

The complaint

Miss O complains that Revolut Ltd won't refund the money she lost to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. However, in brief, Miss O fell victim to a safe account scam.

She received calls from an individual purporting to be from her other account provider, saying that Revolut would shortly contact her.

She then received a call that she thought was from Revolut, though it was actually a scammer. The callers advised Miss O that her account was at risk, and she needed to move her money to keep it safe. Miss O made three transactions on 15 July 2024 - totalling around £8,000 - from her Revolut account to a payment remittance company and a pool club in Spain. When she made the payments she was told that she would shortly receive a refund, the scammer then said they could not issue a refund and they would call back later. At this point Miss O became suspicious and contacted Revolut and her other account provider and she then found out she had been scammed.

When Miss O reported the scam Revolut raised a chargeback for payment 2 (which was to the Spanish pool club) and managed to recover this payment.

Our investigator upheld the complaint in part. They thought that Revolut should have intervened when Miss O made the first payment and provided a tailored written warning. But they thought that this would not have stopped the scam as Revolut did intervene with a tailored warning during payment two and this did not stop the scam. They thought that Revolut should have intervened again during payment two with a human intervention and they thought that this would have stopped the scam. As payment 2 had already been recovered they thought that payment 3 should be refunded.

Miss O did not agree so this complaint has been passed to me to issue 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 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 the consumer 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*".

In this respect, section 20 of the terms and conditions said:

"20. When we will refuse or delay a payment

We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

- *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 the consumer and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut at the time the payments were made 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R:

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider 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.

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;¹
- 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.

For example, it is my understanding that from October 2023, Revolut operated a process whereby if it identified a scam risk associated with a card payment through its automated systems, it might initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat). If Revolut was satisfied with the response to those questions and/or it provided a relevant warning, the consumer could use the card again to instruct the same payment and Revolut would then make the payment.

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).
- 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^[1], 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).
- Since 31 July 2023, under the FCA’s Consumer Duty^[2], regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *“consumers becoming victims to scams relating to their financial products for example, due to a firm’s inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers”*^[3].
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency^[4] 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.

- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 July 2024 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in July 2024, Revolut should in any event have taken these steps.

^[1] BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

^[2] Prior to the Consumer Duty, FCA regulated firms were required to “pay due regard to the interests of its customers and treat them fairly.” (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

^[3] The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

^[4] Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

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

I think that the first payment made which was for £3,801.99 should have prompted Revolut to intervene to ask questions about the payment and then provide a written warning depending on the answers provided by Miss O. I say this because it was unusual for Miss O to make such a large payment. But I don't think that this would have stopped the scam as this is what happened during payment 2 and the scam was not stopped.

I think that when the second payment was made, a human intervention would have been a proportionate response, as this represented two large transactions in a short amount of time which was unusual for Miss O. So, I think a greater intervention was merited for the second transaction than would have been appropriate for payment 1.

I've thought carefully about what a proportionate intervention in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's primary duty to make payments promptly.

I think that a further warning should have been provided when payment 2 was attempted. Having thought carefully about the risk payment 2 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 O's account. I think it should have done this by, for example, directing Miss O to its in-app chat to discuss the payment further.

Had Miss O told the genuine Revolut that she was being asked to move money to a new account in order to protect those 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 O had no desire to lose her money and nothing to gain from going ahead with the payments, it's very likely that she would have stopped, not followed the fraudster's instructions and her loss would have been prevented.

So, I've considered whether Miss O would have revealed that she was being asked to move money to a new account to protect those funds. I think that in an online chat situation had questions been asked about the payments - either Miss O would have revealed what she was doing or had the scammer told her to lie to Revolut, I think that this would have broken the spell of the scammer. I think that Miss O would have questioned why someone purporting to be from Revolut would have required her to lie to a different member of staff from Revolut.

So, Revolut should, once it had established why Miss O was making the payments, provided a very clear warning that explained, as a minimum, that it 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 would have likely caused Miss O to stop. She didn't want to lose her savings 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.

I'm satisfied that, had Revolut established the circumstances surrounding Payment 2, as I think it ought to have done, and provided a clear warning, Miss O's loss from and including Payment 2 would have been prevented.

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

I have carefully considered Revolut's view that, in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of

the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

In reaching my decision, I have taken into account that the payments that funded the scam were made from other accounts at regulated financial businesses.

But as I've set out in some detail above, I think that Revolut still should have recognised that consumer might have been at risk of financial harm from fraud when they made payment 2, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses consumer 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 consumer'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 either the firm that is the origin of the funds or the point of loss.

I've also considered that consumer 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 consumer could instead, or in addition, have sought to complain against those firms. But consumer has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce consumer'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 consumer's loss from payment 2 (subject to a deduction for consumer's own contribution which I will consider below).

Should consumer bear any responsibility for their losses?

In considering this point, I've taken into account what the law says about contributory negligence, as well as what I consider to be 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 and alarming to anyone unfamiliar with them. Miss O was told that her account was at risk and she needed to send funds to Revolut and then onwards to help protect her account. So, whilst I think that in some instances it would seem unusual to transfer money out of an account to 'protect an account', I think the added explanation that this would help protect her funds after was not completely unreasonable.

So in the circumstances, I can't reasonably conclude that Miss O had acted negligently. Because of this, I don't think that it would be fair to say that a deduction should be made to

the amount to be reimbursed to Miss O. Miss O clearly didn't want to lose her money. Her actions cannot be explained by carelessness or that she made the payments for personal gain. There's little explanation as to why she made the payments other than that she genuinely believed what she was told by some very sophisticated fraudsters and in the circumstances I don't find her belief to be unreasonable.

Could Revolut have done anything to recover Miss O's money?

I don't think that Revolut could have done anything more to recover the funds than it already did - which was to raise a chargeback. Unfortunately, this only resulted in the recovery of payment two.

Putting things right

To resolve this complaint I believe that Revolut Ltd should:

- Refund payment three, which was for £1,701.99.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

I uphold this complaint in part and require Revolut Ltd to put things right in the way I've set out above, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 14 July 2025.

Charlie Newton
Ombudsman