

## **The complaint**

Miss M complains that Revolut Ltd (“Revolut”) hasn’t refunded her after she fell victim to a safe account scam.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here:

Miss M was waiting for a copy of her ID to be sent to her in the post when she received a text message that said she’d missed the delivery of a parcel and she’d need to make a nominal payment to arrange for it to be resent. Thinking the text message was referring to the parcel containing her ID, Miss M clicked on the link in the message which took her to what appeared to be the Post Office’s website. Miss M entered her Revolut card details and made the requested payment.

Sometime later, Miss M received a telephone call from someone who said they were calling from Revolut. English isn’t Miss M’s first language, and she’s said she struggled to understand what the caller was saying, so she hung up the phone. Not long after, Miss M received another call. This time the person said they were calling from another of Miss M’s bank account providers, who, for the purposes of this decision, I will refer to as “B”. Unbeknown to Miss M at the time, she was actually speaking with a scammer. And the scammer had been able to call her, apparently from B’s genuine number, using a technique often used by scammers called “number spoofing”.

The scammer told Miss M that she had unwittingly compromised her accounts by clicking the link in the text message she’d received earlier in the day and entering her card details. Miss M was told that because of this, her savings were now under threat from scammers. The scammer told Miss M they could protect her account(s) but she would need to move all of her savings into her Revolut account and then on to a new account that would be set up in her name. Panicked, and convinced that she was speaking with her genuine bank, Miss M transferred money from two of her third-party bank accounts to her Revolut account and then on to what she believed was a new safe account that had been set up in her own name - but that actually belonged to the scammer.

Miss M was on the telephone with the scammer for many hours and, in total, made the following three transactions: £8,900, £839.16, and £833.97. This brought her total loss to £10,573.13.

Soon after the call ended, Miss M realised what had happened and she contacted Revolut to see if it could help get her money back. Revolut tried to recover Miss M’s funds from the account they’d been sent to but it wasn’t able to.

Revolut then said it wouldn't look to refund Miss M's loss as she had authorised the payments herself and it had given warnings about scams at the time the payments were being made that it thought Miss M should've engaged with.

Unhappy with Revolut's response, Miss M brought her complaint to this service and one of our Investigators looked into things.

Our Investigator thought the complaint should be upheld. They said Revolut should've identified the first transaction as unusual for Miss M's account and spoken to her about it before it was allowed to leave her account. Had it done so, our investigator thought the scam would've come to light and Miss M's loss prevented.

Miss M agreed with our investigator's opinion but Revolut did not. It said, at the very least, Miss M should share some responsibility as she had transferred money to an account that clearly wasn't set up in her own name. Revolut argued that this amounted to gross negligence on Miss M's part.

Our investigator didn't think Miss M's actions were grossly negligent and the arguments put forward by Revolut didn't change her mind. So, as an agreement could not be reached informally, the complaint was passed to me for a final 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.

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 Institutions ("EMI's"), like Revolut, are 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 M 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 M and the Payment Services Regulations to carry out her 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'm 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 January 2022 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 "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

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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/>

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 January 2022 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).

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

Having reviewed Miss M’s account statements for the months leading up to the scam, I’m persuaded Revolut should’ve had concerns about the activity on Miss M’s account from the outset, when she attempted to make the first payment of £8,900.

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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”

This payment is significantly higher than any other payments made by Miss M in the preceding 6 months. In fact, Miss M hasn't made any transfers of over a thousand pounds to anyone other than herself. The payment is also being made to a new payee and being facilitated by a large transfer into the account. It also ultimately drains Miss M's account of funds. So, I'm satisfied that even from the outset, the activity on Miss M's account had started to bear some of the hallmarks of an impersonation scam.

*What did Revolut do to warn Miss M?*

Revolut did provide a warning when Miss M was attempting to make this payment. This warning 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."*

While this warning does contain some information relevant to Miss M's circumstances, it requires no interaction or real engagement from Miss M and, in my view, lacks sufficient context to have been impactful in the specific circumstances of this case. In other words, I don't consider it to be a proportionate response to the risk that payment 1 presented.

While I accept that Revolut has attempted to take some steps to prevent harm from fraud, the warning it provided here was too generic to have the necessary impact, unless Miss M already had doubts about who she was speaking to (and, at the point of making the transactions under discussion, I haven't seen sufficient evidence that she had those doubts). In fact, by this point she was convinced she was speaking with her bank and in a state of panic at being told she'd actively compromised her accounts.

So, having thought carefully about the risk payment 1 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 M's account. I'm satisfied Revolut should have sought to speak with Miss M in person, for example, by directing her to its in-app chat to discuss the payment further.

*If Revolut had attempted to establish the circumstances surrounding Payment 1, would the scam have come to light and Miss M's loss been prevented?*

Had Miss M told the genuine Revolut that she was being asked to move money to a new account in order to protect her funds, it would have immediately recognised that she was falling victim to a scam. It would have been able to provide a very clear warning and, given that Miss M had no desire to lose her money and nothing to gain from going ahead with the payment, it's very likely that she would have stopped, not followed the scammer's instructions and her loss would have been prevented.

So, I've firstly considered whether Miss M would've revealed that she was being asked to move money to a new account to protect her funds.

I haven't seen anything that would suggest Miss M would've been anything other than open and honest with Revolut about what was happening to her. And so had Miss M been required to positively engage with another person at genuine Revolut, I haven't seen

anything to suggest she would've deliberately chosen to mislead Revolut – she had no reason to. She genuinely believed she was transferring money to a safe account to protect her funds and she hadn't been provided with a cover story by the scammers to provide to Revolut should it intervene.

Ultimately, as Revolut didn't question the payment Miss M made in person, it can provide no compelling evidence that she would have actively misled it about the purpose of the payments or the surrounding circumstances.

So, Revolut should, once it had established why Miss M was making the payments, provided a very clear warning that explained, as a minimum, that it, or any other legitimate bank, 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, that's likely to have caused Miss M to stop. She didn't want to lose her money and I can see no reason for her to have continued to make the payment if she was presented with a warning of this nature. She would've been actively engaging with someone in real time who would've had been able to tell her she was falling victim to a scam.

So, I'm satisfied that had Revolut established the circumstances surrounding Payment 1, as I think it ought to have done, and provided a clear warning, Miss M's loss from and including Payment 1 would have been prevented.

#### *Should Miss M bear any responsibility for her losses?*

In considering this point, I've taken into account Revolut's arguments about the payments showing as a confirmation of payee "no match" and about it being apparent at the time the payment(s) were being made to an individual and not a bank. I've also 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 don't find it would be fair to reduce the reimbursement due to Miss M on the basis of her own actions.

Key to this is the consideration of how the scam was set up. Miss M received a text message which, to her, appeared entirely genuine. It looked like the kind of text message that might be received when a delivery had been missed and Miss M had been expecting a parcel. It's then understandable why Miss M was convinced the text message was legitimate. And so then, when Miss M received the telephone call later in the day to discuss a potential account compromise, what had happened to her throughout the day all seemed to add up. Added to this, was the fact the scammers were able to spoof the number of one of Miss M's banks. Number spoofing is an incredibly powerful tool used by scammers – one that many lay people may not be aware is possible. Given all of the above, I understand why Miss M subsequently trusted the interactions that followed. They were all linked to that first text message.

Whilst I do appreciate that now, with the benefit of hindsight, it is unclear why Miss M didn't question why a representative of bank B would need her to move funds to her Revolut account or how her other accounts with other business could've been compromised, I'm satisfied that by the time the scammers were telling Miss M all of her accounts were at risk, trust had already been solidly established. On top of that trust, there was then layered panic and fear. Miss M has told us she struggles with anxiety and she was struggling to follow

what she was being told and worried about not understanding. As I've said above, English is not Miss M's first language.

She was also understandably scared about losing her money and worried that if she did lose it, it would be her own fault. In such circumstances it is both common and understandable for a person to not think as clearly as they otherwise might or not be able to engage fully with information that is being presented to them on a screen. This doesn't constitute negligence on their part. And I'm not persuaded that it is reasonable for Revolut to say Miss M was grossly negligent because she didn't notice at the time that what she was being told was incorrect. Miss M was in a heightened state of panic and anxiety and understandably unable to focus.

And so, having considered the warnings Miss M was given during the scam, including the confirmation of payee warnings, I'm not persuaded Miss M's actions were unreasonable. I've already explained why the warnings given weren't sufficient. And given the trust established by the scammer, and the panic created, it's understandable why Miss M continued with the payments at the time. Overall, I find her actions were reasonable in the circumstances.

### **Putting things right**

Overall, I'm satisfied that it's fair and reasonable to require Revolut to refund Miss M:

- The total amount she lost to the scam
- Plus 8% simple interest calculated from the date each payment left Miss M's account to the date of settlement - to compensate her for the amount of time she has been out of pocket.\*

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

### **My final decision**

My final decision is that I uphold this complaint about Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 16 January 2025.

Emly Hanley Hayes  
**Ombudsman**