

## The complaint

Miss O complains that Revolut Ltd won't refund money she lost when she fell victim to a scam.

## What happened

On 3 August 2023 Miss O received a phone call claiming to be from HMRC, she was told that someone had committed tax fraud in her name and that she needed to co-operate with them if she wanted to clear her name. Miss O was initially suspicious of this call and asked for some reassurance that it was legitimate. She was told to search for the high court online and then told she'd be transferred to the number that appeared on the webpage she found. At this stage Miss O believed she was now speaking to a senior officer of the court, and they told her she would need to move all her money to a 'safe account' while the investigation into the fraud was ongoing.

Miss O did as she was instructed, and moved money from her accounts with other UK and overseas banks into her Revolut account and then on to three accounts belonging to third party individuals. In total, Miss O sent four payments totalling £4,359 to the scammers, although £1,170 of this was refunded that same day, so her total loss is £3,189.

Miss O says she then realised she was being scammed, and so she contacted Revolut, but it declined to refund any of the disputed payments and said he had authorised them. Revolut said it had intercepted the payments and asked Miss O to select the purpose of the payment, and that she misled it by selecting 'transfer to a safe account' instead of 'HMRC or tax authority'. Revolut said that Miss O had therefore received warnings relevant to a safe account scam but had nonetheless decided to go ahead with the payments.

Unhappy with this, Miss O referred her complaint to our service. Ultimately, our investigator thought Revolut should have taken steps to intervene more directly at the time of the first payment to the scam, given that Miss O had indicated she was moving funds to a safe account and Revolut would be aware that was not something a consumer would likely ever be legitimately required to do. Had Revolut intervened, the Investigator was persuaded that the scam would have unravelled, so they concluded that Revolut should refund the money Miss O lost, but with a 50% deduction for contributory negligence as they were persuaded Miss O should share some responsibility for what happened.

Miss O accepted the investigator's outcome, but Revolut didn't agree with the proposed Recommendation. In summary, it says:

- Miss O acted negligently by not selecting an accurate payment purpose.
- The account with Revolut was newly created and so there was no historical transaction behaviour that it could have considered to determine normal activity.
- That other banks in the chain had more data on Miss O and should therefore bear more responsibility for her loss.
- That Revolut does not owe a duty to prevent fraud or scams.
- That the Ombudsman service is applying the principles of the Contingent Reimbursement Model code to Revolut even though Revolut is not a signatory of that

code.

As an agreement couldn't be reached, the 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 O 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 O 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

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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

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 August 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).
- 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 Code<sup>3</sup>, which a number of banks and trade associations were

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provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

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

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 Duty<sup>4</sup>, 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"*<sup>5</sup>.
- 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 August 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); 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.

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<sup>4</sup> 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.

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

What did Revolut do to warn Miss O and what should it have done?

It isn't in dispute that Miss O fell victim to a cruel scam. Nor is it disputed that she authorised the payments which she now seeks reimbursement for.

Revolut has said that the limited account history meant that the payments Miss O was making would not have been obviously out of character or suspicious. But Revolut evidently did identify these payments as potentially suspicious, as the very first payment, and then each subsequent payment, was flagged for checks on Revolut's fraud detection systems.

As Revolut recognised the transactions as possibly scam related, I've considered whether it intervened appropriately when it held the transactions and made further enquiries.

At the time of the first payment (and for the subsequent payments), after notifying Miss O that the transaction could be a scam, Revolut asked her to select the payment purpose from a list of options. It then displayed a warning relevant to the option chosen. Miss O selected 'safe account' and Revolut provided a written warning covering the most common features of safe account scams.

Revolut states it was misled by Miss O as she had been contacted by someone claiming to be from HMRC and 'HMRC or tax authority' was an available option when she was prompted for a payment purpose. It says it would have provided a warning about HMRC scams had Miss O selected the true purpose.

But given what Miss O had been told by the scammers – that tax fraud had been committed in her name and that she needed to move her money to a safe account while an investigation was ongoing – I don't agree that she intentionally misled Revolut or that the option she selected was inaccurate.

Regardless, Revolut ought to have been concerned when 'safe account' was selected, given safe account scams are very common and it is not likely to be a legitimate reason for sending money to another account. In the circumstances, I don't consider displaying a scam warning on the screen and giving Miss O the option to cancel the payment or go ahead with it was a proportionate response to the risk identified.

Having thought carefully about the risk the transaction presented based on Miss O's response, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the transaction before allowing it to debit Miss O's account. I think it should have done this by, for example, directing Miss O to its in-app chat to discuss the payment further.

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

I've considered this point carefully. I've not seen anything to suggest that Miss O was given any cover story to use regarding the payments she was making, so I consider it very likely that, had Revolut asked her, Miss O would have been open and honest about what she was making the payments for – transferring her money to a safe account on the instruction of HMRC. And what Miss O would likely have told Revolut about what she was doing should have rung alarm bells for Revolut, given that it would have been aware, by that stage, of the risk HMRC scams represented. Revolut could then have explained the risk Miss O was exposing herself to.

I think, on the balance of probabilities, and bearing in mind that Miss O had already had suspicions about what she was being asked to do, that's likely to have caused her to stop. I

can see no reason for her to have continued to make the payments if she was presented with a warning of this nature.

So, I'm satisfied that had Revolut established the circumstances surrounding the first payment Miss O made to the scam, as I think it ought to have done, and provided a clear warning, Miss O's loss would have been prevented.

*Is it fair and reasonable for Revolut to be held responsible for Miss O's loss?*

In reaching my decision about what is fair and reasonable, I have taken into account that Miss O moved funds into her Revolut account from other UK banks as well as via a money transfer service from her overseas accounts, before sending those funds to third parties.

But as I've set out above, I think that Revolut still should have recognised that Miss O might have been at risk of financial harm from fraud when she made the first scam payment, 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 Miss O suffered. The fact that the money used to fund the scam came from elsewhere does not alter that fact and I think Revolut can fairly be held responsible for Miss O's 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 Miss O has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene – although I've seen nothing to suggest that those firms did intervene – or failed to act fairly and reasonably in some other way, and Miss O could instead, or in addition, have sought to complain against those firms. But Miss O has not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Miss O'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 Miss O's loss (subject to a deduction for Miss O's own contribution which I will consider below).

*Should Miss O 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.

There's a general principle that consumers must take responsibility for their decisions. I've duly considered whether Miss O should bear some responsibility by way of contributory negligence. I acknowledge that part of the call Miss O had with the scammers did appear to be coming from a legitimate number associated with a government agency, and Miss O had seen that number on its website. But I also note that phone number is under the heading 'website enquiries' and not detailed as a number related to official court cases in any way.

Given that Miss O had initially been contacted by what appeared to be a mobile phone number, I think these circumstances should have given her additional pause for thought.

I also think that, when Miss O was told she would need to make payments to three specific individuals, with accounts at an e-money institution, rather than to any official government account, this should have raised another red flag for Miss O given her existing suspicions. I've not seen anything to suggest that Miss O questioned this or received any reasonable explanation for why she was being asked to do this.

So, having thought carefully about this, I do think that Miss O ought to bear some responsibility for her losses and that the refund due to her should be reduced by 50% accordingly.

### **Putting things right**

To resolve this complaint Revolut Ltd should:

- Refund 50% of Miss O's loss; and
- Pay 8% simple interest on the refunded amount, calculated from the date of the payments to the date of settlement (less any tax properly deductible).

### **My final decision**

I uphold this complaint. Revolut Ltd should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 10 October 2024.

Sophie Mitchell  
**Ombudsman**