

The complaint

Mrs V is unhappy that Revolut Ltd ("Revolut") won't refund the money she lost as part of an HMRC impersonation scam.

What happened

Mrs V says she was contacted by someone using a spoofed number claiming to be from HMRC. She says she was told that she had unpaid taxes and there was a criminal case against her. Mrs V says she was provided with an official looking document outlining the charges and the amount owed.

On 26 April 2023, Mrs V made nine payments (shown in the table below), totalling £10,033.86 to three individuals through her Revolut account.

Time	Payee	Amount
14:05	1	£998
14:25	1	\$997
14:36	2	\$2,000
14:40	2	£497
14:50	2	£1,287
15:20	2	£2,460
15:34	2	£997
15:43	2	£990
16:13	3	£400

She was told to pay the various sums for tax, refundable deposits and solicitors fees. When Mrs V didn't receive the refundable amounts back, she realised she'd been scammed and contacted Revolut.

Revolut declined to refund Mrs V, so she brought a complaint to this service. Our investigator upheld the complaint from the first transaction onwards. He thought Revolut ought to have intervened before the first payment was processed.

Revolut didn't agree. I've read all of its submission but in summary it said:

- If the ombudsman service depart from the law this must be acknowledged and explained.
- Revolut does not owe a duty to prevent fraud or scams. It is bound by contract to execute payment instructions, and this is subject to only very limited exceptions.

- Revolut recognises its obligations to put in place adequate procedures to counter the risk that it may be used to further financial crime (and has such systems and controls in place), but that duty is not absolute and does not go as far as to require Revolut to detect and prevent all fraud, particularly in the face of authorised customer instructions.
- The duty to execute valid (or “authorised”) payment instructions does not require it to assess the commercial wisdom or potential for financial loss of a proposed transaction. This point was very recently recognised in the Supreme Court’s judgment in *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- It appears that reimbursement has been awarded in this case as if the voluntary Contingent Reimbursement Model Code (the “Code”) or the mandatory reimbursement rules proposed by the PSR in PS23/3 applied. But Revolut is not a signatory to the Code and therefore its rules do not apply.
- Revolut gave appropriate warnings in this case, which were negligently ignored by the customer.

I issued my provisional decision on 15 November 2024. Mrs V 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.

I’m sorry to hear of all Mrs V has been through. Not just in terms of this scam, but also what happened to her prior to the scam with the loss of her husband. I can understand why she wants to do all she can to recover the money she lost. I can only direct Revolut to refund all or some of her losses if it can fairly and reasonably be held responsible for them.

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 Mrs V 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 Mrs V 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 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”

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 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).

Should Revolut have recognised that Mrs V was at risk of financial harm from fraud?

It isn't in dispute that Mrs V has fallen victim to a cruel scam here, or that she authorised the disputed payments she made to various third parties.

Whilst we now know the circumstances which led Mrs V to make the payments using her 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 Mrs V might be the victim of a scam.

In the twelve months before the scam, the account was generally used to receive and transfer funds. Whilst Mrs V made payments to various payees regularly, the transactions on the account were of very low value; there were no outgoing payments over £500. The balance varied but was usually around £2,000.

I appreciate it is a lot of money to Mrs V, but I don't think the first two transactions warranted any further intervention by Revolut. The sums were still relatively low in value, and I am 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. So I don't think Revolut needed to do anything further than it did (I have covered below what Revolut did to warn Mrs V) when she made the first two transfers.

However, by the third transaction, the balance had reduced significantly from its usual level. This was the third payment and second new payee within an hour. Revolut clearly had concerns that Mrs V might be at risk from financial harm from fraud as it considered payment 3 and the first payment were 'highly suspicious'. So, it's just a question of whether it did enough in the circumstances.

What did Revolut do to warn Mrs V?

Each time Mrs V set up a new payee (payments 1,3 and 9) Revolut displayed the following warning:

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, fraudsters can impersonate others, and we will never ask you to make a payment.

It then declined each of these payments (payments 1,3 and 9) and displayed a warning saying it had identified the transaction as 'highly suspicious' and that if Mrs V continued to make the payment again and the person turns out to be a fraudster she may lose all her money. It provided a link to an external website about fraud prevention.

I think Revolut's actions were proportionate in the circumstances of payment 1 and 2. So, its generic warning about fraudsters impersonating others was not unreasonable in the circumstances.

However, 31 minutes after the first 'highly suspicious' payment and the third payment within the same time frame, with a significant reduction in the account balance, I think it ought to have been clear to Revolut by payment 3, that the pattern of transactions Mrs V was making warranted further intervention.

I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing Mrs V to attempt the transaction again. I think it should have done this by, for example, directing Mrs V to its in-app chat to discuss the payment further before processing it.

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

I have considered whether Revolut's intervention would likely have made a difference. In doing so I've thought about whether Mrs V would have revealed that she was being asked to pay fees to HMRC to settle various charges against her. Mrs V wasn't given a cover story, so I think she would have answered questions about the payment purpose honestly. And Revolut ought reasonably to have been asking Mrs V open and probing questions and I do think, with sufficient questioning, Revolut would have found her responses concerning. I think Revolut missed an opportunity to unearth the scam and bring the key features of an HMRC impersonation scam to life. 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 Mrs V and the situation she found herself in. It could have warned her that HMRC would never ask her make payments in this way or to individual's bank accounts.

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 Mrs V 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 on the third payment onwards would have been prevented.

Whilst the new payee warnings did contain some information relevant to Mrs V's circumstances, the warnings, in my view, were generic and lacked sufficient context to have been impactful in the circumstances of this case. So I don't consider this was a proportionate response to the risk that Revolut ought to have identified for payment 3.

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

Revolut has argued that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory and in circumstances where the CRM Code would not, in any case, apply. I do not seek to treat Revolut as if it were a signatory to the CRM Code, and I have not sought to apply it by analogy. I've explained in some detail why I think

it fair and reasonable that Revolut ought to have identified that Mrs V may have been at risk of financial harm from fraud and the steps it should have taken before allowing the payment 3 to leave Mrs V's account. And the Financial Ombudsman Service's jurisdiction is neither the same as nor tied to the CRM Code.

Should Mrs V 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. The scammers were able to give Mrs V confirmation of her personal details over the phone, including her country of origin and that she was in the UK on a visa. This made the scam seem plausible.

Mrs V was able to establish that the call she initially received was from a number genuinely associated with the Courts and Tribunal Judiciary. She was given a QR Code which took her through to the Courts and Tribunal Judiciary website. And this showed the number she was called from was the official number on the website. This gave further plausibility to the scenario.

I can also see that Mrs V then spent over two and a half hours on the phone to the fraudsters and she was on the phone constantly (three more or less back-to-back calls logged on her phone history) 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 Mrs V 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 Mrs V to do bearing in mind the pressure she would have been under in the moment of a call like this. Mrs V explained that she was shocked and scared and that she couldn't think clearly. She explained she lost her logic and ability to analyse the situation.

On balance, I believe that it was difficult for Mrs V 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 Mrs V 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 payment 3. The warning lacked sufficient context and prominence for me to fairly conclude that Mrs V acted unreasonably by moving past it.

Overall, Mrs V 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 Mrs V's funds?

Revolut contacted the receiving banks when Mrs V 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 Mrs V's funds.

I am upholding this complaint in part. I realise my decision will be a disappointment to Mrs V, especially as it differs slightly to the investigator's assessment. I sympathise with her circumstances, and I am sorry she has fallen victim to a scam. But I think this is the fair and reasonable outcome taking everything into account.

Putting things right

To put things right for Mrs V Revolut Ltd must:

- Reimburse in full from transaction 3 onwards
- As Mrs V 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 Mrs V how much it's taken off. It should also provide a tax deduction certificate if Mrs V 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 and I require Revolut Ltd to put things right for Mrs V as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 6 January 2025.

Kathryn Milne
Ombudsman