

## The complaint

Miss B complains that Revolut Ltd (Revolut) is refusing to refund her the amount she lost as the result of a scam.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Miss B was in the process of buying a property in Spain. Miss B had met with her solicitor in person and was now communicating with them by email.

Miss B started to receive payment requests via what appeared to be her solicitor's email address asking for various payments to be made. Unfortunately, these emails were not from her solicitor but instead were from a scammer who had managed to get her solicitor's details and was impersonating them using a very similar email address.

Each payment was requested to a different account, but when Miss B asked the reason behind the different accounts being used, she was told it was to achieve a better exchange rate.

As Miss B was buying a property abroad and the payment requests appeared to be coming from her solicitor, she made the payments listed below as requested.

Payment	Date	Payee	Payment Method	Amount
1	20 July 2023	Individual 1	Transfer	£16,381
2	21 July 2023	Wiljos Ltd	Transfer	£43,000
3	24 July 2023	Individual 2	Transfer	£13,320

Having made the last payment the scammer contacted Miss B again via email and explained the payment had been held, and that Miss B should recall the payment and send it again. Miss B received the email in the early hours of the morning which caused her concern, and after checking with the solicitors directly, she realised she had fallen victim to a scam.

Payment 3 has been recovered so I will only be considering the other payments made in relation to the scam.

Our Investigator considered Miss B's complaint and thought it should be upheld. Revolut disagreed, it argued that:

- An intervention would not have made a difference to Miss B making the payments as the payment requests came from what appeared to be a trusted source.
- Solicitors usually warn customers to verify payments before making them
- Revolut gave adequate warnings that were neglectfully ignored by Miss B.

As an informal agreement could not be reached this complaint has been passed to me to decide

## 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 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 Miss 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 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.

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<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).

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;<sup>2</sup>
- 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)<sup>3</sup>.
- 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 customers’ 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

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<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/>

<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”

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 July 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 B was at risk of financial harm from fraud?*

The first payment Miss B made in relation to the scam was for the significant value of £16,381. Not only was this payment significant in value, it was also out of character compared to the way Miss B usually operated her account, and was being made to a new payee.

The second payment made in relation to the scam was for the even more significant amount of £43,000 and was again being made to a new payee.

Considering the value of the payments, that they were going to new payees, and that they were not in keeping with the way Miss B usually operated her account, I think Revolut should have had concerns that Miss B could have been at risk of financial harm and this should have prompted a warning.

*What did Revolut do to warn Miss B?*

When Miss B made payment 1, she chose the payment option as “paying for goods or services”. Miss B was then presented with a screen asking if she knew and trusted the payee.

Miss B then received an automated generic warning for Miss B to do her research before sending payments by transfer and stated that scammers can impersonate people she trusts.

Miss B continued with the payment as she thought she was sending payments as requested from her trusted solicitor.

When Miss B made payment 2, she was again provided with the same screen asking if she knew and trusted the payee. Miss B was then provided with a screen stating the payment had been identified as risky. After Miss B answered some questions about the payment purpose she was directed to Revolut’s chat facility where a conversation took place.

Revolut provided Miss B with a generic scam warning that did not cover the scam she was experiencing at the time, and even though Miss B said she was buying a property in Spain Revolut still did not ask her any questions that could have uncovered common scams related to those types of transactions, such as email interception scams where the scammer impersonates the solicitor and requests payments.

*What kind of warning should Revolut have provided?*

Considering the value of payments 1 and 2 and the increased risk associated with them I think Revolut should have provided a human intervention. I don't think the automated warnings provided for payment 1 went far enough to make Miss B aware of the risk associated with the payment she was making.

Revolut did provide a human intervention when Miss B made payment 2, although it did not go far enough to provide an adequate warning. Miss B clearly told Revolut she was making a payment in relation to a property purchase. I think it would have been reasonable for Revolut to question Miss B in more detail about the payment and where the instruction to pay had originated from. It would also have been reasonable for Revolut to have warned Miss B about the potential scams associated with such payments. Revolut did not give such warnings.

*If Revolut had provided a warning of the type described, would that have prevented the losses Miss B suffered?*

Had Revolut provided a warning like that outlined above I think it's most likely having been warned about the type of scam Miss B could be falling victim to, that she would have contacted her solicitor by other means, and it would have become apparent before the first payment was made that Miss B was experiencing a scam and her loss would have been prevented.

Revolut is therefore responsible for Miss B's loss from payment 1 onwards.

*Should Miss 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.

In the circumstances I don't think it would be fair to say Miss B contributed to the loss. I say this because the scammer went to great lengths to appear to be Miss B's genuine solicitor. At the time Miss B was expecting to have to make payments in relation to a property purchase and there were no significant red flags I would have expected her to identify.

### **Putting things right**

To put things right I require Revolut Ltd to:

- Refund all of the payments Miss B made in relation to the scam less any funds that have been recovered and repaid.
- Pay 8% per year simple interest on the amount it pays Miss B from the respective dates of loss until the date of refund (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined

above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 19 November 2024.

Terry Woodham  
**Ombudsman**