

The complaint

Miss K complains Revolut Ltd didn't do enough to protect her when she fell victim to a job scam.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

During May 2023 Miss K was looking for opportunities to earn extra money and had registered with a number of recruitment agencies. On 10 May 2023 Miss K was contacted on an instant messenger service by someone ('the scammer') purporting to be a representative from a recruitment agency. Miss K was offered a role in "product optimization" working for a marketing company I'll refer to as 'D'. She was told the work involved reviewing and rating products and would take no more than an hour a day. On completion of a minimum of two sets of tasks, Miss K was advised she could earn 500 USDT every 5 days.

The scammer directed Miss K to open a "workbench account" with D, where she would complete the tasks. This account had been pre-funded with USDT, which Miss K was advised would be used to create real time buying data. When the initial balance was exhausted, the scammer advised Miss K to top it up herself. She was instructed to open an account with a crypto exchange, which I'll refer to as "B". Miss K then used an existing Revolut account to send money to B to be exchanged into crypto, from there she transferred the crypto to wallet addresses provided by the scammer. Miss K was initially able to make three small withdrawals from the account with D, between top ups, which credited her Revolut account.

In total Miss K made the following card payments into and out of her Revolut account from the account she held with B:

Payment number	Date and time	Credit amount	Debit amount
	13 May 2023 14:34	£92.92	
1	13 May 2023 14:48		£20
2	15 May 2023 07:44		£67
	15 May 2023 11:34	£135.64	
3	15 May 2023 11:56		£211
4	15 May 2023 12:00		£15
	15 May 2023 12:22	£307.55	
5	16 May 2023 09:57		£100
6	17 May 2023 10:27		£280
7	17 May 2023 11:15		£300
8	18 May 2023 11:03		£450
9	18 May 2023 11:26		£1,500
10	18 May 2023 12:00		£2,600
11	18 May 2023 12:28		£3,000

12	18 May 2023 12:34		£2,500
13	18 May 2023 13:14		£3,500
14	18 May 2023 13:17		£2,500
15	18 May 2023 13:28		£1,500
16	18 May 2023 13:30		£120
	18 May 2023 19:06	£27.98	
	Total	£564.09	£18,663

Miss K said she realised she'd been scammed when the price of tasks continued to increase and she was prevented from making withdrawals until she cleared the ever increasing balance.

Having realised she'd been scammed Miss K withdrew the remaining balance from her account with B (£27.98), reported what happened to Revolut and asked for help recovering the funds. She later complained to Revolut, via a professional representative I'll refer to as 'C', that it ought to have recognised her card payments to B were out of character with her usual account usage and it should have intervened and warned her of the scam risks.

Revolut refused to reimburse Miss K for her lost funds. It advised the funds could not be recovered via chargeback as Miss K had authenticated the payments within the app.

Unhappy with Revolut's response, Miss K referred her complaint to the Financial Ombudsman with the help of C. Our Investigator upheld the complaint. While she considered Revolut ought to have provided Miss K with a warning after the tenth payment, she didn't think this would have stopped the scam. But she considered Revolut ought to have initiated a chat with Miss K before processing her eleventh payment. She considered that had Revolut asked Miss K open questions about the purpose of her payments she would have revealed that she was paying money in order to release commission earned as part of a job. She considered that at this point Revolut ought to have provided Miss K with a targeted warning which highlighted the risks of job scams. She considered this would have been effective and Miss K wouldn't have made any further payments. But she considered that Miss K should share responsibility for the loss as she hadn't taken reasonable care to protect herself even though aspects of the "job" ought to have given her serious cause for concern.

Revolut disagreed, and set out the following points:

- The Financial Ombudsman had departed from the law by suggesting Revolut owed a duty to its customers who had have been victims of scams;
- It does not owe a duty to prevent fraud or scams, but does have a contractual, regulatory and common law regulatory duty to execute valid payment intructions, which is set out in its terms and conditions;
- It has systems and controls in place to counter the risk of financial crime, but it does not have a duty to detect and prevent all fraud;
- The Supreme Court's judgement in Phillip v Barclays set out that a payment service provider need not assess the wisdom or potential for financial loss of a proposed transaction;
- It is not a signatory of the voluntary Contingent Reimbursement Model (CRM) code, and so those rules do not apply to it;
- The relevant payments were self to self transfers, as Miss K was essentially moving funds from one account in her name and control to another at another financial institution (B), and so these could not be considered APP fraud.

- It is irrational and illogical to hold Revolut liable for customer losses where Revolut is merely an intermediate link and where other financial institutions in the chain likely hold greater data on the customer than Revolut, but which the Financial Ombudsman has not held them responsible in the same way.

Miss K initially accepted our Investigator's view, but later challenged the suggestion that she should share responsibility for her loss as she set out the research she had carried out into D and why she was persuaded it was legitimate.

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 K 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 terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some

circumstances to carry out further checks. In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

I must also take into account that the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in May 2023 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.

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 did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;
- 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.

For example, it is my understanding that in May 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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, 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).
- 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 crypto 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 crypto wallet.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So, it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 May 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); 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.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in May 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Miss K was at risk of financial harm from fraud?

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

Whilst I have briefly set out the circumstances that led Miss K to make the payments, 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 Miss K might be the victim of a scam.

Miss K opened her account in July 2021, and has used her account daily, typically for low value card payments. When opening the account Miss K had indicated that she intended to use the account for crypto. As such, I don't think Revolut had any reason to be concerned when Miss K instructed the first eight payments to B, while the payments were at the higher end of Miss K's usual spending (which typically didn't exceed £100) I don't think they ought to have stood out as particularly unusual. Similarly, while the ninth payment was significantly larger than Miss K's typical spending, it is not uncommon for consumers to make occasional large payments.

I think Revolut could initially have taken some reassurance from the fact that Miss K had received credits back from B, which could have indicated these were legitimate transactions. But it should also have recognised that it is a common feature of scams for consumers to receive small credits in the early days, as an incentive to continue making larger payments. So, I don't think Revolut ought to have discounted the possibility Miss K was at risk of financial harm purely because she had received some credits from B.

But by the tenth payment I think Revolut ought to have been concerned that there was a significant change in Miss K's account usage. Her spending had increased dramatically – her spending on 18 May 2023, across three payments, exceeded her usual monthly spend; and each payment she made that day was a significant increase on the payment before. While Miss K had indicated when opening the account that she intended to use the account for crypto, I can't see that she had actually done so prior to this point, so again, I think Revolut ought to have been concerned that within the space of a week, Miss K had paid over £5,500 to a crypto exchange.

I consider a proportionate intervention at this stage would have been to present Miss K with a written warning, which highlighted the key risks associated with crypto investment scams, as that was the most prominent crypto scam risk at the time. Given that this was not the

scam Miss K was falling victim to - and considering the hallmarks of a crypto investment scam differ to those of a job scam - I can't safely conclude this would have resonated with Miss K to the extent that she would have stopped making payments to the scam at that stage.

But I consider that upon Miss K instructing the next payment (payment eleven) Revolut ought to have been aware of the heightened risk of significant financial harm. By this stage, Miss K had, within two hours, instructed four payments totalling £7,550 to a crypto exchange in a pattern that was completely out of keeping with her usual account usage.

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

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

Had Revolut asked Miss K why she was making the payment I think it's most likely she would have been honest. I say this as I have seen no evidence to suggest Miss K would have lied or tried to hide what she was doing. While it's clear Miss K had a lot of interaction with the scammer, I have seen no evidence that the scammer had sought to coach her on how to interact with Revolut or what answers she should give.

In view of this, had Revolut asked Miss K why she was purchasing crypto I think she would likely have revealed that she was making payments as part of a job, and that she needed to make further payments to release commission she had earned. I consider that this ought to have been enough to put Revolut on notice that Miss K was likely falling victim to a job scam, which were becoming increasingly more common at the time.

On identifying the actual scam risk, Revolut ought to have provided Miss K with a clear warning that highlighted the hallmarks of a job scam. I think this would have resonated with Miss K, particularly as the evidence shows she had her own suspicions about the plausibility of the job at the outset and was unhappy about the ongoing requests for payment. Given Miss K was worried about losing money, I think it's most likely she would have decided not to go ahead with any further payments, and her loss from this point would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Miss K purchased crypto which credited an e-wallet held in her own name, rather than making payments directly to the fraudsters. So, she remained in control of her money after she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.

I have also taken into account that the money that funded the scam was transferred into Miss K's Revolut account from another account at a regulated financial business.

But as I've set out in some detail above, I think that Revolut still should have recognised that Miss K might have been at risk of financial harm from fraud when she made the eleventh payment, and in those circumstances, it should have made further enquiries before processing her payment. If it had taken those steps, I am satisfied it would have prevented the losses Miss K suffered from that point.

The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was initially transferred does not alter that fact, and I think Revolut can fairly be held responsible for Miss K'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 K has only complained against Revolut. I accept that it's possible that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Miss K could instead, or in addition, have sought to complain against those firms. But Miss K 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 a consumer'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(s) (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 K's loss from the eleventh payment (subject to a deduction for Miss K's own contribution which I will consider below).

Should Miss K bear any responsibility for her losses?

I have thought carefully about whether Miss K should bear some responsibility for her loss by way of contributory negligence (which might justify a reduction in compensation). 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. Having done so, I consider that Miss K should bear equal responsibility for her loss.

When considering whether a consumer has contributed to their own loss, I must consider whether their actions showed a lack of care that goes beyond what we would expect from a reasonable person. I must also be satisfied that the lack of care directly contributed to the individual's losses.

I accept that this was a sophisticated and well-orchestrated scam. I can understand how certain aspects of it may have made the scheme appear legitimate – for example the existence of an online platform where Miss K was to complete her tasks, the fact the scammers cloned legitimate recruitment and digital marketing company and the fact that Miss K was initially receiving what appeared to be earnings. And I understand that Miss K had conducted some research into these companies that gave her further reassurance.

But, like our Investigator, I cannot ignore that there were also aspects of the scam that were highly implausible – for example the expected commission in comparison to the work completed (Miss K was told she could earn up to 500 USDT commission every five days but that the work would only take an hour a day), the fact that Miss K would be paid in crypto, and that she needed to pay money to enable her to release her commission.

But most significantly, I note that Miss K had herself questioned the legitimacy of the scheme from the outset. In messages to the scammer Miss K voiced her concerns about the role - *"I have checked the company and google reviews say it's a scam"* but was falsely reassured

the reviews were just bad press from rival firms. She also questioned the premise of the role, asking “*why is it so easy*” and “*I don’t think it’s difficult that’s why I’m a bit concern [...] worried about it as it’s so easy [...] are we giving fake reviews?*” But despite Miss K’s reasonable suspicions, I can’t see she took further steps to check if what she was doing was legitimate, other than to ask the person she thought may be scamming her. Had Miss K sought independent advice, I think the scam could have been uncovered and her loss prevented.

Having considered the overall circumstances of what happened, I’m not persuaded Miss K took reasonable care to protect herself from the risk of financial harm. I consider that a reasonable person would have had enough reason to question the legitimacy of what was going on and would ultimately not have made the payments.

As such, I think it is fair in the circumstances that Revolut and Miss K share equal responsibility for the loss she suffered from the eleventh payment onwards.

Putting things right

As Miss K was able to withdraw £27.98 from her account with B on 18 May 2023, her loss to the scam from the eleventh payment was £13,092.02. As both Revolut and Miss K could have prevented this loss, it is fair that Revolut should refund 50%.

My final decision

For the reasons I’ve explained, I uphold this complaint about Revolut Ltd and instruct it to pay Miss K:

- £6,546.01 (50% of the loss Miss K incurred from payments 11 - 16), plus
- 8% simple interest per year on that amount from the date of each payment to the date of settlement (less any tax properly deductible).

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss K to accept or reject my decision before 7 January 2025.

Lisa De Noronha
Ombudsman