

## The complaint

X complains that Revolut Ltd hasn't protected it from losing money sent to one of Revolut's customers as the result of a scam.

## What happened

On 15 October 2024 I issued my second provisional decision on this complaint. I wanted to give the parties a final chance to respond before I issued my final decision. That second provisional decision forms part of this final decision and is copied below.

*"The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, X has explained that in December 2021 it was tricked by a scammer into paying an invoice to the scammer's account held with Revolut, rather than the legitimate supplier's account.*

*When X realised it had been scammed, it reported the matter. Ultimately, Revolut didn't reimburse X's lost funds, and X referred its complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.*

*I sent X and Revolut a provisional decision in October 2023. X accepted my provisional decision. But Revolut disagreed.*

### What I've provisionally 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 done so, I'm minded to reach the same overall conclusions as explained in my provisional decision of October 2023, and for materially the same reasons. Revolut strongly disagreed with that provisional decision, and I've carefully considered the points it made in response to it. But I'm not minded to change my mind. I've explained my reasons again below, with further comment, where I have deemed this appropriate, to address Revolut's response to my provisional decision of October 2023.*

*Of course, in reaching my decision I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. But ultimately my role as an Ombudsman is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.*

*In response to my provisional decision of October 2023, Revolut has referenced case law and said it did not owe a legal duty of care to X. But that is not what I said, nor the basis for my provisional decision. As I have mentioned, in deciding what is fair and reasonable in the circumstances of the case, I must take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice: DISP 3.6.4 R. So, I'll briefly summarise some key aspects of these.*

*A receiving payment service provider (such as Revolut in this case) isn't normally a service provider to the sending bank's customer, so there isn't any contractual relationship between them and no duty of care has been found to arise at common law. And the receiving payment service provider's responsibility under The Payment Services Regulations 2017 (the PSRs) is to credit the account identified in the payment instruction.*

*However, in providing its services to the public, payment service providers like Revolut must also operate in a wider regulatory context; and one of the aims of the regulatory system under the Financial Services and Markets Act 2000 (FSMA 2000) is to help drive crime out of the UK's financial system. The FCA is given an "integrity objective" (FSMA 2000, s.1B(3)(b)) of protecting and enhancing the integrity of the UK financial system, where "integrity" is defined as including the financial system not being used for a purpose connected with financial crime (FSMA 2000, s.1D(2)(b)). The FCA's Handbook contains rules by which it promotes this objective, most notably in its Systems and Controls Sourcebook (SYSC).*

*Under SYSC, banks and other regulated firms must take reasonable care to establish and maintain effective systems and controls for countering the risk they might be used to further financial crime (SYSC 3.2.6 R). Such systems must enable the firm to identify, assess, monitor and manage the risk of it being used to further money laundering, whilst also being comprehensive and proportionate to the nature, scale and complexity of the firm's activities (SYSC 3.2.6A R). This obligation is a continuous one and firms are obliged to assess regularly the adequacy of their systems and controls in this area (SYSC 3.2.6C R). Firms must also have in place adequate policies and procedures for ensuring the firm and its personnel counter the risk that it might be used to further financial crime (SYSC 6.1.1 R).*

*Although the nature of its systems and controls is a matter for each firm to decide, the FCA says they should include money laundering training for its employees, internal reporting to the firm's governing body, policy documentation, and measures to ensure money laundering risk is taken into account in its day-to-day operations (SYSC 3.2.6G G). Firms should also refer to guidance published by the Joint Money Laundering Steering Group; and the FCA has regard to whether that guidance has been followed when considering whether the firm has breached its systems and controls rules (SYSC 3.2.6E G).*

*Taking all of this into account, I think it's reasonable to expect a payment service provider such as Revolut to take reasonable steps to ensure its accounts aren't used to further financial crime or misappropriate funds. And if Revolut's acts or omissions in this regard unfairly resulted in loss to X, then I'd consider it fair and reasonable for Revolut to put things right.*

*I don't think there were failings by Revolut when opening the account in question. I'm satisfied it followed its process and took appropriate documents from the account holder when doing so. So, I don't think it could have prevented X's loss in that way.*

*However, when X's payment arrived, it flagged for further checks on Revolut's system. And before allowing its customer access to the funds Revolut asked for more information about the payment.*

*I've seen the evidence provided by the Revolut customer which takes the form of an invoice with X's name on it. The invoice is dated for the day before the payment was received into the account and is for the same amount that was sent. Revolut accepted this evidence and released the funds to its customer. Revolut clearly had some concerns about the payment as it flagged and it took the above steps. But I don't think it was reasonable for Revolut to accept this invoice and I think it should have gone further. This is because by this time in*

*2021 Revolut really ought to have been aware of common scams, including email invoice interceptions. It's common with such scams for there to be a mismatch between the beneficiary information included with a payment instruction and the name on the recipient account. Revolut should also have been alert to the possibility of evidence like the invoice provided to it by its customer being fabricated.*

*The evidence provided by X is clear that its payment was intended for H. H's name was also included with the payment instruction as the beneficiary name. But the recipient account held with Revolut was held in a different name. I can't see that Revolut challenged its customer about this, which I think it reasonably ought to have done as part of its due diligence.*

*In its defence about this, in response to my provisional decision of October 2023, Revolut said that:*

- Under the PSRs, it wouldn't have used the beneficiary name as a unique identifier when accepting the payment into the account. It has pointed me to case law, and a different Ombudsman's decision in 2021 about a different case which it says supports its position. So, Revolut says, to say it should have checked the beneficiary name would be inconsistent with law, such that, if I am saying that, I must explain my reasons for departing from the law.*
- At the time of reviewing the payment, it would have considered all other available "red flags", but not the beneficiary on the SWIFT payment instruction. This is because the only source of the beneficiary name would have been the SWIFT payment instruction sent to Revolut by the sending bank. But it says, due to the way its systems worked at the time, this would not have been visible to Revolut's personnel who reviewed the transaction. Its processes were fit for their purpose. Its customer had a business account which was onboarded correctly. And bearing in mind Enhanced Due-Diligence (EDD) was performed not long before the payment and an invoice was provided by its customer to document the payment, it took all reasonable steps and it was entitled to rely on the invoice to satisfy its concerns regarding the payment in question.*

*But these points don't change my mind. The beneficiary name details were in Revolut's possession by way of the SWIFT payment instruction. Revolut has referenced a court case from 2014. But here, in this case, we're looking at an event in 2021, where the wider regulatory context and good industry practice around fraud and scams had very much moved on. I accept the beneficiary name wouldn't be used as a unique identifier in terms of Revolut accepting the payments under the PSRs. But when the payment was rightly flagged on Revolut's systems as warranting attention, I don't think it's unreasonable to expect Revolut to take steps to properly check, so far as is reasonable and proportionate, what its customer was telling it. I can't say that just because Revolut's systems may not have been set up at the time to enable its personnel to view or easily view the SWIFT payment instruction, that Revolut did nothing wrong by not doing so. I note the Ombudsman's decision from 2021 Revolut has referenced, but that case had its own unique facts, and I must decide this case on its own merits. There may be cases where a proportionate and reasonable investigation wouldn't necessarily involve checking the intended beneficiary on the payment instruction matched the name on the recipient account. But I don't think this is one of them. As I have said, Revolut really ought to have been aware by this time in 2021 about email invoice interception scams, their increased prevalence, and the possibility of evidence being fabricated (particularly the invoice here), which was obviously the whole scam in the first place. And Revolut had in its possession information which I think reasonably ought to have been considered at the time. In which case, Revolut would have seen the beneficiary name on the SWIFT payment instruction didn't match the name on the recipient account, bearing the hallmarks of an invoice interception scam.*

*Ultimately, in these circumstances I don't think Revolut's customer would have been able to provide a satisfactory explanation before Revolut was on notice that X's payment had been made as the result of a scam. This is because within around a week (and over the Christmas period) Revolut was put on notice of a potential problem with the payment. It follows that I think X's payment would have remained available for recovery, but for this failing by Revolut.*

*Should Revolut fairly and reasonably be held responsible for the loss?*

*Revolut has said in response to my provisional decision that X should raise a complaint about its own bank because it could have stopped the scam happening too.*

*However, whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, X has not referred a complaint about its own bank to me, and DISP does not empower me to instruct X to make or refer a complaint to me about another business.*

*I am required to consider the complaint in front of me. I have found that Revolut did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that X may have cause to complain about its own bank, I am not persuaded it would be fair to reduce the award solely for that reason. X is entitled to choose to complain only about Revolut and I am satisfied that Revolut could have prevented the loss X has suffered (if Revolut had acted fairly and reasonably).*

*Should X bear any responsibility for its loss?*

*I've thought about whether X should bear any responsibility for its loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.*

*I don't think in the circumstances here it can fairly be said X was negligent in such a way that it's reasonable for me to make a reduction in award based on contributory negligence. Revolut has said that the scam could've been prevented if X had checked the email the invoice was sent from. And I do note that the domain the scammer's email was sent from was very slightly different (one letter different) to the legitimate supplier's domain. But I don't think this is enough to say X by way of negligence has contributed to the loss it has suffered. This slight difference would be quite an easy thing to miss. And I've seen nothing to suggest X was aware of it or careless with regards to a risk it should have been aware of. I've not seen any evidence to support that it had been warned about this type of scam but carried on despite this. So, I don't think a reduction due to contributory negligence is appropriate in the circumstances of this complaint.*

*Putting things right*

*This means to resolve this case I think Revolut should pay X \$99,976 (I appreciate X's payment was for \$100,000 but this is the amount that landed in the recipient account – presumably due to fees – and would have been the amount that would have remained recoverable, so I'm satisfied this is the fair amount).*

*I also think Revolut should pay X interest on this amount calculated at 8% simple per year to compensate X for being without funds it otherwise would've had access to. X ended up paying H on 22 May 2022 (after its first payment in December 2021 was lost to the scammers). So Revolut should pay this interest from 22 May 2022 to the date of settlement.*

### My provisional decision

*For the reasons explained, I'm minded to uphold this complaint and to direct Revolut Ltd to pay X:*

- *\$99,976; plus*
- *interest on this amount calculated at 8% simple per year from 22 May 2022 to the date of settlement (if Revolut deducts tax from this interest, it should provide X with the appropriate tax deduction certificate)."*

Revolut didn't respond to this second provisional decision, and X accepted this second provisional decision. And now both parties have had fair opportunity to respond, I'm ready to explain my final 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 done so, and in the absence of further evidence or argument from the parties, I've reached the same conclusions as in my second provisional decision set out above, and for the same reasons.

### **My final decision**

For the reasons explained, I uphold this complaint and I direct Revolut Ltd to pay X:

- \$99,976; plus
- interest on this amount calculated at 8% simple per year from 22 May 2022 to the date of settlement (if Revolut deducts tax from this interest, it should provide X with the appropriate tax deduction certificate).

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

Neil Bridge  
**Ombudsman**