

The complaint

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

What happened

On 24 August 2023, Mr D received a call from a No Caller ID and the individual claimed they were calling from his bank "M". The caller told Mr D that he'd been the victim of identity fraud and payments had been attempted from his account with M. They also told him that M was working with his other bank "N" to protect his money.

When Mr D asked for verification, he received a verification code by SMS text. It appeared in the same thread as previous texts from M. Under the guise of protecting his money, Mr D followed the caller's instructions and authorised payments to a merchant using a payment processor. He understood it was M's financial services provider. Mr D also followed the caller's instructions in taking out a loan with M and transferring the funds to the same merchant. It has been explained to him that he needed to protect M's money, and this step was necessary to safeguard it.

After he'd made the above transactions, the caller instructed Mr D to move funds sitting in his account with N to M and then on to Revolut. He states he was told to create an account with Revolut which he could use while his accounts with M and N were frozen due to being compromised. Once the funds arrived in his Revolut account, Mr D was instructed to authorise two debit card payments to the same merchant he earlier sent funds to from his account with M. The first transaction was initially declined due to an incorrect CVV code.

The caller then told Mr D that they would ring again the next day. After the call ended, Mr D felt something wasn't right and he contacted M. It was then that he realised he'd fallen victim to a scam. M refunded the money Mr D sent directly to the scammer from his account with it. It told him to contact Revolut regarding the payments made to it.

Revolut said it couldn't recover the funds as the debit card payments had already been made. It also rejected Mr D's chargeback request and said that the payments couldn't be considered fraudulent given he had approved them in the Revolut app. When Mr D said he'd been scammed into approving them, Revolut said it couldn't help any further and suggested that he contact law enforcement.

Unhappy with this response, Mr D made a complaint to Revolut and subsequently referred it to our service. One of our investigators looked into it and didn't think Revolut had acted fairly. They thought a declined transaction along with a pattern of several incoming credits posed a risk. The investigator was persuaded that Mr D would have stopped in his tracks had Revolut asked open-ended questions about what he was doing, and his response would have uncovered the scam. They recommended Revolut to refund Mr D's loss with a 50% deduction for contributory negligence.

Revolut didn't agree with the investigator's conclusions and asked for an ombudsman to make a decision. In summary, it said it is bound by contract, applicable regulations, and the

common law to execute valid payment instructions. And that this service has overstated Revolut's duty to its customers and errs in law.

I issued my provisional decision a couple of weeks ago and said that I intended agreeing with the investigator's overall outcome, but for slightly different reasons. I gave both parties an opportunity to provide any further comments or evidence for me to consider before I finalise my decision.

Mr D replied and said he didn't have any further comments. We haven't heard back from Revolut and the deadline I gave has now passed. I've therefore assumed it didn't have anything further to add.

What follows is my provisional decision made final.

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.

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 D 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*".

In this respect, section 20 of the terms and conditions said:

“20. When we will refuse or delay a payment

We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

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

I'm satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in August 2023 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I've taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But the basis on which I'm required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R:

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in August 2023 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.

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;¹
- 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.

For example, it is my understanding that in August 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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 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 Code², 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

¹ 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/

² 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 Duty³, 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"*⁴.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ 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.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So, it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 August 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

³ 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.

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

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.

While I'm required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I'm satisfied that to comply with the regulatory requirements that were in place in August 2023, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr D has fallen victim to a cruel scam here, nor that he authorised the payments he made through his card. This was a newly opened account, so there was no account history Revolut could have compared the disputed transactions with. But having considered the available information, I'm satisfied that Revolut should have recognised the risk of financial harm.

I say this because the overall pattern of the account activity that day made this payment request appear unusual. For instance, the first payment amount is quite specific and is just a penny shy of £5,000. I find it odd that a payment for such a specific amount was requested almost immediately after there were 14 credit transactions into the account. Added to that is the fact that the account was created just prior to the account activity I've described above.

Having carefully considered the individual circumstances of what happened here, I find these factors should have led Revolut to consider that Mr D 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.

What did Revolut do to warn Mr D?

Revolut didn't provide any warnings to Mr D before executing his authorised instructions in relation to either of the disputed payments.

What kind of warning should Revolut have provided?

I've thought 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 primary duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate

systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with other firms, has developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by August 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored effective warnings relevant to that scam. As I explained earlier in this decision, I understand Revolut did have systems in place to identify scam risks associated with card payments which enabled it to ask some additional questions and/or provide a warning before allowing a consumer to make a card payment.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider a firm should by August 2023, on identifying a heightened scam risk, have taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

Taking that into account, I'm satisfied that, by August 2023, Revolut ought to have narrowed down the potential risk further. I'm satisfied that when Mr D made the first payment, Revolut should – for example by asking a series of automated questions designed to narrow down the type of scam risk associated with that payment – have provided a scam warning tailored to the likely scam he was at risk from.

In this case, Mr D was falling victim to a 'safe account' scam – he believed he was making payments to keep his money safe.

As such, I would have expected Revolut to have asked a series of simple questions in order to establish that this was the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Mr D gave. I'd expect any such warning to have covered off key features of this type of scam such as: scammers could be impersonating Revolut or other institutions and telling the customer (Mr D in this case) that their account could be at risk; to be aware of unexpected calls that urges them to do something quickly, and to hang up and call the company directly to verify what's been said; and to be aware of SMS messages which scammers could send on the same text thread as the genuine messages from the company in question.

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr D by covering the key features of such scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr D suffered?

I've thought carefully about whether a specific warning covering off the key features of impersonation scams would have likely prevented any loss in this case. And on the balance of probabilities, I think it would have. There were several key hallmarks of common impersonation scams present in the circumstances of Mr D's payments, such as being contacted out of the blue by someone impersonating to be from M, being told his accounts

were at risk, sending a verification code that came through in the same text threat as genuine messages from M.

I would add that I haven't seen anything that indicates that Mr D expressed mistrust of Revolut or financial firms in general. So, I'm not persuaded that he was so taken in by the scammer that he wouldn't have paid attention to Revolut's warning. I've also checked and have seen no evidence that Mr D was provided with warnings by the firm from which the funds used for the scam originated.

Therefore, on the balance of probabilities, had Revolut provided Mr D with an impactful warning that gave details about impersonation scams and how he could protect himself from the risk of fraud, I believe it would have resonated with him. I'm satisfied that a timely warning to Mr D from Revolut would very likely have caused him to pause and take additional steps to verify the legitimacy of the caller – revealing the scam and preventing his losses.

Is it fair and reasonable for Revolut to be held responsible for Mr D's loss?

In reaching my decision about what is fair and reasonable, I've taken into account that Mr D funded his Revolut account from his account with M. But as I've set out in some detail above, I think that Revolut still should have recognised that Mr D might have been at risk of financial harm from fraud when he made the first disputed transaction, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I'm satisfied Revolut would have prevented the losses Mr D suffered. The fact that the money used to fund the scam came from elsewhere doesn't alter that fact and I think Revolut can fairly be held responsible for Mr D'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 the firm that is the origin of the funds.

I've also considered that Mr D has only brought a complaint against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr D could instead, or in addition, have sought to bring a complaint against those firms. But Mr D has not chosen to do that and ultimately, I can't compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr D's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; 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'm satisfied that it would be fair to hold Revolut responsible for Mr D's loss (subject to a deduction for Mr D's own contribution which I will consider below).

Should Mr D 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 text message Mr D received. I'm also aware that scams of this nature rely on the victim being worried about their funds and acting without too much thought.

However, there are elements of the scam that don't make sense and ought reasonably to have concerned Mr D. For example, he was told he needed to take out a loan with M to protect M's money and to lie about the purpose of the loan. I think it's an odd request from a bank to tell its customer to borrow a specific sum of money to keep its funds secure.

Also, the reason Mr D was given for transferring his account balance with N to send to the safe account via M and Revolut doesn't make sense. If Mr D was initially instructed to move his account balance with M, and the loan he subsequently took out with it, directly to the safe account, why then couldn't the funds held with N also be transferred to that safe account directly from N – or via M? And if they needed to via M, why was the Revolut account needed to facilitate this transfer?

Having thought carefully about this, I consider that Mr D 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 D's money?

These were card payments. Once authorised, they were processed even if they appeared as pending on Mr D's account at the time he reported the matter to Revolut. The only avenue would have been to attempt a chargeback. But there are limited scenarios (reason codes) under which a chargeback can be raised – these are set out in the card scheme's chargeback rules. Unfortunately, scam isn't one of those reasons. Fraud is, but as these transactions were completed using 3DS authentication (an additional layer of security which requires the cardholder to complete an additional step to verify the payment), there would be no prospects of success. I can see this is what happened here.

The investigator said that Mr D could raise a 'dispute' chargeback claim and provide the necessary information to support his claim. I think what the investigator meant was that Mr D could raise a chargeback using one of the other reason codes. The only possible code that could apply in this situation is 'goods or services not received'. But I think it's unlikely a chargeback under that reason code would have succeeded, given Mr D wouldn't have been in a position to provide documentation to evidence what goods or service were purchased but not received. It's likely the scammer will have obtained goods or services from the merchant using the funds they tricked Mr D into sending.

In the circumstances, I don't think Revolut could or should have done more to recover the payments once they had been made.

Putting things right

Revolut Ltd needs to refund Mr D 50% of the disputed transactions.

Revolut Ltd also needs to add simple interest at 8% per year to the refunded amount, calculated from the date of loss to the date of refund⁶.

⁶ If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D 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. Revolut Ltd needs to put things right for Mr D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 January 2025.

Gagandeep Singh
Ombudsman