

## The complaint

Miss I complains that Revolut Ltd won't refund money she lost as a result of an impersonation scam.

## What happened

Miss I fell victim to an impersonation scam. She's explained she received a call from someone claiming to be from HMRC, who told her about several 'charges' she needed to pay as she'd miscalculated her tax payment. She was led to believe she'd face arrest if she didn't make these.

During the call, she was asked to download remote access software for a video call with the 'high court judiciary', and she received a letter that appeared to come from HMRC, via WhatsApp, confirming that she'd need to make a refundable £5,000 payment.

Miss I explained she asked to check matters with her accountant as well as her partner, but the caller was insistent not to involve a third party.

In total, Miss I made seven payments to two individuals, who I'll call 'P' and 'Y', believing they were solicitors appointed by the 'high court' to handle her case. In order to make these, Miss I topped up her Revolut account via incoming payments from Monzo. Prior to this, they came from Miss I's account with HSBC.

When she made the payments, she was shown a general scam warning that she was at risk of losing money. For some of the other payments, Miss I was asked about the purpose of the payments – while there was an option to select 'Paying HMRC or Tax Authority', she selected '*goods and services*'. She was then shown educational screens relevant to scams associated with paying for '*goods and services*'. Miss I said she did this having been told she was paying the solicitors representing her to resolve the allegations.

When Miss I realised she'd been scammed, she disputed the transactions with Revolut. It declined to refund these and didn't uphold her related complaint. It said it fulfilled its duty to provide scam warnings about the payments, and it did everything it could to recover the money.

Unhappy with its response, Miss I brought her complaint to our service to investigate. In October 2024, I issued my provisional findings upholding her complaint in part and asked both sides for their response. Miss I accepted what I said. Revolut didn't reply by the date given to respond.

For reference, I've included the details of the relevant payments below:

Ref	Date and Time	Description	Amount
n/a	13 June 2023 08:50	Payment from Miss I's Monzo account	+£797.00

Payment 1	13 June 2023 09:28	Faster payment to 'P'	-£797.00
n/a	13 June 2023 09:36	Payment from Miss I's Monzo account	+£300.00
Payment 2	13 June 2023 09:39	Faster Payment to 'P'	-£697.00
n/a	13 June 2023 10:06	Payment from Miss I's Monzo account	+£999.00
Payment 3	13 June 2023 10:08	Faster Payment to 'P'	-£999.00
n/a	13 June 2023 10:26	Payment from Miss I's Monzo account	+£991.00
Payment 4	13 June 2023 10:27	Faster Payment to 'P'	-£991.00
n/a	13 June 2023 11:16	Payment from Miss I's Monzo account	+£5,000.00
Payment 5	13 June 2023 11:21	Faster Payment to 'P'	-£1,497.00
Payment 6	13 June 2023 11:30	Faster Payment to 'P'	-£1,499.00
Payment 7	13 June 2023 11:37	Faster Payment to 'Y'	-£1,997

### **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.

Given that Miss I accepted my findings and Revolut has not added anything further, I see no reason to depart from my provisional findings. For completeness, I've included my reasons again 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 I 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 I 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 immediately<sup>1</sup>. 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 June 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;<sup>2</sup>
- 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

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<sup>1</sup> 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).

<sup>2</sup> 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/>

“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)<sup>3</sup>.

- 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 Code<sup>4</sup>, 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 June 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;
- 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

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

I’ve been provided with Miss I’s transactions from January 2023, when the account was opened. It doesn’t appear to be her main account – instead, there was a regular, modest

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<sup>3</sup> 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.

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

payment received from another one of Miss I's accounts as well as some infrequent everyday spending – again, for generally modest amounts.

Given her account history, I think the pattern of payments that emerged on 19 July 2023 ought to have stood out as unusual. I've noted:

- She received a significant amount of money into her account – for over £8,000.
- In just over two hours, seven payments were made to new payees, for generally increasing amounts.
- This meant Miss I's cumulative spending on the day in question was £8,477 – over twenty times her previous highest daily spend on the account.

#### What did Revolut do to warn Miss I?

Revolut provided Miss I with a general warning in making the payments, which said:

*“Do you know and trust this payee? If you're unsure, don't pay them, as we may not be able to help you get your money back. Remember that fraudsters can impersonate others, and we will never ask you to make a payment.”*

For Payments 2 and 5, Miss I was shown further warnings that she was required to interact with. In summary, the screens said *‘the transfer could be a scam’*, *‘victims lose millions every year’* and *‘fraudsters are professionals’*. A further screen asked Miss I for the purpose of the payment. While *‘Paying HMRC or Tax Authority’* was an option, Miss I selected *‘goods and services’*. As a result, she was presented with screens warning her about typical scams of this nature.

I'm satisfied that for Payments 1, 2 and 3, Revolut's interaction with Miss I was proportionate to the risk of financial harm. Its increasing warnings reflected that Miss I may be at risk – and it attempted to narrow down the circumstances of the payment and show her warnings about how people typically lose money in these circumstances.

However, by Payment 4, I consider Miss I's risk of financial harm had increased again. It was the fourth payment to the same newly set up payee that day, and it was similar in value to the payment she had made only 20 minutes prior. It also took her cumulative spending to nearly £3,500, nearly ten times what she'd previously spent in a day.

In these circumstances, I think Miss I's risk of financial harm ought to have been a lot more apparent to Revolut. Indeed, it's tricky to think of many scenarios when someone might make payments like this legitimately, even for goods and services. Revolut would've also been aware of how fraudsters coach people to select irrelevant payment purposes, and how, even with the right payment purpose, there inevitably remains a myriad of scams that aren't covered by the key educational messages in its screens.

Taking into account this increased risk, I'm not satisfied Revolut did enough to warn Miss I when she made Payment 4.

#### What kind of warning should Revolut have provided?

Having thought carefully about the risk Payment 4 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 Miss I's account. I think it should have done this by, for example, directing Miss I 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 Miss I suffered from Payment 4?*

I've considered how Miss I would've responded had Revolut asked her open, probing questions about the circumstances of Payment 4. I recognise Miss I selected 'goods and services' as the purpose of the payment. But, having listened to the partial recording she took of her call with the fraudster, while they told her to select this option, she wasn't given a particular cover story that could've assured Revolut that all was well. Instead, it seems that Miss I thought the fraudster's instruction to select this tallied up – as she believed she was paying solicitors to resolve allegations against her as opposed to paying HMRC directly.

Moreover, even if the fraudsters had told Miss I to lie to Revolut, I'm not convinced she would've done. It's clear from the call she was apprehensive and held some reservations. So, had she been asked to mislead Revolut in a way that would've stood up to scrutiny, I think it's likely she'd have become suspicious and realised something wasn't right.

Taking this all into account, I think Revolut would've got to the bottom of the real purpose of the payment and been able to warn her appropriately – for example, that HMRC nor the High Court would require Miss I to pay money out of the blue from a phone call.

Given that Miss I had no desire to lose money, and she didn't have anything to gain from the payments, I'm satisfied she'd have taken heed of this warning and that her loss from and including Payment 4 would have been prevented.

*Should Miss I 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.

Miss I fell victim to an elaborate and deceptive scam, that socially engineered her with clever tactics. I've noted how she was bombarded with information and processes, as well as presented with officious looking letters. She was also placed under pressure to remain on camera, as well to cooperate with their instructions for fear of further action. She was continually reassured that the payments were refundable and shown websites that supposedly demonstrated the caller's legitimacy. I also appreciate Miss I felt particularly distressed and panicked during the call, and I realise that would've affected her decision making

However, I've also noted Miss I's own hesitancy during the call – indeed, she questioned if it was a scam. She also referred to being surprised it wasn't done by post and asked for independent assurance and her own support, which were denied without much explanation.

I've also reflected on the overall plausibility. I can see how Miss I initially believed the caller, given her overall inexperience with HMRC. But I think it became much less plausible when she was unexpectedly asked to pay a further substantial sum of £5,000, that exceeded the alleged unpaid amount and fines against her.

Taking this all into account, I can understand why Miss I initially cooperated. However, I'd have reasonably expected her to do more to reassure herself it was genuine when she was asked to pay a further £5,000, particularly given her previous reservations. For example, she could've ended the call and independently contacted HMRC or the High Court.

It follows that I reduce the award by 50% from Payment 5, which was the first payment after the caller's request for a further £5,000. I consider this to be a fair reflection of Miss I's contributory negligence.

## **My final decision**

For the reasons I've explained, I plan to uphold this complaint about Revolut Ltd and tell it to

- Pay Miss I the sum total of Payment 4, Payment 5, and Payment 6 - £5,984.00 - less any amounts already returned or recovered.
- Reduce this award by £2,496.50, to reflect Miss I's contributory negligence from Payment 5.
- Pay 8% simple interest per year on that amount from the date of the payments to the date of settlement.

If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss I how much it's taken off. It should also give Miss I a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 11 December 2024.

Emma Szkolar  
**Ombudsman**