

## **The complaint**

Miss C complains Revolut Ltd (“Revolut”) hasn’t refunded her the money she lost when she fell victim to an impersonation scam.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here:

In early April 2022, Miss C fell victim to an impersonation scam. She’d received a text message that purported to be from the NHS asking her to make payment for a Covid-19 test. Miss C generated a virtual card on her Revolut app and entered the details when prompted.

Two days later, Miss C received a call from someone who said they worked for Revolut, but who we now know to be a scammer. The scammer called Miss C from a “spoofed” Revolut telephone number and told her the text message she’d received days before had been from a scammer and she’d unwittingly compromised her Revolut account details, alongside another account she held with a third-party bank. For the purposes of this decision, I will refer to the third-party bank as “Bank A”.

Miss C told us the scammer asked her some account verification questions and confirmed some of the recent transactions on her account too. He provided Miss C with a Police crime reference number and an Action Fraud reference number. The scammer told Miss C that he had been able to block some attempted fraudulent transactions, but she would need to move all of her money from both her Bank A and Revolut accounts to a safe account in order to protect her funds.

Miss C says she was dismayed at having fallen victim to a text message-based scam and genuinely believed she was in danger of losing her money. The scammer told Miss C that fraudsters had been able to “mirror” her banking apps and urgent action was needed to prevent them gaining full access to her mobile banking facilities. So, over the next couple of hours, Miss C proceeded to transfer all of the funds she held with Bank A into her Revolut account and on to the scammer.

Initially Miss C made a payment of £3,447.38 which amounted to the total amount she held in both accounts. Miss C was then persuaded to take out a loan with Bank A. She then transferred the loan funds from Bank A to her Revolut account and on to the scammer. This second payment amounted to £19,000. After Miss C reported the scam, Revolut was able to recover £5 so in total Miss C lost £22,442.38 to the scam.

When Miss C realised she’d been scammed, she contacted Revolut via its in-app chat but Miss C says it took a while for anyone to act. From this point onwards, Miss C says Revolut failed to engage with her complaint, passed her back and forth between advisors and took too long to provide her with its final response letter. During this period, Miss C divested £25,000 of her stocks and shares from her ISA to repay the loan she’d taken out and to cover her living expenses. When Miss C repaid the loan she’d taken out with Bank A, she

also had to pay an additional £8.90 in interest. Miss C has told us that divesting her ISA also meant she suffered a further loss of £737.

Revolut looked into Miss C's complaint but it declined to offer her a refund of the amount she had lost. It said it had provided Miss C with scam warnings during the payment process which she had chosen to ignore.

Unhappy with Revolut's response, Miss C brought her complaint to this service and one of our Investigators looked into things.

Our Investigator thought the complaint should be *partially* upheld. They didn't think the first payment of £3,447.38 was so unusual that Revolut should've intervened before it left Miss C's account. However, they went on to say that the second transaction amounting to £19,000, was suspicious enough that Revolut should've stepped in and questioned Miss C about it before it was allowed to leave her account. They thought had Revolut appropriately intervened, the scam would've come to light and Miss C's further loss prevented. So, the Investigator recommended that this payment be refunded to Miss C, minus 50% to recognise that she had also played a role in the success of the scam. The Investigator also recommended that Revolut pay interest on this amount at Miss C's savings account rate and refund 50% of the interest Miss C had been charged when she repaid the loan.

Revolut didn't respond to our investigator's opinion. Miss C responded to say she didn't agree. She said the opinion failed to take into account the pressure the scammer had put on her at the time or that she was following the scammers instructions as to what details to enter when making the payments and moving beyond the scam warnings presented to her. Miss C reiterated that the first transaction was unusual when compared to her normal account activity and for this reason, she felt Revolut should've intervened when this transaction was attempted. Miss C said had Revolut intervened at the point the first transaction was requested, the spell would've been broken and the scam prevented from the outset.

Miss C's additional points didn't change our investigators mind.

As an agreement could not be reached, the case has been passed to me for a 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.

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 Miss C 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 Miss C and the Payment Services Regulations to carry out her 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 immediately<sup>1</sup>. 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 April 2022 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 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;<sup>2</sup>
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;

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<sup>1</sup> 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).

<sup>2</sup> 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/>

- 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)<sup>3</sup>.
- 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 Code<sup>4</sup>, 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).

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 April 2022 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;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before

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<sup>3</sup> 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.

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

processing a payment – (as in practice Revolut sometimes does).

*Should Revolut have recognised that Miss C was at risk of financial harm from fraud?*

I agree with our investigator in that I don't think the first payment amounting to £3,447.38 was so unusual that it should've prompted an in-person intervention from Revolut. Whilst I acknowledge Miss C's arguments that this payment was for a higher amount than the payments she usually made from this account, it's not unusual for customers to request one off larger payments every now and then and I don't think there was anything so inherently suspicious about this payment that it should've prompted further questioning. At the time the payment was requested, Revolut provided Miss C with a pop-up scam warning and I'm satisfied that this was proportionate to the risk identified at the time.

However, I am persuaded that Revolut should've had serious concerns about the activity on Miss C's account once she attempted to make the second payment for £19,000. This was the second high value payment that was being made from Miss C's account within an hour. It was significantly higher in value than the first payment and was being made to a new payee. It was also being facilitated by a large transfer into the account and was ultimately draining Miss C's account of funds. So, by this point, the activity on Miss C's account had started to bear some of the hallmarks of a scam.

*What did Revolut do to warn Miss C?*

Revolut did provide a warning when Miss C was attempting to make this payment. It presented her with the same warning it had presented her with when she made the first payment. This warning said:

*"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 that fraudsters can impersonate others, and we will never ask you to make a payment."*

While this warning does contain some information relevant to Miss C's circumstances, it requires no interaction or real engagement from Miss C and, in my view, lacks sufficient context to have been impactful in the circumstances. In other words, I don't consider it to be a proportionate response to the risk that payment 2 presented.

While I accept that Revolut has attempted to take some steps to prevent harm from fraud, the warning it provided here was too generic to have the necessary impact, unless Miss C already had doubts about who she was speaking to (and, at the point of making the transactions under discussion here, I haven't seen sufficient evidence that she had those doubts).

So, having thought carefully about the risk payment 2 presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Miss C's account. I acknowledge that Revolut asked Miss C to input the reason for the payment via its app during the payment process and Miss C didn't tell Revolut she was making the payment to a safe account – she was being instructed by the scammer to input different information. But given the significant risk presented by this payment, I think Revolut should have done more than request this information via drop down in its app. I'm satisfied Revolut should have sought to speak with

Miss C in person, for example, by directing Miss C to its in-app chat to discuss the payment further.

*If Revolut had attempted to establish the circumstances surrounding Payment 2, would the scam have come to light and Miss C's loss been prevented?*

Had Miss C told the genuine Revolut that she was being asked to move money to a new account in order to protect her funds, it would have immediately recognised that she was falling victim to a scam. It would have been able to provide a very clear warning and, given that Miss C had no desire to lose her money and nothing to gain from going ahead with the payment, it's very likely that she would have stopped, not followed the scammer's instructions and her loss would have been prevented.

So, I've firstly considered whether Miss C would've revealed that she was being asked to move money to a new account to protect her funds.

Revolut has said that when Miss C was attempting to make both of the payments in question here, she was asked to enter the reason she was making the payments into her Revolut app. Revolut says it provided Miss C with the option to pick "safe account", but Miss C chose the option "something else" instead. Revolut says this suggests that had Miss C been asked, she would've chosen to lie about the real reason for the payments so intervention wouldn't have made a difference.

I don't agree. When Miss C entered the payment reason "something else" she was being heavily coached by the scammer through the payment process. She was simply following the scammers instructions and she hadn't set out to deliberately deceive Revolut. So, whilst I accept that Miss C, up until this point, had been following the scammers instructions as to what to input along the payment journey, had Miss C been required to positively engage with another person at genuine Revolut, I'm satisfied she would've had to actively engage with the questions in real time and consider her answers and I haven't seen anything to persuade me that she would've deliberately chosen to mislead Revolut– she had no reason to. She genuinely believed she was transferring money to a safe account to protect her funds. She hadn't questioned what she was being asked to input up until this point but this was because there was no real interaction or engagement with genuine Revolut which in my view, would've had the necessary impact to uncover the scam.

Ultimately, as Revolut didn't question the payments Miss C made in person, it can provide no compelling evidence that she would have actively misled it about the purpose of the payments or the surrounding circumstances.

So, Revolut should, once it had established why Miss C was making the payments, provided a very clear warning that explained, as a minimum, that it would never ask her to move money to a new account, that phone numbers could be spoofed and that she was falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Miss C to stop. She didn't want to lose her money and I can see no reason for her to have continued to make the payment if she was presented with a warning of this nature. She would've been actively engaging with someone in real time who would've had been able to tell her she was falling victim to a scam.

So, I'm satisfied that had Revolut established the circumstances surrounding Payment 2, as I think it ought to have done, and provided a clear warning, Miss C's loss from and including Payment 2 would have been prevented.

### Should Miss C bear any responsibility for her 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.

My intention is not to further Miss C's distress where she's already been the victim of a cruel scam. I've taken on board what Miss C has said about being pressured by the scammer and the investigator placing too much weight on her entering an incorrect payment reason and therefore preventing Revolut from uncovering the scam.

As I've said above, I think Revolut could've prevented the scam had it directly engaged with Miss C. I also want to assure Miss C that I've thought about the numerous sophisticated tactics used by the scammer in this case to make her believe she was speaking with genuine Revolut. However, by the time Miss C was asked to take out a loan with Bank A, I think she should've had serious concerns about what she was being asked to do and how this could plausibly help secure her accounts which no longer contained any of her own funds.

It's unclear how Miss C's account at Bank A could've been compromised when she had only used her Revolut account details to respond to the "scam" text message. I also don't think it's plausible that a member of staff at Revolut would be contacting Miss C to discuss an account held with an entirely different business. I understand that Miss C had been told that the supposed scammer had been able to "mirror" her banking apps and been able to take out a loan in her name. But it's unclear what this means or how her logging into her Bank A app to take out a loan for a car could possibly prevent this. And so, at the point Miss C was asked to take out a loan and lie during the application, I think she should've had concerns about what she was being asked to do and how this could plausibly help her protect her account.

Overall, I think there were enough red flags at this point that Miss C should've been concerned about the legitimacy of what she was being asked to do. For this reason, I am satisfied she should share liability for her loss with Revolut.

In summary, I think Revolut should've intervened when Miss C made the 2nd payment and if it had her loss could've been prevented. However, I think it's fair for Miss C to share the responsibility for her loss with Revolut for the reasons I've set out above and therefore I only ask Revolut to refund 50% of this payment.

### *Additional compensation*

Miss C has highlighted the significant impact this scam has had on both her finances and her mental health. She has stressed that Revolut's handling of her complaint has continued to make things worse for her. I sympathise with the position Miss C has found herself in and I acknowledge Revolut provided her with inconsistent information in regard to the outcome that had been reached on her complaint and that it, at times, could have offered her clearer information. I also acknowledge that she received some generic responses to the enquiries she raised with Revolut. But having reviewed the correspondence that took place between the two parties, I'm not persuaded that an additional compensatory amount is warranted.

I understand why the generic responses she was receiving from Revolut would have been frustrating especially where Miss C had been the victim of a scam and was desperate for some reassurance. But there wasn't any specific information Revolut could provide to her whilst it was investigating her complaint and reaching out to third-parties and so there wasn't

anything further it could say. And ultimately, I don't think Revolut took too long to inform Miss C of its outcome once its investigations had been completed.

I also won't be directing Revolut to refund Miss C the amount she lost when she divested her savings because I'm not satisfied this loss was reasonably foreseeable to Revolut at the point Miss C made the payments under discussion here.

### **Putting things right**

Overall, I'm satisfied that it's fair and reasonable to require Revolut to refund Miss C:

- 50% of Payment 2 minus any funds already recovered.
- Pay interest on the 50% refund calculated at her savings account rate. Interest should be calculated from the date Miss C divested her savings to the date of settlement.
- As I'm satisfied that Miss C wouldn't have had to pay interest on her loan had Revolut stopped the second payment. It should also refund to Miss C 50% of the interest charged when she repaid the loan plus 8% simple interest to compensate Miss C for the amount of time she has been without these funds. \*

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

### **My final decision**

My final decision is that I partially uphold this complaint about Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 December 2024.

Emly Hanley Hayes  
**Ombudsman**