

The complaint

Miss W complains that Revolut Ltd won't refund the money she lost because of a scam.

What's happened?

On 27 September 2023, Miss W received a text message telling her that a delivery she was expecting needed to be rescheduled. Miss W clicked the link provided and attempted to pay a modest redelivery fee. Revolut froze the attempted payment and asked Miss W if it was her making the payment. Miss W realised something was wrong and said it wasn't her making the payment, so Revolut stopped it.

On 29 September 2023, Miss W received a call from someone impersonating Revolut. They put her through to another person, who was purportedly from Revolut's fraud department. Miss W was told that her Revolut accounts were compromised. Miss W carried out an internet search and assured herself that the number she'd been called from was a genuine Revolut telephone number.

Miss W spoke to the scammer for around 35 minutes. They told her that she needed to move her money out of her compromised accounts, to keep it safe. She was told a new account would be set up for her and the details would be sent to her after the call. The scammer got Miss W to move money from her Revolut Vaults to her main account. Then they got her to share her card number and initiated card payment requests. Miss W authorised the payments the scammer had set up in the Revolut app.

Payment number	Date and time	Type of payment	Amount
1	29 September 2023, 19:08	Card Payment	£4,999.99
2	29 September 2023, 19:13	Card Payment	£2,200.00

Shortly after the payments were made, the call ended and Miss W was told she'd receive an email with her new account information within 30 minutes. Miss W started to become suspicious about what had happened and got in touch with Revolut via the webchat. It soon came to light that Revolut hadn't called Miss W and she'd unfortunately been scammed.

Revolut suggested that Miss W raise chargebacks in an attempt to recover her funds. But the chargebacks weren't successful because the chargeback scheme rules don't cover scams and the payments had been authorised by Miss W. Revolut told Miss W there was nothing further it could do.

Unhappy with how Revolut had handled the situation, Miss W made a complaint. She feels Revolut didn't do enough to help her or prevent this happening to other customers in the future.

Revolut has made a number of arguments to support its position, which I've summarised below:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment ('APP') fraud. By suggesting that it does need to reimburse customers, it says our Service is erring in law.
- Our Service appears to be treating Revolut as if it were a signatory to the Contingent Reimbursement Model ('CRM') Code and the 'mandatory reimbursement' rules that were not in effect at the time.
- Miss W fully authorised the payments.
- Miss W didn't carry out enough due diligence to protect herself from the scam.

Our investigator thought that Revolut should've intervened in the first scam payment and, if it had, Miss W would not have lost her money. So, they recommended that Revolut fully reimburse Miss W and pay her some interest to compensate her for the time she's been out of pocket. Revolut didn't accept the investigator's recommendations, so 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 W 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 Miss W 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 am 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 September 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 to 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 have 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 am 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 September 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 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;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 September 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 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

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/

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 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.
- 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 September 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

² BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

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)

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 and the different risks these can present to consumers, when deciding whether to intervene.

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

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

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

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

I've been provided with statements for Miss W's Revolut account from May 2019, and it's evident that she used the account frequently and seemingly for everyday expenditure.

Miss W typically made frequent but low-value day-to-day transactions. In the six months before the scam payments, Miss W only made one significant card payment, for £1,035, in April 2023. In the same period, she made a handful of transfers and card payments around the £300 mark, but otherwise her account usage was very much low-value transactions. With that in mind, Payment 1 stood out as being unusual – it was almost five times the amount of the next largest transaction to have taken place in the six months preceding the scam.

All things considered, I do think the value of the transaction, and how unusual it was compared to Miss W's usual spending means it presented a potential scam risk and Revolut should've taken action before allowing it to be made.

What did Revolut do to warn Miss W?

Miss W said Revolut didn't provide her with any form of warning. Revolut has said the payments were initiated and authorised by Miss W and she would've been presented with a push notification to her Revolut app requiring her to confirm the payment instruction before it could go through. Apart from this, Revolut didn't intervene any further or provide any warnings before completing either payment.

What kind of warning should Revolut have provided?

Having thought carefully about the risk Payment 1 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 W's account. I think it should have done this, for example, by directing Miss W to its in-app chat to discuss the payment further.
If Revolut had attempted to establish the circumstances surrounding Payment 1, would the scam have come to light and Miss W's loss been prevented?

I haven't seen any evidence to suggest that Miss W wouldn't have been truthful about what she was doing if Revolut had asked her some questions about Payment 1.

Had Miss W told the genuine Revolut that she was being asked to move money, supposedly by Revolut, to a new account in order to protect those funds, Revolut ought to have immediately recognised that she was falling victim to a scam. It would have been able to provide a clear warning and, given that Miss W had no desire or intention to lose all her savings 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.

Should Miss W 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 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. Miss W was already concerned after following the link she'd received in a text message and attempting to pay a small redelivery fee. Revolut stopped that transaction and Miss W realised that she shouldn't have interacted with the text message or attempted the transaction. When the calls supposedly came from Revolut a couple of days after, I can understand Miss W's concern that her account was at risk.

Miss W was able to establish that the calls she received were from a number genuinely associated with Revolut and this was a key factor in convincing her she was speaking with Revolut. Simply searching online for the number (as might reasonably be expected in the circumstances), just shows that the number is associated with Revolut. And while some further scrutiny might have revealed the number could be spoofed by scammers, in the moment I don't think Miss W acted unreasonably. She quickly checked the number and saw it was linked to Revolut before her attention turned to the concerns about her account.

Miss W has said she spent around 35 minutes on the phone to the fraudsters talking about fraud and scams and the threat to her account before following the scammer's instructions to move her money. I don't think this gave her the chance to reflect on what she was being told, as she did afterwards when she became suspicious after hanging up the call and contacting the genuine Revolut. Even at that point, she'd been so convinced by the scammers she wasn't sure she hadn't been speaking to the genuine Revolut until it confirmed it hadn't called her that day.

As I've already set out, Revolut didn't provide any warnings to Miss W or any other kind of intervention, so I can't conclude that Revolut did anything that Miss W unreasonably ignored that might've alerted her to the scam.

Given the other sophisticated aspects of the scam, as well as the pressure that was being applied to Miss W, 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 W clearly didn't want to lose her money. Her actions cannot be explained by carelessness or personal gain. There's little other explanation other than she believed what she was told by some very sophisticated fraudsters and in the circumstances I don't find her belief to be unreasonable.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint about Revolut Ltd and instruct it to pay Miss W:

- The sum total of Payment 1 and Payment 2 - £7,199.99, less any amounts already returned or recovered;
- 8% simple interest per year on that amount from the date of the payments to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 28 November 2024.

Kyley Hanson
Ombudsman