

The complaint

Ms K complains that Revolut Ltd (Revolut) is refusing to refund her the amount she lost as the result of a scam.

Ms K is being represented by a third party. To keep things simple, I will refer to Ms K throughout my decision.

What happened

Ms K has told us that she received a text message from what appeared to be a well-known delivery company asking her to reschedule a delivery for which there would be a fee to pay. Ms K clicked in the link and completed the information as requested.

Ms K later received calls from what appeared to be several of her banks including Revolut. Ms K was told her accounts had been compromised and that she would have to move her funds from other accounts to her Revolut account and from her Revolut account to a safe account to keep them safe.

Concerned she was going to lose her money Ms K followed the instructions she was given which included confirming payments from the Revolut App, however, once she moved the funds they were lost to the scam.

Ms K confirmed the following payments from her account with Revolut:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	5 December 2023	Transak	Debit Card	£1,950.00
2	5 December 2023	Transak	Debit Card	£2,501.99
3	5 December 2023	Transak	Debit Card	£1,900.00
4	5 December 2023	Transak	Debit Card	£1,850.00
5	5 December 2023	Transak	Debit Card	£1,800.00
6	5 December 2023	Transak	Debit Card	£1,750.00

In my provisional decision sent 24 January 2025 I said:

“In deciding what’s fair and reasonable, I am required to take into account relevant law and regulations, regulators’ rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that an Electronic Money Institution (“EMI”) such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer’s account.

And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer’s instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.*
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In Philipp, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a legal duty to do so.*

In this case, the terms of Revolut's contract with Ms K modified the starting position described in Philipp, by expressly requiring Revolut to refuse or delay a payment "if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks".

So Revolut was required by the implied terms of its contract with Ms K and the Payment Services Regulations to carry out their 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 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 December 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:

- 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;*

¹ The Payment Services Regulation 2017 Reg. 86(1) 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).

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_fo
[urford_reduction_in_card_fraud_and_had_offers_from_banks_](https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fo)

- *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).*
- *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 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 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 December 2023 that Revolut should:

³ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

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)

- 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 K was at risk of financial harm from fraud?

The payments made from Ms K's Revolut account were made to a cryptocurrency exchange. Given the increased risk associated with this type of payment, that Revolut would have been aware of at the time I think it would have been reasonable for Revolut to have had concerns that Ms K could have been at risk of financial harm by the time Ms K authorised payment 2. Payment 2 was the second payment made from Ms K's account to a cryptocurrency exchange the same day and took the total value of the payments to over £4,000.

Having thought carefully about the risk payment 2 presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Ms K's account. I think it should have done this by, for example, directing Ms K to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the losses Ms K suffered from payment 2?

Had Revolut intervened, I see no reason why Ms K would not have told Revolut that she was being asked to authorise payments apparently by Revolut, in order to keep her funds safe. Revolut would have been able to explain that the instructions Ms K had received were not in fact from Revolut. And given that Ms K had no desire to lose her money and nothing to gain from going ahead with the payments, it's very likely that she would have stopped, and not followed the fraudster's instructions and her loss would have been prevented.

So, I've considered whether Ms K would have revealed that she was being asked to authorise payments to protect the funds in her account. It doesn't appear that Ms K was given a cover story for the payments, and I accept that, because there was no real scrutiny of the transactions by Revolut, this may not have been required.

There's nothing to show that Ms K wouldn't have been forthcoming and listened to Revolut had it asked her why she was making the payments and provided a warning.

Ultimately, Revolut didn't question the payments Ms K made. And I've seen no compelling evidence to indicate that Ms K would have misled Revolut about the purpose of the payments or the surrounding circumstances, had it intervened.

So, Revolut should, once it had established why Ms K was making the payments, provided a very clear warning that explained, as a minimum, that it would never ask her to authorise payments she did not make to keep her funds safe, that phone numbers could be spoofed and that she was likely falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Ms K to stop. She didn't want to lose her money and I can see no reason for her to have continued to make the payments if she was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding payment 2, as I think it ought to have done, and provided a clear warning, Ms K's loss from and including payment 2 would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Ms K transferred funds to her Revolut account from accounts she held elsewhere before they were moved from the Revolut account to a cryptocurrency exchange.

But the payments Ms K made from her other accounts were being made to another account in her name (her Revolut account) which she had a history of making payments to, rather than payments to a cryptocurrency exchange which was the case when Ms K made the payments from her Revolut account.

As I've set out in some detail above, I think that Revolut should have recognised that Ms K might have been at risk of financial harm from fraud when payment 2 was made, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Ms K suffered. The fact that the money used to fund the scam came from elsewhere does not alter that fact and I think Revolut can fairly be held responsible for Ms K's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I have considered the complaint that has been referred to me against Revolut and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Ms K's loss.

Should Ms K 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 I consider to be fair and reasonable in the circumstances of this complaint.

Our Investigator thought Ms K should share blame for what happened. But having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.⁶

The tactics employed by the fraudsters are common, but nonetheless captivating and alarming to anyone unfamiliar with them. Ms K was told that her account was at risk and she had to authorise payments to help protect her account. So, whilst I think that in some instances it would seem unusual to authorise payments to protect an account, I think given the circumstances and the immediate pressure Ms K found herself under believing her account was at risk, gave her fair reason to believe the request being made of her was genuine.

Because of this, I don't think that it would be fair to say that a deduction should be made to the amount to be reimbursed to Ms K. Ms K clearly didn't want to lose her money. Her actions cannot be explained by carelessness or that she made the payments for personal

⁶ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

gain. There's little explanation as to why she made the payments other than that she genuinely believed what she was told by some very sophisticated fraudsters and in the circumstances, I don't find her belief to be unreasonable.

Could Revolut have done anything to recover Ms K's money?

The payments were made by card to a cryptocurrency provider. It's likely these funds were used to purchase cryptocurrency before being transferred elsewhere. So, Revolut would not have been able to recover the funds and it's unlikely that a chargeback would have had any prospect of success."

I gave Ms K and Revolut time to respond to 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.

Neither Ms K, nor Revolut provided anything further for me to consider in the time allowed. So, I see no reason to come to a different decision to that explained above

Putting things right

To put things right I require Revolut Ltd to:

- Refund payment 2 onwards
- Pay 8% simple interest per year on the amount it pays Ms K, calculated from the date of the loss to the settlement date (less any lawfully deductible tax)

My final decision

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

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

Terry Woodham
Ombudsman