

The complaint

Miss D is complaining that Revolut Ltd haven't refunded payments she made as part of an Authorised Push Payment (APP) scam.

What happened

On 1 April 2023, Miss D received a text message and a call, apparently from her credit card company, suggesting that her account had been compromised.

She then received a text message which appeared to be from her bank, followed by a call from someone who told her they were from her bank. The caller told her to transfer funds from her bank account to her Revolut account to keep them safe. She was then told she was being transferred to a Revolut adviser, who told her she needed to set up a new account with Revolut to transfer the funds to.

Miss D received a text which appeared to be from Revolut, with details of a new account number and sort code and showing the payee name as her own name. The caller talked her through setting up a new payee and making payments from her existing Revolut account. Following their instructions, she made a faster payment of £100, and then received another text saying £100 had been received into her new account. Around five minutes after the first payment, Miss D made a further payment of £15,900.

Revolut found the payment of £15,900 to be suspicious, and it asked Miss D what the purpose of the payment was. Miss D selected the payment purpose as "something else" and this prompted Revolut to show a general scam warning which covered off a range of scams, including being "*told your account is at risk, to move funds to a safe account or to take out a loan.*" Miss D continued past the warning and the payment was made.

After Miss D had made the payments, the person she was speaking to told her it may be a few days before she could view her new account on Revolut's system.

On 3 April 2023 Miss D tried to view the new account and found out that she couldn't – and at this point she realised she'd been scammed, and reported this to Revolut. The funds were no longer in the receiving account with Revolut, but it attempted to recover the funds from the third party the scammers had sent the payments on to. It recovered £0.63 and returned this to Miss D's account.

Miss D complained to Revolut, and then to us. In its submissions to us, Revolut offered Miss D £4,000, in recognition that the warning it gave her on the payment of £15,900 could have been more tailored to safe account scams.

Our investigator thought the complaint should be upheld, in part. She thought Revolut should have done more to intervene in the payment of £15,900 and if it had done so, Miss D wouldn't have made it. She also said that she considered that if Revolut had intervened in the payment of £15,900 and identified the scam, it would have been able to recover the payment of £100 which had been made shortly before. She made Miss D aware of Revolut's offer, but explained she didn't think it was sufficient.

The investigator also thought Miss D should share liability for the loss with Revolut. She pointed out that the call Miss D received which she thought was from her bank was from a “no caller ID” number which she thought Miss D should have questioned. She thought Miss D would have known the payment wasn’t going to an account in her own name when she made the transfer. And she thought that because Miss D selected “something else” rather than “transfer to a safe account” as the payment purpose, Revolut didn’t have an opportunity to intervene with a more tailored safe account warning. Miss D was also told by the scammer she couldn’t view her account with Revolut for a few days, and the investigator also thought this should have raised concerns with Miss D.

Both Miss D and Revolut disagreed with the investigator.

Miss D didn’t think she should share liability for the loss with Revolut. She said, in summary, that the scammers were convincing in the calls because they held personal information about her. She said she’d inputted her own name when she instructed the transfer from her Revolut account, in line with the details she’d received from the scammer - and had no idea the account she was sending the funds to wasn’t actually in her name. She also said she wasn’t told she couldn’t view the new account for a few days until after she’d made both the payments, which was too late to stop the scam.

Revolut replied to the investigator to say, in summary:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc [2023] UKSC 25*.
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment (“APP”) fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law.
- The Payment Service Regulator’s (“PSR”) mandatory reimbursement scheme will not require it to refund payments made in these circumstances either.
- Miss D was grossly negligent by ignoring the warnings it gave. The PSR’s mandatory reimbursement scheme will allow it to decline claims where a consumer has been grossly negligent, taking into account any warnings a firm has provided.

As both Miss D and Revolut disagreed with the investigator, the complaint was passed to me for a decision.

My provisional decision

I issued my provisional decision on 6 November 2024. This is what 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 Miss D 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 D 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 April 2023 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 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*

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”

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).

- *Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.*

Overall, taking into account relevant law, regulator's 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 April 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*
- *have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.*

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

From what I've seen I'm satisfied that Revolut should have identified a potential scam risk with the payment for £15,900 Miss D made. This payment was significantly higher than the usual transactions made on Miss D's account and was to a new payee. I can see that she made a payment of just over £3,500 to an account in her own name around five months before the scam, however most of her transactions were usually for much less than this. So, the payment of £15,900 was unusual and out of character compared to her previous account usage.

I also think the pattern of account activity should have looked concerning to Revolut. Miss D transferred a significant amount of money to her account and then very soon after transferred it out to a new payee – almost fully draining the account – which is broadly typical of the activity seen in safe account scams. I think this, in conjunction with the size of the payment and the previous usage of her account warranted Revolut intervening before processing the payment.

What did Revolut do to warn Miss D?

Revolut has told us it did find the payment of £15,900 to be suspicious, and so it asked Miss D for the payment purpose, which she selected as "something else."

Revolut then provided Miss D with a general scam warning based on the payment purpose she selected. Although the scam warning did mention safe accounts, this warning wasn't sufficient to have the necessary impact on Miss D. Miss D has told us she was under pressure from the scammers and was told to bypass the warning – which she did.

Having thought carefully about the risk the £15,900 payment 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 D's account. I think it should have done this by, for example, directing Miss D to its in-app chat to discuss the payment further.

Revolut say it was prevented from providing Miss D with an appropriate warning because she selected the wrong payment purpose. However, I'm not satisfied that issuing a warning, even a more specific one, would've been sufficient in this case, as I would've expected Revolut to have contacted Miss D and asked her questions about the payment – rather than relying on a warning.

If Revolut had intervened in the way described, would that have prevented the losses Miss D suffered?

Having decided that Revolut should have identified this payment as a scam risk, I've gone on to consider what I think is most likely to have happened if it had intervened.

Miss D has explained that the scammer did tell her to expect warnings and had an explanation for them – although she couldn't recall exactly what this was. It seems she was coached through the process of making the payments to a new payee by the scam caller to some extent, and this would likely have continued if Miss D had been directed to an in-app chat - so I've thought carefully about whether an in-app intervention of the kind I've described would have uncovered the scam.

But I'm also bearing in mind that I've not seen any indication that Miss D was provided with a detailed cover story by the scammer which was likely to have withstood a direct intervention through a real time conversation with Revolut. And I haven't seen anything to suggest the scammer had told Miss D to lie or mislead Revolut about the overall circumstances of the payment.

And once Miss D had been directed to the in-app chat, Revolut should have asked open-ended and probing questions about the circumstances of the payment and explained the context around any questions it asked. I think it should have assessed any information it was given, such as anything unusual or implausible in Miss D's answers or any reluctance to answer questions. And I think it should have been aware of the possibility that a customer is being guided through the process by the scammer or have been given a cover story, and taken steps to identify where that was taking place.

Revolut would have been familiar with the circumstances of similar "safe account" scams and would have been able to identify that the payment Miss D was making wasn't into an account in her name as she'd been told, and in a real time conversation I think it would likely have been identified that the person she was on the phone to wasn't from Revolut.

Overall, I think that an in-app chat with Revolut would likely have identified the scam and ultimately the payment wouldn't have gone ahead.

I've thought carefully about the timings of the payments here, and whether Revolut identifying the scam would, on the balance of probabilities, meant that the payment of £100

could have been recovered. And I think from the information we have so far, it's likely it would have been, if Revolut had acted immediately to recover it (as we'd generally expect.)

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

In reaching my decision about what is fair and reasonable, I have taken into account that the payments that funded the scam were made from an account at another regulated financial business.

But I think that Revolut still should have recognised that Miss D might have been at risk of financial harm from fraud when it made the 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 D 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 D'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 the firm that is the origin of the funds.

Miss D has complained against Revolut and also against the business she held the account with that was the source of the money which was transferred to Revolut and subsequently lost to the scam. We've carried out an investigation into Miss D's complaint about this business. But our investigation didn't find that the other business missed the opportunity to intervene or failed to act fairly or reasonably in some other way. Miss D did not ask an Ombudsman to consider this complaint. And I cannot compel her to. So, in these circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Miss D's compensation in circumstances 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 D's loss (subject to any deduction for Miss D's own contribution which I will consider below.)

Should Miss D bear any responsibility for her losses?

I've considered whether Miss D should share any liability for the preventable loss under the principle of contributory negligence, because her actions fell short of the standard of care that would be expected of a reasonable person in these circumstances. 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 D says she found the calls believable because they had personal details about her for ID and verification, and that the text messages she received were convincing as they were shown on the same message thread as genuine texts from the businesses. Having seen the test messages Miss D received I agree that they were convincing and I can understand why she thought they were genuine. The call she received from the scammer pretending to be from her bank was from a "no caller ID" number, but this isn't something I'd necessarily expect Miss D to have placed much weight on, especially as she'd already been told to expect the call by what appeared to be a genuine text message. Miss D was convinced she was talking to her own bank, and then to Revolut, and I can understand why she was convinced she was.

One of the reasons the investigator gave for Miss D sharing liability was that she thought Miss D should have known the payments weren't going to an account in her own name. But Miss D says she entered her own name as the payee of the new account, in conjunction with the details she received by text message, and from what I've seen so far I accept this. Revolut has sent us a transaction history showing the name the receiving account was actually held in, but this transaction history appears to me to be showing where the payment was sent to, rather than the details Miss D entered into the system.

It's not clear from what Revolut have said so far whether a confirmation of payee was carried out for the payments, which would have indicated that the destination account wasn't in Miss D's name. But even if it was, while this could have been a red flag Miss D may have picked up on, under the high pressure of the situation I wouldn't necessarily conclude it was negligent for her not to notice this.

Revolut has also told us that it feels it was negligent for Miss D to select "something else" instead of "transferring to a safe account" as the payment purpose. But I don't agree this was negligent of Miss D. While there may have been a more appropriate payment purpose, I think the purpose of "something else" is vague and could be open to a number of possible interpretations which could justify why Miss D selected it under these circumstances.

I do agree that Miss D being told she couldn't view her new account for a few days was a potential red flag, but I take her point that this was after she'd made the payments so wouldn't have prevented the scam. It's possible that if she'd reflected on this and recognised it as a concern earlier, she could have reported the scam earlier and possibly more of the funds could have been recovered. But I don't consider that it equates to negligence for her not to have acted on this, until she tried to access the account a few days later.

Overall, I'm satisfied that Miss D fell victim to a sophisticated scam, which took place over a short period of time. In such a pressurised situation I don't think it's unreasonable that Miss D didn't realise she was the victim of fraud. It follows that I don't think Miss D should share liability with Revolut for her loss.

For the reasons explained, I'm intending to uphold this complaint and to direct Revolut Ltd to pay Miss D:

- The two payments of £100 and £15,900 that Miss D sent to the scam, less the £0.63 recovered; and*
- interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Revolut deducts tax from this interest, it should provide Miss D with the appropriate tax deduction certificate).*

I asked both parties to reply to my provisional decision with anything else they wished to add by 20 November 2024.

Miss D replied to say she accepted my provisional decision. Revolut didn't reply to my provisional decision, despite a reminder to do so being sent to it on 13 November 2024.

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.

As neither party had anything else to add following my provisional decision, I see no reason to depart from it.

My final decision

For the reasons explained, I uphold this complaint and direct Revolut Ltd to pay Miss D:

- The two payments of £100 and £15,900 that Miss D sent to the scam, less the £0.63 recovered; and
- interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Revolut deducts tax from this interest, it should provide Miss D with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 20 December 2024.

Helen Sutcliffe
Ombudsman