

The complaint

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

What happened

Ms C received a call from fraudsters on 30 August 2023. They said they were from the Supreme Court and were calling about unpaid council tax. Ms C was asked to make payments immediately to have the police warrant and conviction in relation to the unpaid tax cancelled. The fraudsters were able to make it look like they were calling from a genuine number for the Supreme Court. At the time, Ms C also received letters via email about unpaid tax purporting to be from HMRC.

The tactics used by the fraudsters prompted Ms C to make an initial payment via her account with another business. The fraudsters then instructed her to create an account with Revolut and pay the remainder through it. They then told Ms C that her bank account with a third business had been hacked and several credit cards had also been taken out in her name. Under the guise of securing her funds, Ms C was tricked into making a further payment. After the call ended abruptly, Ms C grew suspicious and realised that she had been scammed.

The following transactions were made from Ms C's Revolut account in relation to the scam:

Transaction	Payee	Amount
Faster Payment 1	Individual "A"	£2,575
Faster Payment 2	Individual "M"	£1,355
	Total loss	£3,930

Revolut said it wouldn't refund Ms C's loss as she had authorised the transactions and it provided a scam warning. While her complaint was ongoing, Revolut was able to recover £367 which it paid back to Ms C.

Our investigator upheld the complaint as they considered Revolut ought to have gone further with its enquiries when Ms C indicated that she was sending money to keep her account safe. They weren't satisfied that the provision of a written warning covering the typical features of a safe account was a proportionate response to the risk identified. Had Revolut gone further, the investigator was persuaded that the scam would likely have come to light and Ms C's loss prevented. In their most recent assessment, the investigator didn't think Ms C should share the blame for what happened. And so, they recommended Revolut to refund the transactions minus the amount recovered, along with interest.

I issued my provisional decision last month and gave reasons for why I intended upholding the complaint. I said –

"In deciding what's fair and reasonable, I'm 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 C 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 C and the Payment Services Regulations to carry out her 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’m 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,

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).

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'm 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'm 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 don't 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 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*

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"

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 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).*

Should Revolut have recognised that Ms C was at risk of financial harm from fraud and were the steps it took to warn her sufficient?

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

In addition to providing a new payee warning on both occasions, Revolut's fraud detection systems also recognised the transactions as possibly scam related. So, I've considered whether it intervened appropriately when it held the transactions and made further enquiries.

After notifying Ms C 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

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)

option chosen. Ms C selected 'transfer to a safe account' and Revolut provided a written warning covering the most common features of safe account scams.

Revolut states it was misled by Ms C as she had the opportunity to select 'tax authority request' when prompted for a payment purpose. It says it would have provided a warning tailored to that type of scam had Ms C selected the true purpose, and in doing so she has acted negligently.

The investigator asked Ms C why she had selected the option that she did. She explained she felt panicked at the time and didn't know which option to pick and so asked the caller. It was their suggestion to select 'transfer to a safe account'.

Revolut ought to have been concerned when 'safe account' was selected, given it is almost never a legitimate reason for sending money to another account – especially to a third party's account as was the case here. In the circumstances, I don't consider displaying a scam warning on the screen and giving Ms C 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 first transaction presented based on Ms C'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 Ms C's account. I think it should have done this by, for example, directing Ms C to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding Payment 1, would the scam have come to light and Ms C's loss prevented?

Had there been a direct intervention and questions asked about the payment purpose selected, on balance, I consider it more likely than not that further questioning would have broken the sense of urgency that Ms C felt at the time she authorised the transaction.

There are two likely scenarios – (1) Ms C would have taken the time to review and answer Revolut's additional questions and it would have immediately recognised that she was falling victim to a scam; or (2) Ms C would have referred to the fraudster who would likely have provided her a cover story to give to Revolut and that would have immediately given her cause for concern.

I'm persuaded that the scam would have been exposed in either of those scenarios. What this means is that had Revolut attempted to establish the circumstances surrounding the transaction in question, I'm persuaded that it would have exposed the scam, causing Ms C to stop from going ahead with the transaction – and the subsequent transaction.

Should Ms C 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.

I understand that Ms C had moved to the UK only a few months prior to the scam happening. It's therefore not unreasonable that her knowledge of taxation in the UK may have been limited. It might not have been that obvious to Ms C that HMRC does not deal with the payment of council tax. The fraudster created a sense of panic and pressure by threatening arrest warrant and conviction. There's also number spoofing.

Having carefully considered the circumstances of what happened here, I can see why Ms C might not have fully appreciated the situation. So, I'm not persuaded that she acted negligently when she authorised the first transaction.

However, I do think that Ms C should share equal responsibility for the second transaction. This is because the scam had evolved from owing unpaid tax to needing to secure her bank account which had been hacked and credit cards being taken out in her name. I think Ms C ought to have realised that something didn't seem right when the caller, purportedly from the Supreme Court, started discussing her account with an unrelated business. I also think that being asked to make the next payment to a new beneficiary ought to have rung alarm bells. As the scam evolved, it became more implausible.

As such, I think Ms C contributed to her loss resulting from the second transaction and so I consider it fair that liability for it is split between the parties."

I invited further comments from both parties and gave a two-week deadline.

Ms C replied and said she wanted me to consider one further point – that she wouldn't have lost such a huge amount if Revolut had set a small transaction limit on the first day of using Revolut. She states if it had done that, she would have realised it was scam and avoided the next transaction.

Revolut didn't reply within the two-week period and was given a further week to respond. However, we didn't hear back from it. Four weeks from the date I issued my provisional decision, Revolut asked for a further extension of ten days. But I've declined its request. Considering the time that has passed since I issued my provisional decision, both parties have had sufficient opportunity to provide any final comments for me to consider. And so, it's appropriate for me to progress this case to final decision.

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 thank Ms C for her comments. I understand that point that she's trying to make here. In my experience, several businesses allow customers to set daily transaction limits as a matter of routine. But where such a limit is reached, it doesn't automatically follow that the business questions a customer about the purpose of the transaction. It's more likely that the transaction is declined, and the customer is notified that they've reached their daily limit.

In any event, I've already found that had Revolut taken sufficient steps to identify the circumstances of the first payment when it flagged on its systems, the scam would likely have been exposed. And so, I concluded that it could have prevented Ms C's loss. So, I'm in agreement with Ms C that had Revolut done what it should have, I'm persuaded she wouldn't have made the payments.

The reason I've made a deduction from the refund of the second payment is because I've also found that Ms C contributed to her losses stemming from that payment. I explained why in my provisional decision. For ease, I've quoted my reasoning again in the previous section of this decision.

I've considered Ms C's comments and I remain satisfied that a fair and reasonable outcome here is that Revolut refunds the first payment in full, but it only needs to refund half of the

second payment.

Putting things right

To put things right for Ms C, Revolut Ltd needs to refund the first payment in full and 50% of the second payment. It can make a deduction for the amount directly recovered from the third party's account.

Revolut also needs to pay interest at 8% simple per year on the refunded amount, calculated from the date of loss to the date of refund. If Revolut considers that it's required by HMRC to deduct income tax from that interest, it should tell Ms C how much it's taken off. It should also give Ms C a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Revolut Ltd to put things right for Ms C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 8 October 2024.

Gagandeep Singh
Ombudsman