

The complaint

Ms H complains that Revolut Ltd ('Revolut') won't reimburse the money she lost when she fell victim to a scam.

What happened

What Ms H says

Ms H says that she received a notification from a parcel delivery company asking her to arrange redelivery and pay a small fee. She was in a rush at the time and opened the link and provided redelivery information and paid the fee. Later Ms H received a call from someone who said they were from her bank. Ms H didn't know at the time, but the caller was a scammer. The scammer told Ms H there had been suspicious activity on her card. Ms H said she wanted to check the number she'd been called from and ended the call to do so. The number she had been called from matched that of her bank.

Ms H then received another call from the same number. The caller knew details of Ms H's accounts and told her that following the phishing text her current and saving accounts had been severely compromised. Ms H says the scammer must have gained access to her phone because she later realised a screen sharing app had been installed on her phone. The scammer told Ms H that they needed to update the security on her bank account and took a video and photos of her and asked for a photo of her passport.

To secure her bank account, Ms H was persuaded to transfer funds to a new safe account. She transferred funds to what she thought was an alternative bank account but was actually a new account with Revolut which Ms H says was opened using the details the scammer had obtained from her. But Ms H has also said she was told Revolut was a 'sister' holding account that all major banks use when there is suspicious activity on a customer's account. She believed her funds would be kept safe until matters were resolved with her usual account.

Later that evening Ms H says the scammer persuaded her to download the Revolut app and type in a PIN to see that her funds were safe. She feels that scammers were then able to use the PIN without her knowledge to transfer funds from the Revolut account.

Over the next two days Ms H says she contacted her bank on different numbers from its website but now believes the calls were answered by fraudsters posing as her bank. She was told not to worry, and that a fraud investigation was ongoing, and her funds were safe. But Ms H was later told her funds had been removed from the Revolut account and she had been scammed.

Ms H believes fraudsters were able to use details from her phone to impersonate her. After contacting Action Fraud, Ms H opened the Revolut app and was able to see that messages had been sent in the chat by fraudsters. She reported what had happened on 20 April 2023. Ms H has disputed the following payments from the Revolut account:

Transaction	Date	Time	Amount	Recipient
1	18/04/23	18:58	£90	Individual 1

2	19/04/23	18:06	£90	Individual 2
3	19/04/23	18:08	£11,259	Individual 2
4	19/04/23	18:37	£319	Individual 2
Total			£11,758	

Revolut didn't agree to reimburse Ms H.

What Revolut say:

- When Ms H's account was opened on 18 April 2023 relevant personal details were provided as well as a selfie of Ms H.
- Its internal systems evidence that all transactions were authorised by Ms H, who also confirmed this. The account was unlocked using biometrics or a passcode and the same process was followed when each payee was added, and each transaction made. Revolut has controls within the app to prevent access to screens with sensitive information. This means that it's not possible for a third party to initiate payments through a screen sharing app.
- Ms H was provided with a new payee warning and told of the risks in proceeding.
- Revolut intervened when the high value payment was made and provided appropriate warnings, but Ms H didn't provide honest answers.

Ms H was unhappy with Revolut's response and brought a complaint to this service. Ms H says she didn't authorise the transactions and that Revolut failed to take into account failed transaction attempts to a cryptocurrency exchange before a large transfer the fraudster said was to buy a car.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. She was satisfied that Ms H opened the Revolut account and authorised the transactions. After considering Revolut's intervention before processing the £11,259 transaction, the investigator said it didn't go far enough. This was because Ms H told Revolut the payment was to buy a car from a friend and had previously attempted payments to a cryptocurrency exchange which were declined. When Revolut asked Ms H about those transactions, Ms H advised that she was experimenting with cryptocurrency. But she thought Ms H had a role in what happened so a 50% deduction was fair. Finally, the investigator said Revolut had done what it could to recover Ms H's funds.

Ms H maintained that she didn't open the Revolut account or transfer funds from it.

Revolut didn't agree with the investigator's findings. I have summarised the main points it made below:

- This service is permitted to depart from the law but where we do should explain that we have done so and explain why. If we apply the law or legal duties, we should apply it correctly and if we err in law, we are susceptible to judicial review on the grounds of error in law in relation to our identification of what the law is (as well as perversity and irrationality).
- Revolut is bound by contract, applicable regulations and common law to execute valid payment instructions. The duty is strict and there are only limited exceptions. Revolut referred to specific terms in its terms and conditions and went on to say that although the relationship between a payment service provider (like Revolut) and a customer is one of contract, and such contracts are performed in a heavily regulated legal environment. The most significant legislation is the Payment Services

Regulations 2017 which impose obligations to execute authorised payments promptly. By suggesting that it needs to reimburse customers, it says our service is erring in law.

- This service has overstated Revolut's obligations. Revolut recognises its obligations and has put adequate procedures in place. But the duty is not absolute and doesn't require Revolut to detect and prevent all fraud.
- It does not need to concern itself with the wisdom or potential for financial loss of a customer's payment instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc [2023] UKSC 25*.
- Our service appears to be treating Revolut as if it were a signatory to the Contingent Reimbursement Model Code.
- The Payment Service Regulator's ("PSR") future mandatory reimbursement scheme will not require it to refund payments made in these circumstances either.
- Revolut gave appropriate warnings which were negligently ignored by Ms H. It initiated a chat when the high value payment was made and questioned Ms H, who withheld the true reason for the payment. Ms H also received a new beneficiary warning. Its intervention can't go as far as undermining a customer's decision or assuming they are being untruthful, particularly when a payment is in line with the stated account purpose.
- The investigator's conclusion that, because Ms H attempted card payments to a cryptocurrency exchange before the £11,259 transaction, Revolut ought to have been concerned is flawed. Its analysis of card payments to cryptocurrency exchanges shows that a tiny fraction of them are reported as fraudulent, so treating all cryptocurrency payments as inherently suspicious isn't justified.

As no agreement could be reached, the case was passed to me for a final decision. I intended to reach a different outcome to that of the investigator and issued a provisional decision in which I explained why I wasn't upholding the complaint on 14 June 2024. In the "What I've provisionally decided – and why" section of my provisional decision I said:

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.

- The express terms of the current account contract may modify or alter that position. For example, 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 duty to do so.

In this case, the terms of Revolut's contract with Ms H at the time expressly required it to refuse or delay a payment for a number of reasons. Those reasons included "*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 H 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 in Ms H's case, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately. 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 – which is what it did in this case.

Overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Revolut should fairly and reasonably:

- 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 financial harm from 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;
- 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.

I'm very sorry to hear about this cruel scam and of the impact it has had on Ms H.

The first point I need to consider is whether Ms H opened the account with Revolut and authorised the transactions from it.

Did Ms H open the Revolut account and authorise the transactions from it?

I appreciate that Ms H says she didn't open an account with Revolut or complete the transfers from the newly opened Revolut account. She says the scammers had remote

access and must have taken these steps and used photos they had asked her to take, purportedly for verification purposes.

Having carefully considered the evidence available, I'm satisfied Ms H at the very least knew a Revolut account had been opened, and that she authorised the transfers. I'm aware Revolut has said it's not possible for someone using a screen sharing app to view sensitive screens. This is because when any screen recording is detected all sensitive information (like new beneficiary screens, transfer screens and card details) are blocked and the screen goes black. A message is displayed that says the screen is hidden to protect the customer's personal information.

Other evidence leads me to believe Ms H authorised the transactions from her Revolut account. Contact with Revolut was made via the chat function on 18 April 2023, when a cryptocurrency merchant appears to have initiated card verification checks. After asking various questions Revolut asked for a selfie and for a piece of paper to be held up with the date and a number handwritten on it. Two selfies were provided on 19 April, as the information on the piece of paper was upside down on one. The selfie matches the one provided by Ms H when she later reported the scam and includes details that weren't on photos Ms H says the scammer took of her. So, I can't see how it would have been possible for a scammer to provide the selfie Revolut required to verify its customer before discussing transactions on the account.

I've also considered the messages sent by Ms H when she reported the scam to Revolut on 20 April 2023. Ms H said:

- *"Yes, you did security checks but I need to know how to contact someone because I realise I've been defrauded"*
- When asked why she sent the selfie and said funds were for a vehicle purchase, Ms H said, *"Yes, I was told to by the [S] representative"* and, *"They told me what to say"* and, *"I thought the transactions were legitimate as everything made sense"*.

And I'm aware that when Ms H called S (her bank) to report the transfers from her account with S to Revolut, she advised that the scammer told her to transfer her funds to a Revolut account she set up. The scammer then instructed her to move her funds from the Revolut account to another account (which I understand Ms H believed was an account with her bank). Ms H told her bank that when she made these transfers the scammer told her what to say.

Given the evidence I have discussed above, I consider it fair to conclude that Ms H knew that the Revolut account had been opened and the transactions I have listed were made.

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

The scam transactions were from a newly opened account, so Revolut didn't have an understanding of Ms H's normal spending patterns to compare the transactions with. I have seen evidence which confirms the account was opened to make transfers, meaning the transactions were in line with the stated account opening reason. In any event, the first two transactions in the table above were very low value so I don't consider Revolut would have had any concerns about them. The position changed though when Ms H sought to make a transfer of £11,259 to a recently set up payee.

Revolut has provided evidence to demonstrate that it notified Ms H that the transaction had a *"higher risk score than 99.2% of all Revolut transfers"* and provided a series of dynamic

educational messages which discussed the prevalence of scams and fraudsters pretending to be someone trusted.

Revolut's security system held the £11,259 transaction. In the chat with Revolut Ms H explained that she had been trying to make the transfer since the previous afternoon and expressed dissatisfaction with Revolut's service.

Ms H was informed that Revolut needed to perform some security checks and was given some information about scammers using increasingly sophisticated techniques and could pretend to be from a financial institution from a number that appears to be from Revolut or another bank. The next in-app message is highly relevant to this complaint. It said,

"We have noticed an emerging fraud trend and so we want to check some further details with you before you transfer your money. If you have been called by any bank claiming that your account is not safe and you need to move your money to another account, stop. They may claim that they have created a new 'safe' account for you to move your money into... This is a lie and is a tactic which scammers are using to scare you. Be aware that they are able to make it appear that they are calling you from a genuine bank phone number to convince you that they are from that bank. Remember, if you continue to transfer money to the account details you have been provided, we cannot guarantee that we will be able to recover your money and you risk losing it. Is this something similar to the reason of your transfer?"

Ms H replied 'no' and said that she simply wanted to make a transfer "for a goods or service".

Revolut asked Ms H to let it know if she had any suspicions and went on to ask whether she had recently been contacted unexpectedly by phone or text advising of a concern and asking her to move money to another account. Again, Ms H said 'no'. Further advice about number spoofing was provided and Revolut went on to explain that no bank or institution should be guiding Ms H on what to say, and if they were they were trying to scam her, and she should let Revolut know immediately. Revolut went on to explain the consequences of proceeding with the payment in the event it was fraudulent and asked Ms H to confirm her understanding.

Having carefully considered the information Revolut provided to Ms H I'm satisfied its intervention went far enough. Revolut set out the essential features of a safe account scam in a detailed message, even though Ms H provided a different payment reason. It covered common features of a safe account scam such as another bank calling and saying an account isn't safe, and explained that this wasn't true and was a scam. It also covered number spoofing and the consequences of making the payment. Revolut sought to establish whether Ms H had received an unexpected call or been told to lie – which no bank would ask her to do. Ms H misled Revolut, which meant Revolut was prevented from asking further questions that might have uncovered what was really happening. She said she was buying a car, so Revolut's warnings were then tailored to this payment purpose.

I also think that even if Revolut had probed further the scam wouldn't have been uncovered because Ms H wasn't honest in her responses to Revolut's questions. Ms H's contact with Revolut in the chat started when it appears that a cryptocurrency merchant initiated card verification checks (the transaction value was zero). Ms H was asked about the following:

- whether she uses shared wallet applications
- whether she had recently downloaded a screen sharing app
- the nature of her payment
- the account opening purpose
- whether she had received any calls recently from anyone telling her to create a Revolut account and encouraging her to make outbound transfers. If the answer was

'yes', Ms H was asked what she was told.

Ms H answered 'no' to all the questions except in respect of the nature of the payment, when she said she was experimenting with cryptocurrency. Further cryptocurrency related questions were then asked which aren't relevant here. Ms H has told this service that a screen sharing app was involved and that she was contacted by someone who told her she needed to move funds to a safe account, but she didn't share these details with Revolut.

Ms H received the scam call on 18 April 2023, but the high value transfer wasn't processed until the afternoon of the following day. So Ms H wasn't acting quickly while under pressure from scammers and had the opportunity to reflect on what she had been told before the transaction was processed.

It's clear that none of Revolut's questions were answered correctly. Given the information Ms H provided to Revolut throughout the chat, I consider it to be very unlikely that any further questions would have led her to reveal she'd received a call from her own bank asking her to move funds. In the circumstances, I'm not provisionally minded to require Revolut to refund any of the transactions Ms H made.

I realise this provisional decision will come as a disappointment to Ms H but need to be fair to both parties.

Responses to my provisional decision

Revolut didn't provide any additional points for me to consider.

Ms H didn't agree with my provisional decision. She said:

- I didn't mention that she always believed she was talking to her bank.
- It was clear she was being scammed as there were late night attempts to buy cryptocurrency. If I looked at her genuine spend on her bank account, I'd see that she had no interest in cryptocurrency.
- Warnings weren't delivered to her.
- She has her own vehicle and has no interest in buying another.
- The Revolut account was opened on her behalf, and she thought she was updating security details.
- Revolut accounts have been used in other scams in her local area.
- She and Revolut should share responsibility for her loss.

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.

Having carefully considered the additional evidence provided by Ms H I've reached the same outcome I set out in my provisional decision, and for the same reasons.

I should make it clear to Ms H that I acknowledge she's been the victim of a cruel scam and believed that she received calls from her bank. But being a victim of a scam does not in itself mean that Revolut should reimburse her.

Different considerations apply depending on whether Ms H authorised the transactions from her Revolut account. For the reasons I set out in my provisional decision, I'm satisfied Ms H authorised the transactions. By authorised I mean Ms H likely knew funds were leaving her Revolut account, irrespective of where she believed the funds were going. So, I'm not saying Ms H knew her funds would end up in the hands of a scammer.

Ms H told Revolut that she followed the scammer's instructions when she sent a selfie and said she was buying a vehicle from a friend, and that she, "thought the transactions were legitimate as everything made sense". I recognise that she had no intention of buying a car or cryptocurrency, but this isn't the point here. Ms H also provided selfies with specific information Revolut asked for in the chat. In the circumstances, I'm satisfied Ms H knew what was happening and authorised the transactions, although I accept that when she did so, she was following a scammer's instructions.

Revolut recognised that the £11,259 transaction was unusual and asked Ms H questions about it and provided appropriate warnings. I can't fairly say Revolut should have done anything more.

Overall, whilst I'm sorry Ms H has fallen victim to a scam and lost money as a result, I can't fairly ask Revolut to reimburse her.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 16 October 2024.

Jay Hadfield
Ombudsman