

Complaint

Mrs M is unhappy that Revolut Ltd didn't refund her after she told it she'd fallen victim to a scam.

Background

The background to this case is well known to the parties, so I will provide only a brief summary of the key events.

Mrs M holds an account with Revolut, as well as accounts with two other financial institutions that I will refer to as N and H. In September 2023, she received an email that appeared to be from her internet service provider, advising that she was owed a refund. She clicked on the link in the email and entered the card details for her H account on the website that opened. Immediately afterward, she suspected it might have been a scam, so she cancelled her H card.

A few days later, Mrs M received a phone call from someone claiming to be from N. The caller warned her that her accounts were at risk and advised her to move her funds to a "safe account." Acting on this advice, Mrs M transferred £14,000 from her account with N to her Revolut account and then onward to another account. Mrs M believed this was necessary to protect her funds, but unfortunately, the caller was a fraudster.

When Mrs M realised what had happened, she notified Revolut. Revolut, however, declined to refund her. Mrs M wasn't happy with that response and so she referred the matter to this service. An Investigator reviewed the case and upheld the complaint. She concluded that the payment was significant enough to raise concerns for Revolut, and that it should have intervened. She believed that, if Revolut had questioned the payment, it could have prevented Mrs M from proceeding.

Revolut disagreed with the Investigator's findings. It argued that:

- It had provided Mrs M with warnings during the payment process.
- Its payment screens clearly indicated that the recipient account was not held with N, but with a different entity.
- Mrs M had been asked to categorise the payment by purpose and selected "*something else*" rather than "*safe account*." This meant that the warning displayed was not tailored to the specific scam risk, but that was outside of Revolut's control.
- It's unreasonable to ask Revolut to compensate Mrs M in full when there was another firm that was involved here. Mrs M should be directed to make a complaint against that business too.

As Revolut did not accept the Investigator's findings, the case has been passed to me to consider and come to a final decision.

Findings

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 Mrs M 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 Mrs M 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 September 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 EMIs 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 *“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, the BSI Code⁴, which a number of banks and trade associations

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.

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

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 Duty⁵, 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"*⁶.
- 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 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.

⁵ 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.

⁶ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

Should Revolut have recognised that Mrs M was at risk of financial harm from fraud?

I'm satisfied that Revolut should've recognised the fraud risk associated with this payment of £14,000. Mrs M had had the account for several years and this was by far the largest payment she'd made. On the statement data that's been shared with me, the next largest payment was for £1,000. In addition to that, the payment was made to a new payee and followed a negative confirmation of payee check. In view of that, I think this payment was certainly unusual and out of character and Revolut needed to take some action in response to it.

Revolut did provide Mrs M with a general warning when she added a new beneficiary. It then asked her to categorise the payment. She chose "*something else*" from a list of options. One of those options was to say that she was transferring money to a safe account, but Mrs M didn't pick that one. It also says that she would've seen a warning following the negative confirmation of payee check.

In my view, this wasn't a proportionate response. Given the factors set out above, the fraud risk associated with this payment was sufficiently clear that a proportionate response would've been a human intervention. Revolut shouldn't have processed this payment without first making enquiries with Mrs M to establish the circumstances surrounding it. It could've done this by directing her to communicate with one of its employees in the chat function of its app.

As far as I can see, Mrs M wasn't told that it was important to mislead Revolut about the reason for the payment. On balance, I think it's likely that she'd have answered its questions openly and honestly. Having done so, Revolut would've been able to explain to her that the phone call she'd received could only have been made by a fraudster. I think it's highly unlikely that she'd have gone ahead with the payment if this had been made clear to her.

Is it fair and reasonable for Revolut to be responsible for Mrs M's losses?

Revolut has pointed out that it wasn't the only regulated business that was involved here. Mrs M initially moved her money from her account at N into her Revolut account before it was transferred on. Revolut says it's not fair and reasonable to expect it to compensate Mrs M for her total losses here and this service should direct Mrs M to make a complaint to N.

I have taken into account that she's only complained about Revolut. It is possible that N might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mrs M could instead, or in addition, have sought to complain against it. But she's not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs M's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; 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 the fair and reasonable position.

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 Mrs M's loss.

Should Mrs M bear any responsibility for her losses?

In deciding whether Mrs M bears any responsibility for her losses, I have carefully considered what the law says about contributory negligence, as well as what is fair and reasonable in the specific circumstances of this complaint. While the legal test for contributory negligence is objective, I am able to take into account the individual characteristics of the customer and the wider circumstances of the scam. This allows me to reach an outcome that is fair and reasonable overall.

Revolut has argued that Mrs M was careless for several reasons:

- She selected the wrong payment option, which it says made it impossible to provide a tailored warning.
- There was a failed confirmation of payee check.
- The design of its payment system meant Mrs M would have seen that the payment was not going to N, the bank she believed she was dealing with, but to an account held with a different institution.

I have considered these points, but I am not persuaded that Mrs M was contributorily negligent. In this case, the fraudsters were highly manipulative. They managed to convince Mrs M that they were genuinely calling from N by using some personal information that she assumed wouldn't be widely available. The scam was well-planned: the phishing email she received earlier had been designed to create the impression that she was at risk of fraud, which set the stage for the fraudsters to pose as protectors seeking to help her safeguard her funds. This is a common tactic in scams of this kind, but I wouldn't expect someone without some background knowledge of banking or fraud prevention to recognise it in the moment.

Nonetheless, Mrs M's subsequent actions need to be seen in that context. She genuinely believed she was speaking to a representative from N who was acting in her best interests. When the confirmation of payee check failed, she was reassured by the fraudsters' explanation that her new "*safe account*" was still in the process of being set up. This explanation, combined with the urgency and pressure applied by the fraudsters, left her little time to think critically or question the situation. I appreciate Revolut's argument that the warnings it displayed and the discrepancy in the payee details should have caused Mrs M to reconsider. However, it is well-documented that fraudsters conducting safe account scams create a sense of panic and urgency, leaving victims unable to reflect calmly or rationally. Mrs M's account of being subjected to this type of pressure aligns with what is commonly seen in such cases, and I find her explanation credible.

Taking all of this into account, I do not think it would be fair or reasonable to hold Mrs M partially responsible for her losses. I therefore do not consider a deduction for contributory negligence to be appropriate in this case.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mrs M accepts my final decision, Revolut Ltd needs to refund the payment she made in connection with the scam. It also needs to add 8% simple interest per annum calculated to run from the date the payment left her account until the date any settlement is paid to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 December 2024.

James Kimmitt

Ombudsman