

## The complaint

Miss M is unhappy Revolut Ltd won't refund the money she says she lost as the result of a scam.

## What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Miss M complains that on 04 May 2023 she sent 4 payments to what she thought was another account in her name.

Payment 1	04 May 2023	£5
Payment 2	04 May 2023	£1,997
Payment 3	04 May 2023	£1,997
Payment 4	04 May 2023	£1,368.84
	Total	£5,638

Miss M says she received a call from an unknown number from someone impersonating a Revolut employee.

Miss M was told about some suspicious transactions on her account and the scammer made her aware of an earlier text message she had received relating to a missed parcel delivery that he said was fraudulent.

Miss M was convinced her account was at risk, and she needed to move her money to a new account in her name. It was only when the call dropped with the scammer after she made the transfers from her Revolut account and was about to move money from another third-party account, that she realised she'd been scammed. So, she logged a complaint with Revolut.

Revolut looked into the complaint but didn't uphold it. It didn't think it had done anything wrong by allowing the payments to go through. So, Miss M brought her complaint to our service.

Our investigator looked into the complaint and didn't uphold it. Our investigator thought Revolut had provided sufficient warnings and Miss M still made the payments. Miss M didn't agree with the investigator's view, so it was passed to another ombudsman for a final decision.

The first ombudsman didn't agree with the investigators view. The ombudsman thought the complaint should be upheld and Miss M refunded from payment 2 onwards. On

06 November 2023 he issued a provisional decision explaining this. In the ombudsman's decision he did think contributory negligence should be applied on payment 2, and his decision reflected this.

Unfortunately, that ombudsman is no longer available, so the complaint was passed to me to issue the final decision.

On 11 October 2024 I emailed both parties to explain that I too thought the complaint should be upheld from payment 2, but I hadn't found contributory negligence should be applied. I explained my reasons and they are also at the end of this decision. Revolut didn't respond by the deadline I gave, so I've now proceeded to issue my final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having taken all of the above into account, for the reasons I shall set out below, I have concluded that:

- When Miss M attempted to make the second payment to the fraudsters – that is the £1,997 on 04 May 2023 ("Payment 2"), Revolut should have recognised that Miss M could be at heightened risk of financial harm from fraud and it should have attempted to establish the circumstances surrounding that payment by, for example, directing Miss M to its in-app chat.
- Once it had established the circumstances surrounding the payment, it should have provided a clear warning to Miss M.
- Had it done so, I think it's more likely than not that Miss M's loss from that payment onwards would have been prevented.
- In those circumstances, I consider it to be fair and reasonable to hold Revolut responsible for Miss M's loss.

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.

- The express terms of the current account contract may modify or alter that position. For example, 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 duty to do so.

In this case, the terms of Revolut's contract with Miss M at the time did expressly require it to refuse or delay a payment for a number of reasons. Those reasons included *"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 M 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 in Miss M's case, 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 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 May 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 that view, 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;
- 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:

- FCA regulated firms are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6)<sup>3</sup>.

---

<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/](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/)

- Over the years, the FSA, and its successor the FCA, 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 here, but I nevertheless consider these requirements to be relevant to the consideration of a firm’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) and it has since been withdrawn, 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 the practices articulated in the BSI Code remain a starting point for what I consider to have been the minimum standards of good industry practice in January 2023 (regardless of the fact the BSI Code 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 May 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;
- 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 Miss M was at risk of financial harm from fraud and were the steps it took to warn her sufficient?*

It isn’t in dispute that Miss M has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made to the fraudsters.

---

<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”

Whilst I have set out in detail above the circumstances which led Miss M to make the payments using her Revolut account, I am mindful that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Miss M might be the victim of a scam.

Although Revolut have said it didn't have grounds to be suspicious about the payments being sent, it did send Miss M a number of warnings after she put the payment purpose as *Safe account* before making payment 2. So, I'm satisfied Revolut did recognise the payment as a risk.

While the warning did contain some information relevant to Miss M's circumstances, it required no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case. I don't consider it to be a proportionate response to the risk that Payment 2 presented, given Miss M through the payment purpose had told Revolut she was making a payment in relation to a safe account scam.

Having thought carefully about the risk Payment 2 presented, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Miss M's account. I think it should have done this by, for example, directing Miss M 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 M's loss been prevented?*

Had Miss M told the genuine Revolut that she was being asked to move money to a new account in order to protect those 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 M had no desire to lose her money and nothing to gain from going ahead with the payments, it's very likely that she would have stopped, not followed the fraudster's instructions and her loss would have been prevented.

So, I've considered whether Miss M would have revealed that she was being asked to move money to a new account to protect those funds. Miss M says that she wasn't given a cover story, but I also accept that because there was no real scrutiny of the transactions by Revolut, this may not have been required. My impression is that there's nothing to show that had Revolut asked her why she was making the payment or provided a warning, she wouldn't have given accurate information explaining how the fraud was unfolding.

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

So, Revolut should, once it had established why Miss M 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 M 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.

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 M's loss from and including Payment 2 would have been prevented.

*Should Miss M bear any responsibility for her loss?*

In considering this point, I've taken into account what the law says about contributory negligence as well as what I consider to be fair and reasonable in the circumstances of this complaint.

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

The tactics employed by the fraudsters are common, but nonetheless captivating to anyone unfamiliar with them. The seemingly innocuous delivery text message asking Miss M to pay a very modest postage fee, was, when the calls later came, confirmation to Miss M that her account was really at risk.

I have considered whether contributory negligence applies in the case in detail, but the circumstances of the scam have satisfied me that it was highly unlikely Miss M was going to know she was being scammed at the time, or that that she could've prevented the scam by doing anything differently. I'll explain why.

- The scammer had pre planned the scam by sending Miss M a convincing phishing text. The text resonated with Miss M, as she was expecting a parcel delivery.
- The account was set up in Miss M's name, as evidenced by the name of the transfers on her statement.
- As Miss M was clearly being coached throughout the scam, I'm satisfied that as she firmly believed she was on the phone to someone at Revolut, there was no reason for her to take notice of any automated warnings she was being given.
- The scammer was on the phone at the point Miss M received the educational messages which meant the scammer was able to convince her to continue with the payments.
- The scammer had an awareness of the messages Miss M was receiving and was able to reassure her when bypassing them.
- The length of call clearly shows the complexity of the coaching that was taking place at the time – over an hour.
- She received a text message that looked like it had been sent from her other bank and this convinced her the risk of her accounts being compromised was real.

Assuming that Revolut did show Miss M a message which informed her that the name she'd entered as a payee didn't match that on the recipient account, I think that should have reasonably put her on notice that the account she was paying wasn't held in her own name. Miss M doesn't remember this warning, so it's difficult for me to understand why she moved past it, but even accepting that she likely saw this message, given the other sophisticated aspects of the scam, as well as the pressure that was being applied to Miss M, it doesn't lead me to conclude that a deduction should fairly be made to the amount reimbursed.

Overall, I don't think there should be a deduction to the amount reimbursed. Miss M clearly didn't want to lose her money. Her actions cannot be explained by carelessness or personal gain. There's little other explanation than that she believed what she was told by some very sophisticated fraudsters and in the circumstances, I don't find her belief to be unreasonable.

*Is it fair and reasonable for Revolut to be held responsible for Miss M's loss?*

Revolut has argued in submissions to our service that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory and in circumstances where the CRM Code would not, in any case, apply.

I do not seek to treat Revolut as if it were a signatory to the CRM Code. I've explained the basis on which I think, fairly and reasonably, Revolut ought to have identified that Miss M was at risk of financial harm from fraud and taken further steps before Payment 2 debited her account.

Finally, the PSR's proposals were not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. For the reasons I've already explained, I don't think that Miss M acted unreasonably by moving past the warnings that Revolut provided.

**Putting things right**

To put things right for Miss M, Revolut should:

- refund her the full amount of Payment 2 onwards. A total of £5,363
- Add 8% per year simple interest to the refund from the date of the payments (4 May 2023) until the date it makes the refund.

Less any tax lawfully deductible.

**My final decision**

My final decision is that I uphold this complaint and instruct Revolut Ltd to make a payment inline with the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 11 December 2024.

Tom Wagstaff  
**Ombudsman**