

The complaint

Mrs B complains that Revolut Ltd did not refund a series of transactions she says she lost to a scam.

What happened

Mrs B fell victim to a scam when an individual claiming to be from His Majesty's Revenue and Customs (HMRC) said she owed taxes and was being charged with tax evasion and money laundering. They convinced her to send the following transfers from her Revolut account on 27 September 2023:

Payment number	Amount	Payee
1	£2,488.00	S
2	£2,950.00	S
3	£1,800.00	S
4	£2,800.00	S
5	£1,700.00	S
6	£2,350.00	S
7	£2,900.00	P
8	£2,100.00	P
9	£4,800.00	P
10	£7,500.00	N

She attempted to make a further payment from her third-party account with her bank that I'll call 'X', but this was blocked. Following a conversation with X, Mrs B came to the realisation she was being scammed and she raised a scam claim with Revolut soon afterwards.

Revolut was able to recover £4,810 but did not agree to reimburse Mrs B with the rest of the funds. The complaint was referred to our service and our Investigator initially did not agree Revolut needed to intervene in the payments, but they did think Revolut should have acted quicker to try and recover the funds from the beneficiary banks. As there was no evidence showing if this would have made a difference, they upheld the complaint in full.

The complaint was passed to me and after receiving further evidence from the beneficiary banks, I did not agree that more funds could have been recovered if Revolut had acted sooner. But I thought Revolut should have intervened in some of the payments. My provisional decision read as follows:

I would firstly like to cover off the recovery of funds from the beneficiary accounts. Since the Investigator issued an uphold view in relation to this point, we have received further information from the beneficiary banks. I've reviewed this evidence and I can see that the majority of the funds were withdrawn immediately after they credited the beneficiary accounts. With this in mind, I think that had Revolut acted quickly to try and recover the funds, only £4,810 would have remained, which is what they were able to recover in any event. Because of this, I don't think Revolut missed an opportunity to recover the remaining funds, and I don't think it therefore needs to reimburse Mrs B for this reason.

I've gone on to consider Revolut's actions in relation to the scam payments when they were processed out of Mrs B's account. 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 B 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 B 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

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).

should in September 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 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*

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/>

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

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 Duty⁴, 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"⁵.*

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 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 B was at risk of financial harm from fraud?

Mrs B had an existing Revolut account which she used occasionally, generally for small transactions of up to a few hundred pounds in the six months before the scam. With this in mind, the payments involved in the scam were generally higher value than her usual account activity, though I have kept in mind that Revolut is an EMI and not a bank, so often sees it's customers making higher value transactions. Because of this, I don't think the value of the payments alone is enough to say Revolut should have intervened prior to them being processed.

But I do think the number of transactions and the frequency of them should have been a concern to Revolut. This was a new payee and Mrs B made five payments to that same

⁴ 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.

⁵ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

payee in the space of just over an hour. This pattern of spending is indicative of a scam and I think Revolut should have had concerns that she may be at risk of financial harm. I think the most reasonable trigger point was payment four, as Mrs B had made four payments in relatively quick succession to a new payee, and that payment would total £10,038 in less than an hour.

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

For each initial payment to a new payee, Revolut asked if Mrs B knew and trusted the payee, and if she was unsure, she should not pay them as Revolut would not be able to recover her funds. This may have been proportionate for the initial payment, but I don't think it was for the latter payments to new payees, considering the frequency of payments up to that point and the total value that had been transferred out of the account earlier in the day.

For the same payments, Mrs B was asked a series of automated questions she could select the responses to from a list. For each of these, she selected 'something else' as the payment purpose and was therefore provided a general warning for a number of scams, which were not specific to her situation. Again, I think this was proportionate for the initial payment going out towards the scam, but I don't think this was proportionate for the latter two. As explained above, by the time the latter initial payments to new payees occurred, Mrs B had made a number of payments out of the account that day in relatively quick succession and the total value of the transactions had become high value and therefore unusual compared to her normal account activity. So, I don't think automated questions and a general warning was proportionate to the scam risks the payments posed.

I explained above that I think a reasonable trigger point for an intervention was the fourth payment with the value £2,800. Having thought carefully about the risk this payment presented, I think a proportionate response would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mrs B's account. I think it should have done this by, for example, directing Mrs B to its in-app chat to discuss the payment further.

If Revolut had referred Mrs B to the in-app chat, would that have prevented the losses Mrs B suffered from payment 4?

I've considered whether a conversation with Mrs B at the time of payment four would reasonably have uncovered the scam and prevented further payments from being made. In doing so, I have considered all of the evidence available to me, including Mrs B's conversation with the scammer and the intervention carried out by her third-party bank, X.

Mrs B was on the phone with the scammer at the time and was being guided on what to input when making the payments from her Revolut account. And this is why she selected 'something else' as the payment purpose when Revolut asked her. I've therefore considered if I think Mrs B would have continued to follow the guidance of the scammer and not question what she was being asked had Revolut referred her to the in-app chat.

Based on what I've seen so far, I think the scam could have been uncovered had Revolut asked her open and probing questions about the payments. When X spoke with Mrs B following the transfers listed above, they asked her some probing questions about the initial attempted payment on her account with X that was unsuccessful. I can see that Mrs B initially misled X and followed what the scammer had told her to say, that she was just paying a friend some money she owed them. But she did not sound confident in her answers and her reasons were not particularly sound. Following a break in the conversation where the call handler placed her on hold to check to things, Mrs B said she felt something was not right and she had been scammed. This was not as a result of any prompting or warning from

X and following that a conversation about the situation Mrs B was in and what she had been told by the scammer fully revealed the scam.

I therefore think an earlier intervention from Revolut would more likely have followed the same pattern and therefore revealed the scam. Considering this was the fourth payment to a new payee in under an hour and brought to total paid to the payee to over £10,000, I don't think it would have been easy for Mrs B to give a believable explanation about what the payments were for. So I think it would have been reasonable for Revolut to ask open and probing questions about why Mrs B was making the payment. Following questions by X, Mrs B came to the realisation she was being scammed and this was without a warning being provided by X. I think it's more likely the probing questions by Revolut when Mrs B made the payment of £2,800 would have had the same effect and made Mrs B question what the scammer was telling her. And I think a relevant warning from Revolut would have been enough to reveal the scam in the circumstances. Based on what I've seen so far, I therefore think it's more likely that scam would have been revealed and Mrs B would not have proceeded with the payments after that point.

Should Mrs B 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.

Based on what I've seen so far, I do not think Mrs B should bear any responsibility for her loss, so I do not think a reduction in the redress would be reasonable. I say this because Mrs B was called on what appeared to be the genuine number for the Court and Tribunals Judiciary, and the scammer sent her a letter that appeared to be from HMRC confirming she owed funds. I can therefore understand why she initially believed the scammer was calling from HMRC.

In addition to this, Mrs B was due to move out of the country following the divorce from her husband just a few days after the scam occurred. Mrs B was therefore understandably panicked that if she was arrested or did not pay the fines that she was told she owed, that she would not be able to leave the country as planned. I can therefore understand how stressful the situation must have been for her which would have added to the believability of the scam. With all of this in mind, due to Mrs B's specific circumstances, I don't think a reduction in the redress would be reasonable.

This means I intend to recommend reimbursement from the payment of £2,800 onwards, with no reduction for contributory negligence on Mrs B's part. Revolut can deduct the £4,810 it has already repaid to Mrs B when the funds were recovered. It should also add 8% simple interest from the date of the transactions to the date of settlement.

Mrs B's representative responded to the provisional decisions and accepted the outcome.

Revolut responded and highlighted that by the time Mrs B contacted them about the scam, the funds had already left the beneficiary accounts. So, they could not have recovered the funds if they had acted sooner.

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.

I've considered Revolut's comments. As I set out in my provisional decision, I agree with their comments that had they acted sooner, they would not have been able to recover any

additional funds than the £4,810 they have already refunded Mrs B with.

As neither party has raised any additional comments or evidence for me to consider, and Mrs B has accepted my recommendation, I see no reason to depart from the findings in my provisional decision. I therefore recommend that Revolut reimburse Mrs B from the payment of £2,800 onwards, plus 8% simple interest. It can deduct the £4,810 it has already repaid to Mrs B.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 February 2025.

Rebecca Norris
Ombudsman