

The complaint

Mrs R complains that Revolut Ltd did not refund a series of payments she lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Mrs R was the victim of a task-based job scam. She made the following transfers from her Revolut account to a payment service provider:

Payment #	Date	Amount (£)
1	22/07/2023	300
2	22/07/2023	500
3	23/07/2023	2,000
4	23/07/2023	200
5	23/07/2023	1,500
6	23/07/2023	500
7	23/07/2023	200

Mrs R realised she had been the victim of a scam when she was asked for more money and raised a scam claim with Revolut. When they declined to reimburse her, Mrs R brought the complaint to our service and our Investigator looked into it. They could see that a warning was provided to Mrs R which they felt was proportionate to the risk level of the payment. So, they did not agree that Revolut should provide reimbursement in the circumstances.

The complaint was passed to me for review when Mrs R disagreed with the outcome. I issued a provisional decision in which I felt the complaint should be upheld in part. My provisional decision read as follows:

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 Mrs R 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 Mrs R 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 July 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 EMI's like Revolut do in fact seek to take those steps, often by:

- *using algorithms to identify transactions presenting an increased risk of fraud;²*
- *requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;*
- *using the confirmation of payee system for authorised push payments;*
- *providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.*

¹ The Payment Services Regulation 2017 Reg. 86 states that "the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account **by the end of the business day following the time of receipt of the payment order**" (emphasis added).

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/>

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 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 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).*
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency 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.*

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 July 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;*

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

- 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); 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.

Should Revolut have recognised that Mrs R was at risk of financial harm from fraud?

Payment 3 was referred for some additional checks. I can see it was the third payment to a new payee in two days, and the value had gradually increased, so there were some features of a scam pattern emerging. Mrs R was referred to an automated list of payment purposes, and she selected 'safe account' from the drop-down list. A safe account is a known type of scam to Revolut, and the fact Mrs R selected this could have been a strong indication she was the victim of a scam.

What did Revolut do to warn Mrs R and what should it have done?

Revolut provided Mrs R with a general warning about safe account scams, which set out some of the key features of that specific type of scam. Following this, it gave the option for Mrs R to continue with the payment, which she did. On balance, I do not think this was a proportionate response to the risk that the payment presented.

I say this because firstly, Mrs R was the victim of a job scam and not a safe account scam, so the warning she was provided was not relevant to the scam type she was involved in. And secondly, Mrs R had selected the payment purpose of a known type of scam, and I think Revolut needed to establish the circumstances surrounding the payment before allowing it to debit the account. And I therefore think it should have referred her to the in-app chat for additional questions about the payment

If Revolut had referred Mrs R to an in-app chat, would that have prevented the losses she suffered from Payment 3?

Nothing I have seen so far indicates that Mrs R would not have been open and honest with Revolut had they asked her open and probing questions about the purpose of the payment. When asked why she had selected 'safe account' as the payment purpose, she said that it felt like the most sensible option with it being a good way to transfer funds. With this in mind, I think it's more likely Mrs R simply selected the incorrect payment purpose and was not being guided by the scammer to mislead or lie to Revolut.

Considering the type of scam Mrs R had fallen victim to, some basic question about what the payment was for and how she found the company she was dealing with would have quickly revealed it. I say this because Mrs R was making payment to fund what she thought was a legitimate job, via cryptocurrency, which was a well-known scam to Revolut at the time she made the payments. Because of this, I think Revolut missed an opportunity to intervene and meaningfully reveal the scam.

Is it fair and reasonable for Revolut to be held responsible for Mrs R's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs R forwarded her funds via a payment services provider to a cryptocurrency wallet in her name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.

But as I've set out above, I think that Revolut still should have recognised that Mrs R might have been at risk of financial harm from fraud when she made Payment 3, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Mrs R suffered. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Mrs R's own account does not alter that fact and I think Revolut can fairly be held responsible for her 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 either the firm that is the origin of the funds or the point of loss.

I've also considered that Mrs R has only complained 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 Mrs R could instead, or in addition, have sought to complain against those firms. But she has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs R's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); 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 am satisfied that it would be fair to hold Revolut responsible for Mrs R's loss from Payment 3 (subject to a deduction for Mrs R's own contribution which I will consider below).

Should Mrs R bear any responsibility for their 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.

Based on what I've seen so far, I do agree that a reduction in the redress is due in the circumstances. Mrs R received a job offer via a messaging platform, without having to apply or go through any interview process with a basic salary of over £100 per day for simply working a few hours. And there was scope to make additional commission through 'special' tasks. On balance, I think Mrs R could have seen this as too good to be true, and that it was unusual for her to have to purchase and send cryptocurrency in order to continue to earn money for her job.

With this in mind, based on what I've seen so far, I currently think a reduction in the redress of 50% would be a fair resolution to account for Mrs R's contribution to the loss.

Mrs R's representative responded and accepted the provisional findings.

Revolut did not provide a response.

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.

As neither party has responded with any additional comments or evidence for me to consider, I see no reason to depart from the findings set out in my provisional decision.

So, for the reasons outlined above, I uphold Mrs R's complaint in part and recommend Revolut reimburse Mrs R from Payment 3 onwards. It can reduce the redress by 50% to account for Mrs R's contribution to the loss. Revolut should also add 8% simple interest from the date of the transactions to the date of settlement.

My final decision

I uphold Mrs R's complaint in part. I recommend Revolut Ltd pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 6 November 2024.

Rebecca Norris
Ombudsman