

The complaint

Mrs L is unhappy that Revolut Ltd (Revolut) won't refund her the money she lost after she fell victim to an Authorised Push Payment ("APP") scam.

What happened

The background to this complaint is well known to both parties and the Investigator's view covered this and the timeline in detail, so I'm not going to cover everything again here. But in summary, I understand the background to be as follows.

In or around March 2023, Mrs L fell victim to a task-based job scam. The fraudsters persuaded Mrs L to pay her own money in order to proceed with the work. She was instructed to send money to a number of different payees, in order to buy cryptocurrency using peer to peer exchange platforms - once her money had been converted into cryptocurrency it was then sent to accounts controlled by the fraudsters.

Mrs L opened a Revolut account to facilitate the payments and the following payments were sent from that account, ultimately ending up in accounts controlled by the fraudsters;

Payment 1	13 March 2023	£87.99	(to payee 1)
Payment 2	13 March 2023	£176.80	(to payee 2)
Payment 3	18 March 2023	£1,536.00	(to payee 2)
Payment 4	19 March 2023	£2,984.00	(to payee 3)
Payment 5	19 March 2023	£13.09	(to payee 4)

Mrs L realised she'd been scammed when she was asked to pay increasingly larger sums to be able to make withdrawals. She reported the matter to Revolut, but it didn't uphold her complaint. In summary, it said it didn't think it was liable for the transactions. It noted that it had provided Mrs L with scam warnings when she instructed the payments and it had made attempts to recover the funds when she reported the scam.

Unhappy with Revolut's response, Mrs L referred her complaint to this service, with the help of a professional representative. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, our Investigator said that while Mrs L was not in fact falling victim to a safe account scam, Revolut should have made further enquiries after she had selected this as a payment purpose (on 16 March 2023, for a transaction that wasn't subsequently progressed). He concluded that had it done so, the scam would have come to light and Mrs L's loss could have been avoided from this point. But he considered that Mrs L should share responsibility for the loss as she hadn't taken reasonable care to protect herself even though aspects of the job scam ought to have given her serious cause for concern.

Mrs L accepted our Investigator's opinion. Revolut disagreed, in summary it set out the following points:

- This service is permitted to depart from the law, but where we do, we should explain that we have done so and explain why. If we apply the law or legal duties, we should

apply it correctly and if we err in law, we are susceptible to judicial review on the grounds of error in law in relation to our identification of what the law is (as well as perversity and irrationality).

- Revolut is bound by contract, applicable regulations and common law to execute valid payment instructions. The duty is strict and there are only limited exceptions.
- Revolut referred to specific terms in its terms and conditions and went on to say that although the relationship between a payment service provider (like Revolut) and a customer is one of contract, such contracts are performed in a heavily regulated legal environment. The most significant legislation is the Payment Services Regulations 2017 which impose obligations to execute authorised payments promptly. By suggesting that it needs to reimburse customers, it says our service is erring in law.
- This service has overstated Revolut's duty. Revolut recognises its obligations and has put adequate procedures in place. But the duty is not absolute and doesn't require Revolut to detect and prevent all fraud.
- It does not need to concern itself with the wisdom or potential for financial loss of a customer's payment instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- Our service appears to be treating Revolut as if it were a signatory to the Contingent Reimbursement Model Code.
- The transaction values are not so out of character that Revolut would be expected to suspend the account.
- Revolut gave proportionate warnings, which Mrs L willingly chose to disregard.

As agreement couldn't be reached the complaint has been passed to me for a 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 Mrs L 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 L 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 March 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.

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

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).

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/>

control its affairs responsibly and effectively, with adequate risk management systems” (FCA Principle for Businesses 3)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 Code⁴, 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 March 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 Mrs L was at risk of financial harm from fraud?

It isn’t in dispute that Mrs L has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made because of the scam.

³ 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.

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

I'm aware that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mrs L might be the victim of a scam. I say this as Mrs L set the Revolut account up for the purposes of the scam, so Revolut didn't have any knowledge of her usual account usage to be able to identify if the scam payments were out of character. But that's not to say it was unable to identify if the transactions highlighted that Mrs L may be at risk of financial harm.

I don't think the first two, successful, payments would have caused Revolut to have been concerned. Although they went to two new payees, they were relatively low in value and not ones that I'd usually expect Revolut to recognise as higher risk.

But the evidence I've seen shows that, on 16 March 2023, Mrs L attempted to make a payment for £1,700. Mrs L chose the payment reason for this as 'safe account transfer'. This payment reason can only apply if a customer is falling victim to a safe account scam or has chosen an incorrect payment purpose. While it doesn't appear that this payment was successful, I think Revolut needed to satisfy itself that Mrs L chose this payment reason in error. Which it could have done by directing her to its in-app chat or through having a conversation with her.

When Mrs L went on to make a further payment on 18 March 2023 (payment three above) she chose 'Goods and Service' as the reason for her transfer. But Revolut ought to be mindful that fraudsters can often ask their victims to select inaccurate payment reasons in an attempt to bypass fraud prevention measures and I don't think it should have taken this at face value. I say that as by this point, Mrs L had made a series of payments to multiple new payees over the course of a few days, with the value of the transactions rising. I think this, coupled with the concerns that Revolut should still have harboured from Mrs L selecting 'safe account transfer' just two days before, ought reasonably to have led Revolut to taking additional steps to satisfy itself she wasn't at risk of falling victim to a scam, before allowing the payment to debit her account.

What did Revolut do to warn Mrs L?

Revolut says that each time Mrs L set up a new payee it provided her with the following warning:

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

In addition to this, Revolut says that when Mrs L made payments three and four, she received a set of educational story messages. It has provided example screens. These relate to scams in general and to scam victims losing millions of pounds each year, and to fraudsters being professionals who trick people to send money. Mrs L was then asked the reason for the payment. She chose 'goods and services' and received a warning tailored to this payment reason. This warning started by saying there was a high probability that the payment was a scam.

What kind of warning should Revolut have provided?

Given what I have said above, I'm not persuaded that Revolut needed to do anything more when the first two payments were made.

Having thought carefully about the risk payment three 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 Mrs L's account. I think it should have done this by, for example, directing Mrs L to its in-app chat to discuss the payment further.

I consider that Revolut should have asked more about the payment purpose, why Mrs L was making payments to multiple new payees and why she had selected 'safe account' for an earlier payment.

Whilst I wouldn't have expected Revolut to provide a warning tailored to task based job scams, I consider that if Revolut had asked the kind of questions I have set out above, it would have identified that the payment Mrs L was making wasn't legitimate. I'm not satisfied Revolut went far enough to protect Mrs L when she made payment three.

If Revolut had provided a warning of the type described, would that have prevented the losses Mrs L suffered from payment three?

I've carefully considered what I think would have most likely have happened, had Revolut contacted Mrs L via chat or telephone and asked a specific question about why she was transferring a large sum from her account.

In doing so, I'm mindful, that Mrs L has said that the fraudsters had told her she shouldn't tell the financial firms that she was buying cryptocurrency as they would frown upon this. There is of course the possibility the fraudsters could have continued to instruct Mrs L as to how to proceed if she been directed to an in-app chat - so I've thought carefully about whether an in-app intervention, or verbal conversation, of the kind I've described would have uncovered the scam.

But I've also considered that I've not seen any indication that Mrs L was provided with a detailed cover story by the scammer which was likely to have withstood a direct intervention through a real time conversation with Revolut. And I haven't seen anything to suggest the scammer had told Mrs L to lie or mislead Revolut about the overall circumstances of the payment.

If an intervention had taken place, as for reasons explained I think it ought to have done, I would reasonably expect Revolut to have asked open-ended and probing questions about the circumstances of the payment and explained the context around any questions it asked. I'm persuaded that, on the balance of probabilities, had Mrs L been probed on the purpose of the payments she would have explained that they were being made for the purposes of a job and explained why the payments needed to be made. With this I think Revolut, as professionals in these matters, would have been able to identify that this didn't sound legitimate and that this could be a scam.

I'm also mindful here that Mrs L did have some doubts before these payments had been made, Mrs L had questioned whether what was being offered was 'too good to be true' and whether there was a catch. So I don't think it would have taken much for Revolut to have compounded these doubts and to have quickly uncovered that Mrs L was in the process of being scammed.

Revolut has argued that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory. I have no intention of treating Revolut as if it were a signatory to the CRM Code. I've explained in some detail the basis on which I think, fairly and reasonably, Revolut ought to have identified that Mrs L was likely at risk of financial

harm from fraud, and the steps it should have taken before allowing the payment to leave her account.

Overall, I'm satisfied that Revolut should fairly and reasonably have intervened further and established more detail about the purpose of the payments she was making. If it had done so, I'm persuaded it is more likely than not that the scam would have been exposed from the point she was making the third payment listed above and Mrs L would not have lost the money from this or the subsequent payments she made from her Revolut account. In those circumstances I am satisfied it is fair to hold Revolut responsible for some of the loss.

Should Mrs L 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.

Mrs L has already accepted the Investigator's opinion that any refund provided should be reduced to account for her own actions as part of the scam and as I agree with this point, I won't dwell on it, except to say that I think there were a number of things that ought to have led Mrs L to proceed with more caution than she did.

While I accept Mrs L believed that these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one. There was no formalisation of the arrangement between her and the employer – for example, there was no written contract and indeed no clear setting out of the terms of her employment.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement. I also think the level of salary and commission being offered, seemed inflated, considering the nature of the work that was being carried out.

Overall, I think it's fair and reasonable for Revolut to make a 50% deduction from the redress payable to her.

Recovery of funds

I'm not persuaded that there was any reasonable prospect of Revolut being able to successfully recover Mrs L's funds once she reported the scam. I say this because Mrs L used the funds sent from her Revolut account to individual sellers to purchase cryptocurrency, which was ultimately received and sent on to the fraudster. So Revolut was unable to recover this.

Putting things right

For the reasons explained above, I uphold this complaint in part and now ask Revolut Ltd to:

- refund Mrs L £2,266.55 (being 50% of the sum of payment three onwards).
- pay interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Revolut Ltd deducts tax from this interest, it should provide Mrs L with the appropriate tax deduction certificate).

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 28 March 2025.

Stephen Wise
Ombudsman