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.

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

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

The payment Mr P made towards this scam was significantly larger than any previous payment made from his Revolut account. It was also to a recently added new payee with an account at H. And it had been funded by recent large payments into the account from Mr P's account with H. These circumstances should, I think, have caused some concern to Revolut, and led to it taking steps to intervene before allowing this payment to be made.

What did Revolut do to warn Mr P, and what should it have done?

When Mr P set up the new payee, Revolut provided him with a general message asking him if he knew and trusted the payee, warning that scammers could impersonate other people, and confirming that Revolut would not ask him to move his money.

But while this warning does contain some information relevant to Mr P's circumstances, the warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case.

And having thought carefully about the risk the payment presented, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr P's account. I think it should have done this by, for example, directing Mr P to its in-app chat to discuss the payment further.

And I think that kind of direct contact with Mr P would likely have made the difference here. While there's obviously a balance to strike, Revolut ought fairly and reasonably to have satisfied itself that Mr P hadn't fallen victim to a scam, and I'm persuaded it could've done this by asking a few open-ended questions.

I've not seen anything to suggest that Mr P was given a cover story about the payment he was making, or that he was otherwise told to lie to Revolut. So, had Revolut intervened in this way I think it would have quite quickly come to light that Mr P was the victim of a scam, given that the particular scam he was falling victim to is a common and well-known scam featuring many hallmarks of scams that Revolut would have been aware of.

I'm aware that Mr P moved funds from another account, held with H, into his Revolut account to fund the scam. But H also did not intervene in the payments Mr P was making, so by the time I think Revolut should have intervened, Mr P had not seen (or ignored) any detailed warnings regarding what he was doing. With this in mind, I think it's fair to say that, had Revolut intervened appropriately, then it is likely that the spell of the scam would have been broken and that Mr P wouldn't have proceeded with the payment. So, I think Revolut could have prevented Mr P's loss.

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 made payments into his Revolut account from his account with H, before moving those funds on to the scammer. I agree that H should also bear some responsibility for what has happened here, and I have considered H's role in these events in a separate complaint.

But as I've set out above, even bearing in mind H's involvement, 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 payment to the scammer, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, 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 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.

So, for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut partially responsible for Mr P's loss.

Should Mr P 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.

Our investigator considered that Mr P should bear some responsibility for his loss. They felt that what Mr P was being asked to do was unusual, and should have caused him some concern. They also noted that, when searching for the phone number had had been called from, Mr P should have seen that an independent website suggested that the number was associated with scam activity. So, they considered that it was fair for Mr P to bear partial responsibility for his loss.

I do not agree. The initial phone call that Mr P received, purporting to be from A, appeared to come from a phone number belonging to A. I appreciate that when conducting an online search for this number there is also a search result from an independent website which states (in smaller text below the main search result) that this number has been associated with scams, but I think I must also bear in mind that, in the highly stressed situation Mr P found himself in, the prominent search result showing that the number did belong to A is more likely to have caught his attention. I don't think it is fair to say Mr P was negligent for believing that he was being legitimately called by A if he did not, as I believe is most likely, see the full search result saying the number could be associated with a scam.

I consider that everything Mr P then went on to do must be seen in that context, that he sincerely believed he was talking to a legitimate representative of a known and trusted banking institution. I acknowledge that the actions Mr P was then asked to take were unusual, but he was in a highly pressured situation taking steps that he believed would be the only way to protect his money. And any specific concerns he might have had do appear to have been answered by the scammers, he was provided with an explanation of why his money had to be moved in the way it was, and I don't think he therefore acted unreasonably in the circumstances by acting on what he believed to be the legitimate instructions of his bank.

With all this in mind, I don't currently intend to find that it is fair or reasonable for Mr P to bear any responsibility for his loss. I am currently intending to find that Mr P's loss should be refunded to him in full, with responsibility shared between Revolut and H."

As Mr P has accepted these findings, and Revolut has not said anything to make me change my decision, I see no reason to depart from the findings set out above. I remain satisfied that Mr P's loss should be refunded to him in full, with responsibility shared between H and Revolut

Putting things right

To resolve this complaint Revolut Ltd should:

- refund 100% of the first £8,600 of Mr P's loss;
- refund 50% of the remaining £11,200 of Mr P's loss; and
- pay 8% simple interest per annum on this refund from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. Revolut Ltd should now put things right in the way I've set out above.

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

Sophie Mitchell
Ombudsman