

The complaint

Mr S complains that Revolut Ltd won't refund money he lost when he fell victim to an impersonation scam.

What happened

On 15 January 2024, Mr S received a call from someone purporting to be from Revolut. Unfortunately, the caller had spoofed Revolut's genuine number. They said they had called in relation to suspicious activity. Mr S was told that payments coming into his Revolut account from his account with a high street bank "H" were being intercepted by fraudsters. The caller said they were also liaising with H.

Mr S states he was still hesitant, and the caller sent him a text message with a reference number which appeared in the same thread as genuine text messages from Revolut. When he checked his Revolut account, Mr S could see declined and reverted transactions. He states this led him to believe that Revolut was protecting his money and preventing it from being sent.

The caller told Mr S that malware had been installed on his device. In order to secure his account, he needed to follow their instructions in moving money from H to his Revolut account. Under the pretext of keeping his money safe, Mr S was tricked into making two payments (£10,000 followed by £5,000) to a third-party account. He says it was explained that the account details were set up in such a way to be hidden and secure, so they couldn't be intercepted.

Mr S states that the caller started laughing at him after he made the second payment. It was then that he realised something had gone wrong.

Revolut contacted the beneficiary bank when it was notified of the scam. Although it was advised partial funds remained, Revolut considered recovery was unsuccessful when the beneficiary bank didn't provide sufficient information for it to locate the funds it said it had returned. Revolut refused to refund Mr S's losses, saying it provided him with a scam warning at the time, but he decided to proceed regardless.

Our investigator didn't uphold the complaint. They concluded that Mr S wasn't honest with his answers when Revolut questioned him, despite the warnings displayed being appropriate to the scam type he'd fallen victim to.

Mr S didn't agree and asked for the complaint to be reviewed by an ombudsman.

I issued a provisional decision last month and gave reasons for why I intended upholding the complaint in part. I said:

"In deciding what's fair and reasonable, I'm 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 S 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 S 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’m 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 January 2024 fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks,

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).

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'm 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'm 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 don't 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.*

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/

- *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 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.*

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 January 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; and*
- *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 S was at risk of financial harm from fraud?

³ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

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)

There's no dispute here that Mr S has fallen victim to a cruel scam here, nor that he authorised the payments in question. So, although he didn't intend his money to go to scammers, the starting position is that Revolut is expected to process payments and withdrawals that a customer authorises it to make.

I've considered, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr S might be at a heightened risk of fraud that merited its intervention.

I've looked at the operation of Mr S's Revolut account and I consider Payment 1 was significantly larger in value compared to the account activity in the previous 12 months. The largest transaction Mr S made in that period was a card payment of £1,048, also in January 2024. By contrast, Payment 1 was nearly ten times that amount.

I think that the circumstances should have led Revolut to consider that Mr S was at heightened risk of financial harm from fraud. In line with good industry practice and regulatory requirements, I'm satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

As Revolut did recognise Payment 1 as possibly scam related, I've considered whether it intervened appropriately when it held the transaction and made further enquiries.

What did Revolut do to warn Mr S?

Revolut says it provided a warning when Mr S set up the new beneficiary before making Payment 1. It says it warned him that he might be falling victim to a scam by providing the following message:

"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."

Revolut says following this warning, it asked Mr S to complete a questionnaire. He was asked a series of questions, some requiring him to select his response from a list of options. These questions included (Mr S's response are in brackets):

- Is anyone telling you how to answer these questions? Is someone telling you which options to choose or telling you this is urgent? (No)*
- Why are you making this transfer? (Something else)*
- Select the option that best applies. (Personal)*
- Were you told which option to select? (No)*
- Were you told your account isn't safe? (No)*
- Have you been asked to install software? (No)*
- Have you been told to ignore these warnings? (No)*

After completing the questionnaire, Mr S was shown a scam warning over a series of screens which couldn't be skipped. The warning advised him not to give remote access to anyone, be wary of unexpected phone calls, and not transfer funds to an account he didn't open himself.

Revolut submits that Mr S was given the opportunity to select that he'd been told his account wasn't safe but didn't. It states it doesn't believe that further intervention would have resulted in it establishing further information that could have changed the outcome.

What kind of warning should Revolut have provided?

I've thought very carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

I don't discount Revolut's warning entirely – the questions asked did attempt to identify the specific scam-type Mr S had fallen victim to. But having thought carefully about the risk the transaction presented, in the circumstances of what happened here and what Revolut knew about Mr S's previous account spending, I think a proportionate response to that risk would be for Revolut to have gone beyond asking a series of questions during the payment flow and providing an automated warning. I consider it should have attempted to establish the circumstances surrounding the transaction through a direct intervention by one of its agents. It could have done this by, for example, directing Mr S to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding Payment 1 in the way described, would that have prevented the losses Mr S suffered?

Had there been a direct intervention and questions asked by an agent, I think Mr S would have been asked what he was doing and why. A natural opportunity would have arisen to probe Mr S's responses further. While the questionnaire did attempt to establish the potential risk involved, in the circumstances of what happened here, it wasn't detailed enough. It didn't sufficiently delve into Mr S's reason for making the payment. He selected personal, but there were no further questions asked to narrow down Mr S's reason for making such a large payment.

From what Mr S has said, it seems to me that the caller was advising him to be vague. But had the intervention happened in the way I've described, the agent would have wanted more details from Mr S. In that scenario, it's no longer the case that Mr S was simply clicking through pop-up screens he thought to be malware. On balance, I'm persuaded that he would have realised he was interacting with a human being whose enquiries were based on his responses. I think it would have been clear to Mr S that it wasn't malware. And this would have given him more doubts. Enough to break the spell he'd been under because of clever tactics employed by the scammer. Mr S was paying an account in another individual's name, which he understood was to keep his funds hidden and secure so they couldn't be intercepted. But the agent would have wanted to understand who this payee was, how he knew them, etc. This would have indicated to Mr S that the funds weren't going to a safe location but to another individual.

I've considered the possibility that the scammer might have tried to argue that the in-app chat feature was also malware. But considering what I've said above about the kind of interaction Mr S would have had with an agent, and how it would have differed from the questionnaire, I don't think the scammer's explanation would have seemed plausible to Mr S. Especially, when considering the warnings the agent would have provided him at the time of establishing the risk.

Having carefully thought about this, I'm satisfied that an intervention from Revolut along the lines described above would very likely have caused Mr S to decide not to go ahead with Payment 1.

Should Mr S bear any responsibility for his losses?

There's a general principle in law that consumers must take responsibility for their decisions.

I recognise that there were relatively sophisticated aspects to this scam, not least spoofing the phone number the call and the text message Mr S received.

However, there are elements of the scam that don't make sense and ought to have caused concerns. For example, Mr S was told payments from his account with H to his account with Revolut were being intercepted. In that situation, I question why in the first instance he agreed to move £15,000 from H to his Revolut account, knowing he could be risking those funds from being intercepted. Also, if his account with H wasn't compromised and it was just the payments sent to his Revolut account, I question the logic of moving money out of H in the first instance. Equally, once the funds had safely credited his Revolut account, why then was there a need to move them out of that account for safekeeping?

I'm also mindful that Revolut's automated warning did cover 'safe account' scam features that ought to have resonated with Mr S. I acknowledge what he's said about not thinking of the caller (who claimed to be from Revolut) as a third party, and therefore not considering their involvement as being assisted by someone. But Revolut also warned Mr S that financial institutions won't ask customers to urgently move funds. And not to transfer to an account he didn't open himself. The warning also said fraudsters could make calls look legitimate, and to check if the call is genuine by contacting the organisation himself.

Also, the explanation given for why payments needed to be made to a third party's account doesn't quite add up.

If Mr S had heeded Revolut's warning, it's very likely the scam would have been uncovered and losses prevented. Having thought carefully about this, I consider that Mr S ought to bear some responsibility for his losses because of his role in what happened – and that compensation should be reduced accordingly. Weighing up everything, I consider that it would be fair to reduce compensation payable by 50%.

Could Revolut have done anything to recover Mr S's money?

From the available information, I can see Revolut contacted the beneficiary bank within an hour of it being notified of the scam. It wasn't until two days later that it heard back and was advised that partial funds (£1,748.50) remained in the beneficiary account.

I can see Revolut provided the information that the beneficiary bank requested in order to return the funds. And once it was informed that funds had been returned on 22 January, Revolut made further enquiries when it couldn't locate the credit. The response it received from the beneficiary bank didn't offer anything helpful. Mr S will no doubt agree that there's no credit of £1,748.50 in his Revolut account on or after 22 January 2024.

When Mr S's case was passed to me, I contacted Revolut and asked it to chase the beneficiary bank. It did but didn't hear back. I then contacted the beneficiary bank

directly and made enquiries about the funds it said it returned. Despite a few email exchanges, the beneficiary bank hasn't provided any evidence to show that it returned the funds to Mr S's Revolut account like it says it did.

Having thought carefully about Revolut's responsibilities in attempting recovery of funds, I'm satisfied there's nothing more it could have done here. That partial funds remain but haven't been recovered isn't something I can fairly hold Revolut liable for."

I invited further comments from both parties in response to my provisional decision.

I didn't hear back from Revolut despite sending a reminder before the deadline I gave.

Mr S replied and said he accepted my provisional decision. Around ten days later, he informed me that Revolut had paid £1,748.50 into his account. The reference used was 'Fraud Refund'.

I wrote to Revolut again and said that I hadn't heard from it since issuing my provisional decision. I also said that the amount it had paid Mr S following the decision was not the amount I said I intended awarding. It was, however, the exact amount the beneficiary bank advised remained in the beneficiary account and which it had returned in January 2024.

I informed Revolut that unless I heard from it otherwise, I would assume that the credit applied to Mr S's account is the amount it was able to recover from the beneficiary bank. And therefore, in my final decision I planned to direct Revolut to refund 50% of Mr S's outstanding loss.

Revolut still hasn't responded and the revised deadline I gave has now passed. I'm satisfied that it has had sufficient time to submit any final comments for my consideration. Therefore, it's now appropriate for me to proceed with issuing my final decision on this complaint.

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.

I thank Mr S for letting me know about the amount that was paid into his Revolut account.

As Mr S hasn't provided any further comments for me to consider, and Revolut hasn't responded at all, I see no reason to depart from my provisional findings.

Putting things right

Revolut Ltd needs to refund 50% of Mr S's outstanding loss i.e., 50% of £13,251.50. It also needs to add simple interest at 8% per year to the individual refunded amounts, calculated from the date of loss to the date of settlement.

If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, Revolut should tell Mr S how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given, my final decision is that I uphold this complaint in part. Revolut Ltd

needs to put things right for Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 January 2025.

Gagandeep Singh
Ombudsman