

The complaint

Miss S complains that Revolut Ltd hasn't protected her from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Miss S has explained that in May 2023 she made seven payments from her Revolut account as a result of an impersonation scam. The payments totalled £10,357 and were all instructed on the same day, on 8 May 2023, as follows.

Payment number	Time	Beneficiary	Amount (£)
1	9.13am	A	500
2	9.17am	A	1,950
3	9.20am	A	1,007
4	10.20am	A	1,500
5	10.41am	A	1,450
6	11.34am	A	2,500
7	11.54am	B	1,450
Total			10,357

Miss S subsequently realised she'd been scammed and got in touch with Revolut. Ultimately, Revolut didn't reimburse Miss S's lost funds, and Miss S referred her complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Miss S and Revolut my provisional decision on 20 November 2024. Now both parties have had fair opportunity to respond, I'm ready to explain my 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.

Miss S told us that she accepts my provisional decision. And Revolut didn't respond to my provisional decision. So, in the absence of evidence or arguments persuading me otherwise, I've reached the same conclusions as in my provisional decision, and for the same reasons. I've explained 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 S 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 S 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 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 May 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:

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).

- 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 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

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”

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, 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 May 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 S was at risk of financial harm from fraud?

Miss S opened her Revolut account in 2021. All seven scam payments were made on 8 May 2023. The first three payments were sent to the same payee ("A") in the space of seven minutes and totalled £3,457. Given her account history, and the speed at which the payments were instructed from her account, I'm satisfied that Revolut ought then to have realised – at the point Miss S instructed the fourth payment which was for £1,500 and would take the total amount sent to this new payee within the space of just over an hour to almost £5,000, and spread over four payments instructed so closely together – that this was unusual and uncharacteristic for Miss S's account and that she was at heightened risk of financial harm from fraud and that it was appropriate that it intervene to warn her.

What did Revolut do to warn Miss S?

I'm satisfied from what Revolut has said that for both payments one and seven, the two payments to a new beneficiary, Revolut showed Miss S in her Revolut app the following warning which Miss S acknowledged such that she was free to continue with the payments: *"Do you know 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"*.

I'm satisfied from what Revolut has said that for both of these payments, that Revolut nonetheless then detected the payments were uncharacteristic and could indeed be being made as a result of a scam, so it declined these payments, and sent Miss S the following warning again through her Revolut app: *"Our systems have identified your transaction as*

highly suspicious. We declined it to protect you. If you decide to make the payment again anyway, you can, and we won't decline it. As we have warned you this transaction is highly suspicious and to not make the payment, if the person you pay turns out to be a fraudster, you may lose all your money and never get it back. You can learn more about how to assess this payment and protect yourself from this link: <https://takefive-stopfraud.org.uk/>".

Revolut has also said that it also frequently informs its customers about scams and prevention tips through emails and blog posts.

What kind of warning should Revolut have provided?

Revolut did do something to try to warn Miss S of the possibility of fraud. But these warnings weren't specific or impactful here, in my view. And given the level of unusualness of the pattern of Miss S's payments – by the time she instructed payment four – I can't agree that any of these warnings were a proportionate response to the risk that Miss S's fourth payment presented. I accept Revolut attempted some steps to prevent harm from fraud, but I think the warnings it provided were too generic to have the necessary impact. Instead, I think a proportionate response to the risk here would have been for Revolut to have attempted to establish more context around the circumstances surrounding the payment before allowing it to debit Miss S's account. I think it should have done this, for example, by asking Miss S about the payment and providing at the very least a tailored written warning based on the scam risk identified.

If Revolut had provided a warning of the type described, would this have prevented the loss Miss S suffered from the fourth payment onwards?

Miss S first transferred money into her Revolut account from another account in her name she held with a bank I'll call "B". Miss S has said that she had some technical issues with B which is why the scammers suggested she use her Revolut account. We asked B for evidence of any intervention (for example calls) with Miss S but it said there was none. So I've seen nothing to make me think Miss S received a warning from B and ignored it.

And I'm persuaded that had Miss S been provided with, by Revolut, an appropriate warning about impersonation scams, which I'm satisfied she should have been had Revolut done what I think it should have, there's no reason to believe she wouldn't have responded positively to it – realising that the key features of typical impersonation scams were very similar to what the scammer had discussed with her already. I think the closeness of Miss S's situation to those key features Revolut ought to have been able to point out probably would have been sufficient to really make Miss S think carefully and ultimately break the spell she was under. It follows that I'm persuaded that had Revolut done what it reasonably ought to have done in this case, Miss S most likely wouldn't have proceeded with this fourth payment nor any of the subsequent ones.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Miss S first transferred money into her Revolut account from another account in her name she held with B – before then making the payments from her Revolut account that she lost to the scammers.

But as I've set out above, I think that Revolut still should have recognised that Miss S might have been at risk of financial harm from fraud when she made the fourth 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 S suffered from the fourth payment onwards. 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 S'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.

I've also considered that Miss S has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Miss S could instead, or in addition, have sought to complain against those firms. But Miss S has not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Miss S's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and 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 S's loss from the fourth payment onwards (which amounts to £6,900).

Should Miss S bear any responsibility for her loss?

I've thought about whether Miss S should bear any responsibility for the loss of the £6,900 I've said Revolut should have prevented. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

In this case, I think it's fair to say Miss S was put under pressure to act quickly. She's explained that she received a phone call from a mobile number from someone purporting to be calling on behalf of the UK Supreme Court. They said they'd tried to deliver a letter to her house but because no one answered they were calling her, which was believable because she had been away. They said her biometric residence permit ("BRP") was found in Birmingham to open fraud accounts for money laundering – which again was convincing because she'd been to Birmingham the week before. She was then told to call a number that was publicly listed as for the Supreme Court, which she then did, but unbeknownst to her at the time this connected still to the scammers, making the scam convincing. She's said as someone not native to the UK, this immediately made her feel very scared. They staged that whilst they understood she had broken no law and she'd most likely fallen victim to identity fraud using her BRP, she was still legally responsible for clearing her name, and the only way to do this was to make immediate payments.

So, I think it's fair to say here that Miss S was under pressure to act quickly, was tricked by resourceful and clever scammers, and bearing in mind she was unwittingly tricked into thinking what the scammers were saying was correct, I can't fairly say she acted with such carelessness, or disregard, that a deduction for contributory negligence would be appropriate here. So whilst there may be cases where a reduction for contributory negligence is appropriate, I'm satisfied this isn't one of them.

Could Revolut had done anything to recover Miss S's money?

There's no real need for me to address recovery at least of the last four payments, because I've already explained why I think Revolut should refund those to Miss S. However, for completeness, and also because I haven't said Revolut should refund the first three payments, let me briefly address this. The scam payments were sent from Revolut to two separate third-party accounts. And from the information I've seen, I'm satisfied the funds were spent so quickly from the recipient accounts that even though Miss S contacted Revolut soon after the payments to let it know she'd been scammed, I can't see Revolut unreasonably missed an opportunity to recover the funds.

Interest

I consider 8% simple interest per year fairly reflects the fact Miss S has been deprived of this money and that she might have used it in a variety of ways. So Revolut should also pay Miss S interest on the £6,900 calculated at 8% simple per year from 8 May 2023 to the date of settlement.

My final decision

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

- £6,900; plus
- interest on this amount calculated at 8% simple per year from 8 May 2023 to the date of settlement (if Revolut deducts tax from this interest, it should provide Miss S with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 2 January 2025.

Neil Bridge
Ombudsman