

The complaint

Miss G complains that Revolt Ltd hasn't refunded her after she fell victim to a scam.

What happened

I issued a provisional decision for this complaint on 27 September 2024. I've included a copy of it at the end of this decision, in *italics*.

Miss G responded to say she accepted the provisional decision. Revolut didn't reply. And so it's necessary for me to issue this final decision to bring the complaint to a close.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'll not restate my findings here as they are included in the provisional decision. Given that Miss G accepted, and Revolut offered no further evidence or information to consider, I see no reason to depart from what I've already set out.

Miss G's complaint is upheld.

Putting things right

Revolut should:

- Refund Miss G £2,950 which was lost to the scam; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement.

My final decision

I uphold this complaint against Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 19 November 2024.

Provisional Decision

I've considered the relevant information about this complaint.

I'll look at any more comments and evidence that I get by 18 October 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Miss G complains that Revolut Ltd hasn't refunded her after she fell victim to a scam.

What happened

The background to this complaint is well-known to both parties, so I'll summarise the key events here.

Mrs G received an automated call from a number she didn't recognise, advising her she had owed tax to HMRC and needed to respond. On pressing 1, as instructed in the message, she was connected to someone who claimed to work for HMRC. It was actually a scammer.

The scammer explained that Miss G owed tax and was being pursued, having been written to without response twice already. She was told she might be arrested. The scammer sent Miss G copies of letters and these appeared to confirm what Miss G was being told. The scammer explained that the situation could be easily resolved by speaking to someone at the Supreme Court, where her case was being handled, and the owed taxes could be paid.

The scammer gave Miss G the number for the Supreme Court and was told she'd receive a call from that number. He told Miss G to check the phone number online so she could see it was legitimate. When the call did come through, just moments later, it showed on her phone as the number for the Supreme Court.

Miss G was then instructed to make two payments using a Revolut username. These were for £1,345 (made at 13:01) and £2,950 (made at 13:33).

The first payment was stopped by Revolut, having been identified as bearing a high scam risk. Miss G was given a general warning about scams and was told she could remake the payment if she was happy to proceed.

Miss G remade the payment, convinced that the scammers were legitimately from HMRC and the Supreme Court. No further warning was given to her when she remade the payment, nor when she made the second payment.

The scammers then asked Miss G for more money, and she realised something was wrong. She contacted Revolut to report the scam.

Revolut attempted to recover the money, but it had already left the recipient account. It informed Miss G of this and said that it also wouldn't reimburse her loss given she'd authorised the payment and it had warned against proceeding.

Miss G was unhappy with Revolut's answer and so brought her complaint to our service.

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.

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 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 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:

- using algorithms to identify transactions presenting an increased risk of fraud;²*

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).

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/>

- *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 Code⁴, 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).*

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;*

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”

- *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?

I'm satisfied Revolut ought to have recognised Miss G was at risk of financial harm from fraud when she went to make the second payment.

Revolut had in fact already identified there was such a risk when she made the first payment. It intervened and stopped that payment from being made, though I don't believe it strictly needed to at that stage.

Miss G then went on to make a second payment to the same payee within 30 minutes. The value had spiked, and I'm aware the payments were essentially being sent internationally. Whilst they went to another Revolut user, that user's account was not held within the UK. That ought to have heightened the risk associated with the payment, with international payments generally being viewed as more risky.

I've considered these facts alongside Miss G's normal account activity. It's evident the payments were for greater amounts than she would normally send out of her account, by any means. Whilst I don't think the first payment on its own was particularly remarkable, when combined with the second, and considering the other factors which heighten the risk of financial harm through fraud, I'm persuaded Revolut ought to have intervened.

What did Revolut do to warn Miss G?

Revolut gave no further warning to Miss G when she made the second payment. There had only been the general warning given when she attempted payment one the first time. And so there wasn't a proportionate response from Revolut to the heightened scam risk presented by payment two.

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 two, 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.

In May 2023, I think that one of the payment purposes that Miss G could have selected should have covered the key features of HMRC scams, given how common they were at the time. I've seen nothing to suggest that Miss G wouldn't have selected the most relevant payment purpose had she been asked.

The warning Revolut ought to have provided should have highlighted, in clear and understandable terms, the key features of common HMRC scams, for example referring to:

- *being contacted out of the blue;*
- *being told correspondence had been sent but not responded to;*
- *that unexpected tax was due, and there were fines and charges to pay;*
- *that phone numbers could be 'spoofed', making it look as though incoming calls were*

coming from legitimate parties (as was the case here).

I recognise that a warning of that kind might not have covered off all the features of an HMRC scam. But I think a warning covering the key features of scams affecting many customers, but not imposing a level of friction disproportionate to the risk the payment presented, would have been a proportionate and reasonable way for Revolut to have acted in May 2023 to minimise the risk of financial harm to Miss G.

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

Miss G didn't think she owed tax when she was contacted, but she was panicked by what the scammer's told her. And I note Miss G is a foreign national without much experience of the UK tax system.

But the features of the scam she fell victim to are common and ought to be well-known to firms like Revolut. And so, a properly tailored warning, referring to the circumstances Miss G found herself in, would more likely than not have resonated with her and broken the scammer's spell.

In making that finding I've taken account of the fact that she realised she was being scammed herself, when asked for further payment. So a proper warning from Revolut, nudging her in the right direction, would likely have made a difference here.

Miss G hadn't received any specific warning about the type of scam she was falling victim to. There's no evidence to suggest she wouldn't have heeded a suitable warning from Revolut.

My findings are then that Miss G would have stopped what she was doing and the loss from payment two would have been avoided.

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

I've set out above why I believe Revolut should have recognised that Miss G might have been at risk of financial harm from fraud when she made the second payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Miss G 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 Miss G'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'm also not persuaded it would be fair to reduce Miss G's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Miss G's loss from payment two.

Should Miss G bear any responsibility for her losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint. Having done so, I won't be making a deduction to the redress Miss G is to be paid.

The scammer caught Miss G off guard and caused a great deal of panic in suggesting that she owed a fairly significant sum in tax. The threat of having amounts outstanding to HMRC, and that she could be arrested, shook Miss G. And the scammer's claims appeared to be supported by the correspondence she was shown, apparently confirming that contact had been attempted and the stated amounts were owed.

Miss G didn't think she owed any tax as everything was taken care of by her employer. But the scammer told her it was still her responsibility to make sure she was up to date with her tax and that mistakes did happen. And I've considered that Miss G wasn't very familiar with the UK tax system, having come to the country as a student and having only recently started working.

Perhaps the most important factor for me here though is the number spoofing element. I can understand why this was powerfully convincing for Miss G. She understandably believed she was being called from someone within the Supreme Court. And so, even if she had her doubts up to that point, I can see why they would have been dispelled. And I wouldn't have expected Miss G to know that a call from someone at the Supreme Court was unlikely in respect of tax matters. Even if she had, the number spoofing could still have reasonably overcome such doubts. There's nothing to suggest Miss G was aware of the sophisticated scam technique of number spoofing.

I do acknowledge there were some things that, with the benefit of hindsight, appeared off or unusual. The first call was an automated message and didn't come from a spoofed number. The HMRC correspondence, on closer inspection, contains few of Miss G's details and little personal information. And her payment instruction was set up using a Revolut username.

I have taken these and other factors into account in making my findings. But given the sense of panic and a need to act created by the scammer, alongside the incredibly powerful effect of number spoofing, I don't find Miss G acted so unreasonably as to say that a deduction for contributory negligence ought to apply here.

Recovery of funds

I've considered whether there was anything more Revolut could or should have done to try and recover Miss G's money.

There is limited evidence to show when exactly Revolut started the process of trying to recover the funds. It's said that it did so as soon as the issue was reported to it. Though, from the chat history with Miss G, it seems as though it may have taken a day or so to gather information and evidence from Miss G before pursuing the funds.

What does appear evident is that the money was removed from the recipient account quickly and was gone by the time Revolut attempted to recover it.

Given the nature of the scam, and the means by which the funds were spent, I believe it's more likely than not the money was withdrawn almost immediately after it was received. And so it's very unlikely there was an opportunity to recover it, regardless of how quickly Revolut might have acted.

It's also the case that the recipient account was held outside of the UK. That would mean that recovery was unlikely to succeed in any case, as such attempts to claw back funds from overseas accounts are rarely successful.

Putting things right

Should the outcome remain unchanged from as I've described here, Revolut should put things right by:

- refunding payment two in full (£2,950); and

- *pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement.*

My provisional decision

I intend to uphold this complaint.

Ben Murray
Ombudsman