

The complaint

Mr A is unhappy that Revolut Ltd didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In August 2023, Mr A was the victim of a scam. He was cold-called by someone who claimed to be an employee of his bank, which I'll refer to as Bank A. He was told that his account had been "*hacked*" and, his money was at risk, and it was imperative that he transfer his money to a safe account as soon as possible.

The fraudster was able to make it look as if the call was from a genuine number connected to Bank A. Mr A didn't realise that it was possible to spoof the origins of telephone numbers in this way. He was told to create a new account at Bank A which would have a higher transfer limit, transfer his funds to that account and then send them on to his Revolut account. Once they were safely received with Revolut, he was told to send them on elsewhere. This was his supposed "*safe account*." I understand he made payments to it believing the account was in his own name. It was, in fact, an account controlled by the fraudsters.

He made two payments using his Revolut account - for £100 and £18,900 respectively. At the same time, Mr A's wife called Bank A. Mr A says she waited for around 90 minutes before that call was answered. This overlapped with an attempt to make a further payment from the Revolut account of £21,900. Revolut paused this payment and asked Mr A to speak to one of its agents via the chat function in its app. He was asked to verify his identity and whether the account he was paying was under his control. Within just a few minutes of Revolut warning him that he might be at risk of falling victim to a scam, an employee of Bank A confirmed to Mrs A that they hadn't been speaking to a genuine employee of the bank. Mr A told Revolut that he was being scammed and so the third payment was cancelled.

Mr A complained to Revolut that it hadn't done more to protect him in relation to the first two payments. Revolut didn't agree to refund him. Mr A wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in full. Revolut disagreed with the Investigator's opinion and so the complaint 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 customer’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 A 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 A 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 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 August 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

¹ The Payment Services Regulation 2017 Reg. 86(1) 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).

- 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 “*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 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*

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”

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.

*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 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 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).

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

I recognise that, as this was a relatively new account, Revolut was in a slightly more difficult position in respect of spotting payments that might be unusual or out of character. Mr A's main account was with Bank A, and it would've had considerably more data at its disposal to determine whether either of these payments were uncharacteristic for him.

I wouldn't have expected Revolut to have had any concerns about the first payment (£100) – I don't think it would be practical or realistic to expect it to intervene in connection with a payment of that value. However, I think the second payment of £18,900 required that it take some action. It was significant in value, much higher than any of the other payments that had been made from the account and was being made to a new payee. I think Revolut ought to have been alive to the possibility that the payment was being made in connection with fraud and taken some steps to protect Mr A from that risk.

I can see that Revolut asked Mr A several questions and, based on his answers, provided him with a system generated warning. Unfortunately, Mr A didn't answer all Revolut's questions accurately – for example, he said the purpose of the payment was "*something else*", he said that nobody had told him his account wasn't safe and he said that he wasn't being guided in how to answer the questions. Although some of the content of the warnings displayed to Mr A was relevant to his circumstances, he wasn't deterred and went ahead with the payments.

In my view, the risk here was sufficiently clear that merely providing a tailored warning wasn't a proportionate response. Instead, I think there needed to be a human-led intervention. The payment should've been paused, and Mr A asked to communicate with an employee of the firm via the in-app chat function. He should've been asked open-ended questions to establish the circumstances in which this payment was being made. This did happen with the third payment, but it ought to have happened sooner.

If it had, I think it's likely that Mr A wouldn't have gone ahead with the payments. Revolut has pointed out that Mr A didn't provide accurate information when it asked him questions about

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

the payment that led to a system generated warning. It says that things may have turned out differently if he'd answered its questions accurately.

I've considered this argument carefully. However, I don't think it automatically follows that, since Mr A provided inaccurate information (at the direction of the fraudsters), he would've misled Revolut if it had asked him open-ended questions about the reasons for the payment. He's told us he wasn't given a cover story or told that it was essential that he mislead Revolut if it queried any of the payments with him. For example, he wasn't told (as is common in scams like this one) that an employee of the firm was somehow involved in the scam and so it was imperative that he not reveal the real purpose for the payment. It seems to me that he followed the guidance of the fraudster in answering Revolut's questions because he was persuaded that this was the best way to ensure the payment was processed without delay. He had, after all, already been told that time was of the essence, and he had a short window in which he needed to act to protect his money.

In any event, I've not seen anything to suggest that there was detailed coaching by the fraudsters. In the absence of that, I don't think it's likely that Mr A could've come up with a plausible explanation as to why he was making the payment. In addition, if the execution of that payment was simply delayed, it would've allowed enough time for Mrs A to learn that the call wasn't really from an employee of Bank A after all.

Should Mr A 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. Having done so, I'm not persuaded it would be fair and reasonable for a deduction to be made here. First, the fraudsters had to take some basic steps to persuade Mr A that they were really calling from the fraud team at his bank. This included the use of number spoofing and the fact that they knew some information about activity on his account. The actions he went on to take have to be seen in that context – he genuinely believed he was acting on the guidance of an employee of Bank A.

I'm also mindful of the fact that Mr A appears to have been put under significant psychological pressure to act quickly. He was told that there was a specific deadline by which he needed to move his money out his account at Bank A. While some of the actions Mr A took might look careless with the benefit of hindsight, I'm mindful of the fact that the fraudsters engendered a sense of urgency and panic which likely made it harder for Mr A to think critically about what he was doing and process the contents of any warnings that were displayed to him during the payment process.

Revolut has argued that, since Mr A gave inaccurate information to it when making the second payment, it's fair for a deduction to be made from any compensation it has to pay him. I can understand that perspective, but I'm afraid I don't agree with it. In order for me to say that a deduction should be made, I'd need to be persuaded that Mr A's actions contributed to the loss he suffered. It's not enough to just observe that they were unhelpful or unwise or that, speculatively, different answers might have led to a different outcome. In this instance, the cause of Mr A's losses was the fact that Revolut didn't intervene in connection with payment 2 in a manner that was proportionate to the risk. If it had done so, given the way subsequent events transpired, it would've prevented the losses he suffered overall.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Mr A accepts my final decision, Revolut Ltd should refund the second payment he made in connection with the scam. It should also add 8% simple interest per annum to that payment calculated to run from the date it left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 June 2025.

James Kimmitt
Ombudsman