

The complaint

Miss G complains that Revolut Ltd refused to reimburse her after she fell victim to a scam.

What happened

The facts of this case are well known to the parties, and were previously set out by our investigator, so I don't intend to set them out in full here.

In summary, Miss G fell victim to a scam in late September 2023. She received a phone call from someone who claimed to be from Revolut's fraud prevention team. Miss G has provided a screen shot to show the number that displayed on her phone was Revolut's telephone number. The phone number she was called from had been spoofed.

The fraudster told Miss G that money was being taken from her account, using her card details. Miss G was asked to confirm whether she was making these transactions. When Miss G said she wasn't making the transactions she was told Revolut would cancel her card and refund the payments. Miss G was then instructed to make seven card payments in rapid succession, believing them to be refunds. Miss G says she was told the refunds would be sent to another account with Revolut to keep her money safe. It is not in dispute that Miss G authorised these payments.

Miss G contacted Revolut early the following morning, as soon as she realised that she might have been the victim of a scam. It tried to recover her money using chargeback but as the payments had been authorised it was unable to recover any of the payments Miss G had made.

Our investigator recommended that Revolut should refund Miss G the £14,446.30 she had lost in this scam.

Revolut did not accept our investigator's view. It offered to refund the first payment Miss G made of £5,000, but said that *'...after this the customer should have known it was a scam as they would have seen their balance reduced. We acknowledge that for the first transaction, the customer wouldn't have understood and we do accept liability for this. But after this, the customer should have been aware that the funds were going to different merchants and this should have been a red flag.'*

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 done so I have reached the same view as our investigator, and for much the same reasons.

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 customer’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 setting out that Revolut may 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*”.

In this respect, section 19 of the terms and conditions said:

“19. When we will refuse or delay a payment

We may refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

- *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 expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority’s “Consumer Duty”, which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in September 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.

So, Revolut’s standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I’m satisfied that those regulatory requirements included adhering to the FCA’s Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required to act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But 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 September 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 do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;¹
- 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 September 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).

¹ 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/

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 *“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 Code², 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).
- Since 31 July 2023, under the FCA’s Consumer Duty³, 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”*⁴.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ 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

² BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

³ 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.

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency 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 cryptocurrency 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 September 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); 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 September 2023, Revolut should in any event have taken these steps.

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

It is not in dispute that Miss G has been the victim of a scam and has lost a significant amount of money. I accept that Revolut doesn't automatically become liable to reimburse her loss and the starting position is that liability for an authorised payment rests with the payer, even where they have been duped into making the payment. Both parties accept that Miss G authorised the transactions in question.

Miss G had held an account with Revolut since 2020, so it would have built up a picture of how Miss G used her account. This would have allowed Revolut to spot unusual transactions, that were not in-line with Miss G's usual custom and practice for the account.

Having reviewed the account history Revolut has provided, I cannot see any previous

instances where Miss G had transferred a large amount (or all) of her savings in her linked 'Vault' account and then immediately made large payments to merchants she had not previously made payments to. Like our investigator, I think the first card payment Miss G made of £5,000 should have been flagged by Revolut as unusual, as it was not consistent with the way Miss G had previously used her account.

Overall, I'm satisfied that Revolut should have identified the first payment as carrying a heightened risk of financial harm and should have taken additional steps before allowing it to debit Miss G's account.

Having thought carefully about the risk this payment presented, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment, before allowing it to debit Miss G's account. I think it should have done this by, for example, asking Miss G to provide some information about the payment so that an appropriately tailored warning could be provided.

What did Revolut do to warn Miss G?

Revolut did not intervene or provide any fraud warnings.

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 these payments will be entirely genuine. I've also given due consideration to Revolut's primary duty to make payments promptly.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

Had Miss G told the genuine Revolut that she thought she was approving refunds of fraudulent transactions and that the money was being moved to a 'safe account', in order to protect those funds, I'm satisfied that Revolut would have immediately recognised that Miss G was falling victim to a scam. It would have been able to provide a very clear warning to Miss G. Given that Miss G had no desire to lose her money and nothing to gain from going ahead with authorising the payments it is very likely that she would have stopped and would not have followed the fraudsters instructions and her loss would have been prevented.

I've considered whether Miss G would have revealed that she was being asked to approve 'refunds' and that her money was apparently being moved to a new account to protect it. I have not been provided with anything that shows or suggests the fraudsters advised Miss G to mislead Revolut if it questioned her about the transactions. I am also mindful that because there was no real scrutiny of the transactions by Revolut this may not have been required.

Ultimately, as Revolut did not question the payments Miss G made, it cannot provide any evidence that she would not have given an honest explanation of the payments and the circumstances surrounding them.

Once Revolut had established why Miss G was making the payments it could have provided a very clear warning explaining, as a minimum, that it would never ask her to move money to a new account, that phone numbers could be spoofed and that she was falling victim to a scam.

I think on the balance of probabilities this would have caused Miss G to stop. I can see no reason for her to have continued to make the payment if she was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding the first payment, as I think it ought to have done, and provided a clear warning Miss G's loss from the first payment of £5,000 would have been prevented.

In light of the above, I think that by September 2023, when these payments were made, Revolut should have had systems in place to identify as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by September 2023, on identifying a heightened scam risk, a firm such as Revolut should have taken reasonable steps to attempt to identify the specific scam risk - for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

As such I'd have expected Revolut to have asked a series of simple questions in order to establish the risk the payment presented. Once that risk had been established it should have provided a warning which was tailored to the risk and the answers Miss G gave. I'd expect any such warning to have covered off the key risks of such a scam such as making payments to a 'safe account'. I acknowledge that any such warning relies on the customer answering questions honestly and openly, but I have not seen anything to suggest that Miss G would not have done so here.

In finding that Revolut should have identified that the first payment presented as a potential scam risk (and I note that it has offered to refund this payment) and that it ought to have taken steps to narrow down the nature of that risk, I do not suggest Revolut would, or should, have been able to identify every conceivable or possible type of scam that might impact its customers. I accept there may be scams which due to their unusual nature would not be easily identifiable through systems or processes designed to identify as far as possible the actual scam that might be taking place and then to provide tailored effective warnings relevant to that scam.

But I am not persuaded that 'safe account scams' such as this, would have been disproportionately difficult to identify through a series of automated questions (as demonstrated by Revolut's current warnings which seek to do exactly that) or were not sufficiently prevalent at the time that it would be unreasonable for Revolut to have provided warnings about them, for example through an automated system.

As I've set out, I accept that under the relevant card scheme rules Revolut cannot delay a card payment. But in the circumstances of this case, I think it is fair and reasonable to conclude that Revolut ought to have initially declined the first payment of £5,000 in order to make further inquiries with a view to providing a specific scam warning of the type I've described. Only after that scam warning had been given, if Miss G attempted the payment again should Revolut have made the payment.

As I've set out above it did have systems in place by September 2023 to decline card payments and provide warnings of a similar nature to the time I've described. So it could give such a warning and was providing such warnings at the relevant time.

If Revolut had provided a warning of the type described, would that have prevented the losses Miss G suffered from the first payment of £5,000?

In its response to our investigator's view Revolut said that as Miss G had authorised the payments it felt she had been '*significantly negligent and has demonstrated a severe lack of critical thinking in authorising the payments*'. It said it was of the view that the names of the merchants '*sound fishy*' and it felt this should have led Miss G to be suspicious. It said it would only be willing to refund the first payment of £5,000.

As I set out above, Revolut is required to monitor accounts and any payments made or received in order to counter various risks including preventing frauds and scams. As the transactions were so out-of-line with the normal pattern of Miss G's previous use of the account, I think the first disputed transaction of £5,000 should have been flagged as suspicious by Revolut's fraud detection system and blocked. Revolut could then have contacted Miss G to explain that the payment had been flagged as a potential scam. It could then have taken Miss G through questions about the payment, including whether she was being guided on what to do, or being told the situation was urgent. Had Revolut done so I am of the view that this would have allowed Miss G to reflect on what the fraudster was telling her and I think it is more likely than not that the fraud could have been prevented.

Overall, I'm satisfied this was a sophisticated scam and, taking everything into account including the fact that Miss G didn't know about the risk of such scams, I'm not persuaded that she should have known that she was being tricked, particularly as it appears she was being pressured to authorise the payments in rapid succession by the fraudster.

In view of this, and Revolut's failure to intervene or provide any fraud warnings, I think Miss G's complaint should be upheld and Revolut should reimburse all the money Miss G lost in this scam.

Putting things right

In order to put matters right Revolut should:

- refund Miss G the £14,446.30 she lost in this scam; and
- pay 8% simple interest per year on this amount (to compensate Miss G for the time she has been deprived of these funds), from the date the payments were made until the date of settlement.

(If Revolut deducts tax in relation to the interest element of this award it should provide Miss G with the appropriate tax deduction certificate.)

My final decision

My decision is that I uphold Miss G's complaint. In order to put matters right Revolut Ltd should pay Miss G the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 7 March 2025.

Suzannah Stuart
Ombudsman