

The complaint

Miss G is unhappy Revolut Ltd won't reimburse money she lost to a scam.

What happened

On 9 August 2024 I issued my provisional decision on this complaint. I wanted to give both parties a chance to provide any further evidence or arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

On 4 May 2023, Miss G was woken up by a call from someone claiming to represent His Majesty's Revenue and Customs (HMRC).

The caller claimed that she'd be charged with tax evasion and that she could either get legal help and go to court or solve the issue by making payments to clear any outstanding fines. Miss G recalls that the caller was able to demonstrate that they were calling from a number associated with the judiciary (although it appears the first call came from a mobile number). Her impression of the people she spoke to was that they were very professional and used 'legal terms and titles' in order to convey their authority.

Miss G was assured that any money that she paid would be immediately refunded, but that it was necessary to make the payments to avoid any further repercussions. Miss G remembers the sense of urgency created by the fraudsters and the stress this caused her. Miss G made three transfers from her Revolut account to another account operated by Revolut (albeit not an account operated by Revolut Ltd and one based in another country). Those payments are set out below.

<i>Payment number</i>	<i>Date</i>	<i>Amount</i>	<i>Recipient</i>
<i>1</i>	<i>4 May 2023, 9:50am</i>	<i>£997</i>	<i>Unknown third party</i>
<i>2</i>	<i>4 May 2023, 10:00am</i>	<i>£1,998</i>	<i>Unknown third party</i>
<i>3</i>	<i>4 May 2023, 10:11am</i>	<i>£300</i>	<i>Unknown third party</i>

After making the above payments, Miss G says she was overwhelmed with the requests and hung up the phone. She then spoke to her mother who suspected she'd been the victim of a scam.

She contacted Revolut to report the matter. It said that it had warned her about a scam risk before she made the payments, but she'd decided to proceed regardless. It also said that it had tried to recover her money but the funds had been sent to its sister entity in another country – and it couldn't remove funds from the recipient's account without the account holder's permission or that of local law enforcement.

Miss G referred the matter to our service and one of our Investigator's upheld her complaint in part. They thought that Revolut should have made further enquiries of Miss G before

processing payment 2, as that payment was unusual for Miss G's account. Had it done so, the Investigator concluded, Miss G would have realised that she was the victim of a scam, would not have proceeded with payment 2 and her loss from that point onwards would have been prevented. They also thought that Miss G had acted reasonably in the circumstances – particularly considering a genuine phone number connected to the judiciary had been 'spoofed' by the fraudsters. So they recommended that Revolut reimburse payments 2 and 3 in full.

Revolut didn't agree. In summary, it said:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of Philipp v Barclays Bank UK plc [2023] UKSC 25.*
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment ("APP") fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law.*
- Our service appears to be treating Revolut as if it were a signatory to the CRM Code and the Payment Service Regulator's ("PSR") mandatory reimbursement scheme is not yet in force.*
- Miss G was grossly negligent by ignoring the warnings it gave. The PSR's mandatory reimbursement scheme will allow it to decline claims where a consumer has been grossly negligent, taking into account any warnings a firm has provided.*
- Miss G should not have made the payment – no government agency would ask for money or cold call a consumer without prior notification.*

As no agreement could be reached, the case was passed to me to decide.

What I've provisionally 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.

For the reasons I've set out below, I'm provisionally minded to conclude that:

- Revolut should have found the payment 2 to be concerning enough to have provided a warning that was tailored to the circumstances Miss G found herself in.*
- Had it done so, Miss G's loss from that point on would have been prevented.*
- I think Miss G acted reasonably and there should be no reduction to the amount reimbursed to her.*

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 G 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 G 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 payment 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 May 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:

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).

- *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:

- *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 Code*⁴*, 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).*

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 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”

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).

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

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

Whilst I have set out the circumstances which led Miss G to make the payments using her Revolut account, I am mindful that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Miss G might be the victim of a scam.

Miss G opened her Revolut account in September 2020. She used the account frequently but generally only for small value card payments. She received fairly regular credits into her account and often transferred that money to another of her own accounts.

Payment 1 did stand out as being somewhat unusual. It was the largest payment that had been made on the account in the previous six months and was made to a new payee. However, it was for a relatively small sum.

Revolut has also told our service that the payment went to an account holder who is a customer of Revolut's sister entity, which is based in another country. So, although this might not have been clear to Miss G, the payment was effectively sent internationally. Revolut denies that it would have been apparent to it that the payment was being made internationally. It says that it would only have known that the payment was being made to another Revolut user. It also strongly rejects any suggestion that the destination of the payment could be taken into account when deciding the risk a payment presents.

I'm surprised by Revolut's submissions on this point. It's difficult to understand how it would not have known the recipient account was both 1) based overseas and 2) held by an entirely different entity. The name and address of the account holder would necessarily be linked to the receiving account and that customer would not be a customer of Revolut Ltd. So, I'm satisfied that, despite Revolut's submissions, it reasonably ought to have been aware that the destination account was held overseas. I also don't agree that the fact the payment was international was not a potential additional risk factor given its ability to recover those funds is significantly curtailed in comparison with a domestic payment (particularly one sent to another Revolut Ltd account)

So, with all that mind, I've considered whether Revolut acted fairly in relation to payment 1.

It did provide some warnings in advance of this payment. I've set out those warnings below. The first warning said:

'Do you know and trust [name of 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.'

It then asked Miss G whether she wanted to proceed with the payment. Miss G instructed Revolut to make the payment, but it declined to do so, giving a further warning:

"Our systems have identified your transactions as highly suspicious. We declined it to protect you. If you decide to make the payment again anyway, you can, and we won't decline it. As we have warned you this transaction is highly suspicious and to not make the payment, if the person you pay turns out to be a fraudster, you may lose all your money and never get it back. You can learn more about how to assess this payment and protect yourself from this link: <https://takefivestopfraud.org.uk/>

Miss G, if she wanted to proceed, then had to instruct Revolut to make the payment again. Miss G says that she questioned the fraudsters about the warning but they reassured her that it appeared just because she was making a payment to a new payee. Miss G says that this resonated with her – and she considered the warning to be generic – appearing even when she made transfers to 'trusted individuals'.

It's not clear exactly what prompted the warnings above, but I suspect it was likely the factors I've described. I've thought about whether Revolut should have done more at this point but, having considered this matter carefully, I think its warnings in relation to payment 1 were proportionate.

At that point, Miss G had made just a single payment of just under £1,000. While not significant in value, the value of the payment was not so high that I'd expect Revolut to have considered it to be particularly high risk. Revolut would not, at this point, know that further payments would be attempted. And, as I'll come onto, although I think that the fact the payment was made internationally did attach some additional risk, Miss G, by Revolut's account, made a number of small value international payments in the six months before the scam. Overall, I think the steps it took to warn Miss G at this point were proportionate to the risk payment 1 presented.

However, payment 2 took place just 10 minutes later. It was being made to the same payee in a way which might be consistent with splitting a larger sum into smaller amounts to avoid fraud detection systems. The amount of the payment had also doubled and while only two payments had taken place, the activity was already consistent in appearance with certain types of scam (including the one that Miss G was falling victim to). And, as I've set out, I believe that Revolut had an additional piece of information about this transaction – it was being made to an overseas customer. While, as I've mentioned, this wasn't the only international payment Miss G had made, it was significantly larger than any of the others and came minutes after a similar payment.

Taking all of this into account, I think payment 2 stood out as being sufficiently unusual that it should have prompted Revolut to make further enquiries with Miss G.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, in line with what I consider to have been good industry practice at the time, as well as what I consider to be fair and reasonable, when Miss G attempted to make payment 2, to have asked about the purpose of the payment (for example by asking Miss G to select a payment reason from a list of possible reasons) and provided a warning which covered the key scam features of the payment purpose selected.

Given the prevalence of this type of scam in May 2023, when this payment took place, I'd have expected one of those options to be paying HMRC or paying taxes. I'd have expected any warning of this nature, among other things, to explain that HMRC won't call and demand immediate payment under threat of being arrested.

Had Revolut provided a warning of the type described would that have prevented Miss G's loss from payment 2?

I've noted that Miss G asked the fraudsters about the warning that appeared in relation to payment 1 and appears to have been prepared to ignore it on their advice. She's also said that the warning was generic and she recognised it from other payments she'd attempted.

But a warning of the type I've described would have been much more tailored to Miss G's circumstances. I think she's much more likely to have recognised her own circumstances in that warning and she's also less likely to have seen the warning before.

I also note that, after payment 3, Miss G spoke to her mother, who was quickly able to identify that her daughter was falling victim to a scam. This indicates that she was not so under the spell of the fraudsters that she was unwilling to disclose the purpose of the payment or not to heed a relevant warning.

While we haven't obtained evidence from the bank which funded the payments to Miss G's account, I think it's very unlikely that it would have provided any warnings to Miss G. Miss G's Revolut account appears to be a longstanding payee of the account from which the funds were received and the originating bank is unlikely to have recognised any risk associated with the transactions.

I think, on balance, that a further, more specific warning is likely to have prompted Miss G to seek advice about the legitimacy of the call at this point (rather than after payment 3). Had she done that, I think scam would have come to light and the loss from payment 2 would have been prevented.

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

Revolut has argued that we are applying the provisions of the CRM Code or the PSR's proposed mandatory reimbursement scheme to complaints against it, despite it not being a signatory to the former and the latter not yet being in force. I do not seek to treat Revolut as if it were a signatory to the CRM Code or apply the provisions of the PSR's mandatory reimbursement scheme, and I have not sought to apply them by analogy. I've explained in some detail why I think it fair and reasonable that Revolut ought to have identified that Miss G was at risk of financial harm from fraud and the steps it should have taken before allowing payment 2 to leave her account.

Should Miss G bear any responsibility for her loss?

In deciding this point, I've taken into account what the law says about contributory negligence, as well as what's fair and reasonable in this complaint.

Miss G, at the relevant time, was an overseas student living in the U.K. She says that she was not aware of how the U.K. tax system operated. She was 20 years-old at the time of these transactions. I've taken this into account when deciding whether she acted reasonably.

I also note that the fraudsters, while initially calling on a mobile number, called her back on a number which is associated with the judiciary. Miss G says that the fraudsters directed her to a specific page on the 'Courts, Tribunal and Judiciary' website. That page showed the number that the fraudsters were calling on.

I've reviewed that page and the telephone number is for enquiries about the website itself – rather than anything to do with the functions of the court (and completely unrelated to HMRC). Nevertheless, I can see how, at first glance and in the pressure of the situation, the existence of the phone number on an official website may have seemed (to someone unaware of 'number spoofing', as Miss G says she was) to provide some confirmation of the legitimacy of the caller.

And, the pressure of the situation is an important factor to consider here – Miss G was threatened with serious legal consequences should she not comply with the fraudster's demands. I can understand why, in that situation, she might reasonably not have been alive to the risk the call presented.

Overall, I don't think that Miss G should bear any responsibility for the loss she's suffered.

Recovery

I'm satisfied with what Revolut have said about the recovery of Miss G's funds. The money was sent internationally to Revolut's sister entity. I have no jurisdiction over that entity and cannot compel it to return Miss G's money. Revolut says that it has no authority to remove the funds either.

Conclusion

Overall, I think that Revolut ought to have provided a warning in relation to payment 2 based on the payment reason Miss G chose. I think that warning would have been sufficiently relevant to Miss G's circumstances that it would have resonated with her to the extent that she would not have made payment 2 or the following payment. It follows that Revolut should, fairly and reasonably reimburse those payments in full. In addition I think that Revolut should pay Miss G 8% simple interest per annum on that amount from the date of each payment to the date of settlement to fairly reflect the time that Miss G has been without the money.

My provisional decision

For the reasons I've explained, I'm currently minded to uphold this complaint and instruct Revolut Ltd to pay Miss G:

- The total of payments 2 and 3 - £2,298

8% simple interest per year on that amount from the date of each payment to the date of settlement.

Both parties accepted my provisional 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.

As both parties accepted my provisional decision, my final decision is the same as the provisional decision set out above.

My final decision

For the reasons I've explained, I uphold in part this complaint and instruct Revolut Ltd to pay Miss G:

- The total of payments 2 and 3 - £2,298
- 8% simple interest per year on that amount from the date of each payment to the date of settlement.

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

Rich Drury
Ombudsman