

The complaint

Miss R is unhappy that Revolut Ltd (“Revolut”) won’t refund the money she lost as part of an HMRC impersonation scam.

What happened

Miss R says she was contacted by someone using a spoofed number claiming to be from HMRC. She says she was then transferred to another agent who told her that she had unpaid taxes and there was a criminal case against her. Miss R says she was provided with an official looking document outlining the charges and the amount owed. As part of the scam, she was convinced to open a Revolut account, as she was told that this was the fastest way to resolve the case against her.

On 23 November 2023, Miss R made four payments (shown in the table below), totalling £7,047 to an individual through her newly opened Revolut account.

Date	Time	Amount
23/11/23	11:03	£1,997
23/11/23	11:36	£1,850
23/11/23	11:49	£2,000
23/11/23	11:58	£1,200

Before the first transaction Miss R made a payment for £1,998 from her other bank account. Following the fourth transaction from Revolut, Miss R attempted a further transaction for £2,900 from her Revolut account but this was declined. Miss R then went on to make a payment for £3,900 from her other bank account. Soon after she realised, she’d been the victim of a scam and contacted Revolut. Her other bank refunded her in full.

Revolut declined to refund Miss R, so she brought a complaint to this service. Our investigator upheld the complaint from the second transaction onwards. Although Revolut intervened, he didn’t think the intervention that took place before payment two was processed went far enough.

Revolut didn't agree. It said:

- Untruthful information was provided to Revolut and Miss R had multiple chances to re-evaluate the situation and mitigate her loss or at least inform Revolut about what was happening - which would have helped it in assisting her and mitigating her loss. It cannot predict when a customer is lying to them.
- The kind of scam she was falling victim to was mentioned during the in-app chat and she still proceeded with the payment.
- Miss R was asked to transfer money to the alleged HMRC officer's own account. Being tasked to do this, real or otherwise, should be a warning sign that whatever she was taking part in is inherently dishonest or unofficial and this should have led to her questioning the legitimacy of the scheme.
- Further intervention would likely not have made a difference.
- We have preferred customer testimony where the consumer has already been shown to deliberately misled Revolut about the purpose of the transactions and we are ignoring reliable data of the efficacy of online interventions.

I issued my provisional decision on 14 October 2024. Miss R accepted my provisional decision. Revolut did not respond.

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.

Revolut did not respond to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Revolut) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final decision. However, I think it's unlikely that Revolut would've provided any new evidence or information that would've changed the outcome of the case.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

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 R 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 R 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 November 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).

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).

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;
- 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 (EMIs) 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).

² For example, Revolut’s website explains it launched an automated anti-fraud system in August 2018: <https://www.revolut.com/news/revolut-unveils-new-fleet-of-machine-learning-technology-that-has-seen-a-fourfold-reduction-in-card-fraud-and-had-offers-from-banks/>

³ Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

⁴ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

- Since 31 July 2023, under the FCA’s Consumer Duty⁵, 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”*⁶.

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 November 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).

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

It isn’t in dispute that Miss R has fallen victim to a cruel scam here, or that she authorised the disputed payments she made to a third party.

Whilst we now know the circumstances which led Miss R to make the payments using her newly opened Revolut account and the process by which her money fell into the hands of the fraudster, I am mindful that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Miss R might be the victim of a scam.

Miss R opened her account immediately before payment 1 (£1,997) and the only other transaction on the account was a credit for the same sum immediately prior to the first scam payment. So Revolut had no meaningful account activity to compare payment 1 against. I’ve also reviewed the account opening reason given by Miss R and it was ‘transfers’ – which is consistent with the activity Miss R was undertaking.

⁵ 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.

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

I am also mindful that there's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. Whilst banks and EMIs like Revolut have obligations to be alert to fraud and scams and to act in their customers' best interests, they can't reasonably be involved in every transaction.

I appreciate it is a lot of money to Miss R, but I don't think the first transaction warranted any intervention by Revolut. So I don't think it needed to do anything further when she made the first transfer for £1,997.

Payment 2 was made around half an hour later and Revolut did in fact intervene – so it recognised the transaction carried a heightened risk of financial harm from fraud. So, it's just a question of whether it did enough in the circumstances.

What did Revolut do to warn Miss R?

Before it processed payment 2, Revolut asked Miss R a series of questions about the purpose of the payment she was making. It asked her if anyone was telling her how to answer the questions and Miss R said she wasn't being assisted through the questionnaire. She also told Revolut the reason for the transfer was to "pay a family member or friend" for "gifts".

I think Revolut's series of automated questions was a proportionate intervention in the circumstances. Whilst I appreciate Miss R was being guided by the scammer, her answers made it much harder for Revolut to identify that she was at risk from financial harm from fraud or to identify the actual scam she was falling victim to.

In fact, Revolut went further before processing payment 2 and following her response to the automated questions, reached out to her in person via the in-app chat function. Miss R continued to relay the cover story given to her by the scammers - that the payment was for a gift. And it provided some general warnings including covering different impersonation scams in response.

Some of its warnings included

We think there's a high chance that your money might be at risk if you make this transaction.

If anyone is guiding you to make a payment, especially if they are putting you under time pressure....

If someone is claiming to call you from a bank or government institution, look up the phone number for those institutions yourself.

there is a high likelihood that you're being scammed, and the person you are trying to send money to is not who they say they are.

I think Revolut's actions were proportionate in the circumstances of payment 2. As I said above, Miss R's responses (which did not accurately reflect the situation she was in) made it that much harder for Revolut to identify the exact scam Miss R was falling victim to. So, its generic warnings, covering off a number of impersonation scam scenarios was not unreasonable in the circumstances.

However, 13 minutes later Miss R made a further payment for £2,000 to the same payee (the third payment within an hour), I think it ought to have been clear to Revolut by this payment (payment 3), that the pattern of transactions Miss R was making, did not reflect the payment purpose she had previously given them (ie a gift for her brother).

I think a proportionate response to that risk would be for Revolut to have attempted to re-establish the circumstances surrounding the payment before allowing it to debit Miss R's account. I think it should have done this by, for example, directing Miss R back to its in-app chat to discuss the payment further before processing it.

If Revolut had intervened further, would that have prevented the losses Miss R suffered from payment 3?

I've considered whether Miss R would have revealed that she was being asked to pay fees to HMRC to settle various charges against her. In doing so I have carefully considered her responses to Revolut's questions regarding payment 2 (which did not accurately reflect the situation she was in) and I have taken into account that she was seemingly being guided through the payments by the scammer.

But Revolut is aware that consumers are often given cover stories and it was apparent by payment 3 that the cover story Miss R had relayed to Revolut did not match the pattern of activity and certainly warranted a further discussion. She had also given some inconsistent answers about the gift being for family friend but then also for her brother.

I think Revolut could have asked why she hadn't made this payment along with the previous payment just 13 minutes earlier and why there was a third payment just 33 minutes before that. This pattern seems odd given she was purportedly making a gift. It could have questioned her, for example, as to why she was making a gift over three transactions. Revolut ought reasonably to have been asking Miss R open and probing questions and I do think – with sufficient questioning, Miss R's cover story (which did not have much substance) would have fallen apart.

Whilst I accept that the warnings for payment 2 were sufficient in the circumstances of that payment (especially bearing in mind Miss R did make it difficult for Revolut to identify the specific scam risk and therefore prevented it from providing a more tailored warning at that point). I don't think those warnings were sufficient for payment 3 (given the clear pattern that had emerged by this point; a pattern that in my view contradicted the payment purpose Miss R had given). Whilst the earlier warnings did contain some information relevant to Miss R's circumstances, the warnings, in my view, were generic and covered off too many scenarios. So I don't consider they were a proportionate response to the risk that Revolut ought to have identified for payment 3.

The part of the warning that does refer to 'government institutions' lacked sufficient context to have been impactful in the circumstances of this case. And Miss R had already been shown on the official government website that the number, she was initially called from was the official number. If Revolut had pointed out scammers can spoof official numbers or that scammers impersonate HMRC, or that HMRC will never call you to make payments, this would likely have resonated with Miss R and the situation she found herself in.

I've also thought about the fact that Revolut did later decline a fifth payment Miss R made and this resulted in her making it from an account elsewhere. No warnings were given from her other bank account. I've thought about whether Miss R would have continued regardless of a better intervention.

I do appreciate Revolut's strength of feeling about this, but I think Revolut missed an opportunity to unearth the scam and bring the key features of an HMRC impersonation scam to life. I can see no reason for her to have continued to make the payment if she was presented with a warning of this nature. Given that Miss R had no desire to lose her money and nothing to gain from going ahead with the payments, it's more likely than not that she

would have stopped, not followed the fraudster's instructions and her loss would have been prevented.

I'm satisfied that had Revolut established the circumstances surrounding payment 3, as I think it ought to have done, and provided a clear warning, Miss R's loss from and including payment 3 would have been prevented.

Should Miss R 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 considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

The tactics employed by the fraudsters are common, but nonetheless captivating to anyone unfamiliar with them. Miss R explained she had only moved to the UK in September 2019. Until this scam incident she had never interacted with HMRC before. She changed jobs in early 2022 and thought potentially she had been under-paying her taxes as she had moved to a new tax bracket in her new job. This made the scam seemed plausible.

Miss R was able to establish that the call she initially received was from a number genuinely associated with Courts and Tribunal Judiciary. The initial caller took her through the Courts and Tribunal Judiciary website. And showed her the number she was calling from was the official number on the website. This gave further plausibility to the scenario.

I can also see that Miss R then spent more than four hours on the phone to the fraudsters and I can see she was on the phone constantly throughout the duration of the transactions that took place here. I don't think that this gave her the chance to reflect on what she was being told, as she did afterwards. She was provided with a letter on official headed paper and whilst I accept further scrutiny of this letter might have revealed this was a scam – I don't think she had the opportunity during the call.

I'm not persuaded that Miss R can reasonably be expected to have had an understanding of this type of fraud or how to protect herself against it. Revolut was the professional here and is more familiar with these types of scam. I appreciate to the trained eye and with the benefit of hindsight, there may have been some 'red flags'. But I have thought carefully about what it is realistic to have expected Miss R to do bearing in mind the pressure she would have been under in the moment of a call like this.

On balance, I believe that it was difficult for Miss R to think clearly in the moment and once in the call she had little opportunity to make further enquiries. I appreciate Revolut feels strongly that what Miss R was being asked to do ought to have raised concerns about its legitimacy. But calls like this are designed for the victim not to be able to think rationally. It is far easier to raise the points Revolut now raises as a professional and with the benefit of hindsight.

As I've already set out, I can't put significant weight on the warning Revolut provided prior to the payment 3. The warning lacked sufficient context and prominence for me to fairly conclude that Miss R acted unreasonably by moving past it.

Overall, Miss R was convinced that she was talking to HMRC and taking action to prevent criminal charges against her, and I don't think her actions fell below the standard expected of a reasonable person.

Could Revolut have done more to recover Miss R's funds?

Revolut contacted the receiving bank at the same time as Miss R raised her scam claim. Unfortunately, Revolut was told that no funds remained. This is not unusual as scammers usually remove funds within hours. So I don't think Revolut could have done anything further to recover Miss R's funds.

Putting things right

To put things right for Miss R Revolut Ltd must

- Reimburse transactions 4 and 5 in full
- As Miss R has been deprived of the use of this money - pay interest on the above refund calculated at 8% simple per year * from the date the transactions were made to the date of settlement.

*If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Miss R how much it's taken off. It should also provide a tax deduction certificate if Miss R asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part, and I require Revolut Ltd to put things right for Miss R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 November 2024.

Kathryn Milne
Ombudsman