

The complaint

Ms B complains that Revolut Ltd won't refund the money she lost when she was the victim of a scam.

What happened

In June 2023, Ms B received a phone call from someone who said they worked for another bank she had an account with. The caller asked if she had made a payment from her account they had identified as suspicious and, when Ms B said she hadn't, she was transferred to who she was told was a security manager. The manager then told her she needed to move her money to a 'safe' account. And as Ms B believed the call was genuine, she followed the manager's instructions and made a series of payments from her account with the other bank to her Revolut account, and then from her Revolut account to new bank details the manager gave her.

I've set out the payments Ms B made from her Revolut account below:

Date and Time	Details	Amount
19 June 2023 – 14:58	To 1 st payee	£100
19 June 2023 – 15:00		£200
19 June 2023 – 15:05		£4,900
19 June 2023 – 15:31		£100
19 June 2023 – 15:38		£100
19 June 2023 – 15:41		£200
19 June 2023 – 15:43		£4,900
19 June 2023 – 15:50		£100
19 June 2023 – 15:55		£100
19 June 2023 – 15:59		£3,000
19 June 2023 – 16:04		£100
19 June 2023 – 16:10		£100
19 June 2023 – 16:25		£3,900
19 June 2023 – 16:32		£105
19 June 2023 – 16:46		£100
19 June 2023 – 16:50		£2,900
19 June 2023 – 17:02		£2,900
20 June 2023 – 08:51		£100
20 June 2023 – 08:58		£110
20 June 2023 – 09:05	To 2 nd payee	£93
20 June 2023 – 09:06		£200
20 June 2023 – 09:08		£4,900
20 June 2023 – 09:11		£3,100
20 June 2023 – 09:15	To 3 rd payee	£93
20 June 2023 – 09:17		£200
20 June 2023 – 09:19		£4,900
20 June 2023 – 09:22	To 2 nd payee	£1,000
20 June 2023 – 09:24	To 3 rd payee	£2,100

20 June 2023 – 09:29	To 4 th payee	£93
20 June 2023 – 09:35	To 5 th payee	£94
20 June 2023 – 09:36		£200
20 June 2023 – 09:41		£4,900
20 June 2023 – 09:46		£2,500
20 June 2023 – 18:18	To 6 th payee	£88
20 June 2023 – 18:19		£200
20 June 2023 – 18:21		£3,250

Unfortunately, we now know the call was a scam. The scam was uncovered after the manager didn't call Ms B back the following day to help her access her new 'safe' account, as they said they would. Ms B then realised she'd been the victim of a scam and reported the payments to Revolut.

Revolut investigated but said it showed Ms B warnings and educational screens about scams before she made the payments and didn't think it was at fault for processing the payments she authorised. So it didn't agree to refund the money she had lost. Ms B wasn't satisfied with Revolut's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Revolut should've had concerns from the seventh payment Ms B made, and intervened to ask her more questions about the purpose of it. And that, if it had done this, the scam would've been uncovered at that point. So they recommended Revolut refund the money Ms B lost from this point onwards. Revolut disagreed with our investigator, so the complaint has been passed to me.

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 Ms 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 Ms 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 should in June 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:

¹ 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).

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/

- 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)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 June 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 Ms B was at risk of financial harm from fraud?

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”

The first few payments Ms B made here weren't for particularly large amounts, or for amounts where I'd have expected Revolut to identify them as suspicious based on their size alone. So I wouldn't have expected Revolut to identify that she was at risk of financial harm as a result of these first few payments.

But when Ms B tried to make the seventh payment here, for £4,900 at 15:43 on 19 June 2023, I think Revolut should have identified a risk. At this point, Ms B had tried to make seven payments, all to the same payee, in around 45 minutes. Two of the payments were for significant amounts, and the payments totalled over £10,000. And as this is a pattern of payments similar to that often seen when customers are falling victim to a scam, I think Revolut should have recognised that Ms B was at risk of financial harm from fraud here.

What did Revolut do to warn Ms B?

Revolut says it provided several warnings to Ms B. It says the first warning was shown when Ms B was creating the new payee for the first payments, and said:

"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."

But this warning was very general in nature. And it didn't relate to the circumstances Ms B found herself in, as she thought she was speaking with another bank she had an account with, rather than with Revolut. So I don't think it was a proportionate response to the risk I think Revolut should have identified.

Revolut also says that, for one of the later payments, the payment was put on hold and Ms B was asked what the purpose of it was. And after she selected 'something else' from the options Revolut gave her, Ms B was then forced into an in-app chat with one of its agents who left her a warning which said:

"Upon checking your account, I can see that your transfer has been declined and had automatically been declined by the system. If you still wish to make this payment, please return to the Revolut app and proceed as before."

Before you go, I just wanted to remind you that fraudsters can impersonate other people and pretend to be part of a legitimate company."

Revolut's main communication channel is this chat and we will never ask you to make a payment, if you are suspicious about any situation about your account, please contact us on chat before proceeding with a transaction and we'll be happy to help you. Once the funds leave your Revolut account, we might not be able to recover your money."

But while this warning went further than the previous warning and said fraudsters could impersonate legitimate companies, it was still general in nature. It doesn't mention anything specific about safe account scams or why Revolut believed the payment was high risk, and so wouldn't have alerted Ms B to the specific risk she was facing. And so, even if this warning had been shown when Ms B tried to make the earlier payment of £4,900, I don't think it would have been a proportionate response to the risk I think Revolut should have identified either.

What kind of warning should Revolut have provided?

Having thought carefully about the risk the seventh payment presented, I think a proportionate response to that risk would have been for Revolut to attempt to establish the circumstances surrounding the payment before allowing it to leave Ms B's account. I think it should have done this by, for example, directing Ms B to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding the seventh payment, would the scam have come to light and Ms B's loss been prevented?

Ms B has said the scammer was talking her through making the payments, and told her to ignore the warnings Revolut did provide. So I appreciate that the scammer would likely also have encouraged her to continue making the payment, even if Revolut had directed her to its in-app chat to discuss the payment further.

But I haven't seen anything to suggest the scammer had told Ms B to lie or mislead Revolut about the circumstances of the payment, or that they had given her a cover story to give if she was asked about it. Revolut has suggested Ms B selecting 'something else' from the list of potential payment purposes shows she wasn't being honest and that even further intervention may not have exposed the scam. But even though there may have been a more appropriate payment purpose available for her to select, I don't agree that selecting 'something else' shows that Ms B was being dishonest as this purpose doesn't suggest the payment is for a completely unconnected reason and is so vague that a number of possible interpretations could justifiably lead to it being selected.

In any event, once she had been directed to its in-app chat, I think Revolut should have asked open-ended and probing questions about the circumstances of the payment and explained the context around any questions it asked. I think it should have assessed any information it was given, such as anything unusual or implausible in Ms B's answers or any reluctance to answer questions. And I think it should have been aware that customers may be coached or given a cover story, and so not necessarily have accepted everything it was told on face value if there were reasons to doubt it.

As I haven't seen anything to suggest the scammer had given Ms B a cover story to give Revolut about the purpose of the payment, I think it's likely Ms B would either have been honest about the circumstances if asked open-ended and probing questions about it, or would have tried to make up a cover story in the moment. And as Ms B has said herself that her English is far from perfect and she's had help making this complaint, I think it's unlikely that any cover story she tried to make up in the moment would have been particularly plausible or convincing. So, if Revolut had carried out the kind of questioning and assessed the information it was given in the way I think it should have, I think it's likely the true circumstances of the payments would have been uncovered.

And if Ms B had told Revolut that she was being asked to move money to a new account in order to protect her money, it should have immediately recognised that she was falling victim to a scam. It would then have been able to provide a very clear warning and, given that Ms B had no desire to lose her money and nothing to gain from going ahead with the payments, I think it's very likely she would have stopped, not made any further payments, and her loss would have been prevented from that point on.

So if Revolut had identified a risk as a result of this seventh payment and attempted to establish the circumstances of it, as I think it should have done, I think the scam would have been uncovered and Ms B wouldn't have lost any of the money she did from that point on. And so I think it would be fair for Revolut to bear some responsibility for the loss Ms B suffered from the seventh payment onwards.

Should Ms B bear any responsibility for her losses?

I've also thought about whether it would be fair for Ms B to bear some responsibility for the loss she suffered. And 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.

But this was a sophisticated scam, where the scammers had disguised the phone number they were calling from and made it appear to be a genuine number for the other bank they said they were calling from. And Ms B says they suggested she check the number they were calling from to confirm they were genuine, which she did. So I think this will reasonably have made the callers seem genuine and legitimate to her.

The scammers also told Ms B they had identified a potentially suspicious payment attempted on her account with the other bank and, when she checked her account, she could see this payment she hadn't made had come out of her account. So I also think it's reasonable that this will have made the callers seem legitimate and made Ms B believe her account had been compromised.

Ms B also says the caller she spoke to sounded very professional and well-educated and knew exactly what was happening when she was making the payments. So I think this will have reasonably reassured her that the person she was speaking to was genuine.

And while Revolut did warn Ms B that it would never ask her to make a payment and that fraudsters could impersonate other people or pretend to be part of a legitimate company, I don't think these warnings were clear enough about the specific risks Ms B could be facing that it was unreasonable for her to move past them and continue making the payments she did.

Revolut has argued that being asked to send money from one bank to a competitor to keep it safe, and being told a bank could open an account in her name without her consent, should have caused Ms B significant concern. But I don't think the implausibility of these things is so well known to people without significant banking experience that it would be fair to say Ms B acted unreasonably in not picking up on them.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening that could have caused Ms B some concern – such as being asked to make payments to a number of different payees. But, based on what I've seen, I don't think it was unreasonable that, at the time, she either didn't pick up on these things or wasn't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say Ms B acted unreasonably, or that she should bear some responsibility for her loss.

Summary

I don't think Revolut took proportionate steps to address the risk I think it should have identified here. And, if it had done, I don't think Ms B would have lost the money she did from the seventh payment onwards. So I think it would be fair for Revolut to refund the money Ms B lost, from this point onwards.

As Ms B has now been without this money for some time, I also think it would be fair for Revolut to pay her 8% simple interest on this refund from the date of the payments until the date of settlement.

There were a number of refunds into Ms B's account immediately following some of the scam payments she made here, totalling £3,715, and Revolut was able to recover £9.70 from one of the banks the money was sent to. So I think it's reasonable for these amounts to be deducted from the amount Revolut should refund.

The bank the money was sent from into Ms B's Revolut account, before it was then sent out of her Revolut account, has also already agreed to refund £28,762 of Ms B's loss. So I also think it's reasonable to deduct this amount from the amount Revolut should refund.

My final decision

For the reasons set out above, I uphold this complaint and require Revolut Ltd to:

- Refund Ms B the money she lost as a result of this scam from the seventh payment onwards, minus the £3,715 already refunded, the £9.70 recovered and the £28,762 refunded by the other bank
- Pay Ms B 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 September 2024.

Alan Millward
Ombudsman