

Complaint

Ms M is unhappy that Revolut Ltd didn't reimburse her after she told it she'd fallen victim to a scam.

Background

The background to this case is well known to the parties, so I don't intend to set it out in full here. In short, Ms M had been looking for work when she found an advert for an employment opportunity. It was working as a 'product auditor' - the role was entirely remote and flexible. She registered her interest and, shortly afterwards, was contacted by someone who said they were a representative of the company. Ms M says she found that they came across as professional and credible. Unfortunately, although Ms M didn't realise it at the time, she hadn't been contacted by a genuine employer, but by a fraudster.

She was given access to an online platform on which she was required to complete tasks. Completing those tasks earned her commission payments. However, she was told that in order to participate she needed to ensure her account was funded. She used her Revolut account to make payments in the belief that this was a necessary step for her to earn back commission.

The payments she made in connection with the scam are set out in the table below:

1	5 July 2023	Payee A	£100
2	5 July 2023	Payee A	£149
3	5 July 2023	Payee A	£21
4	25 July 2023	Payee B	£780
5	25 July 2023	Payee C	£600
6	25 July 2023	Payee C	£1,200
7	25 July 2023	Payee D	£1,200
8	25 July 2023	Payee D	£1,200
9	25 July 2023	Payee E	£1,000
10	26 July 2023	Payee E	£270
11	27 July 2023	Payee F	£1,700
12	27 July 2023	Payee D	£1,700
13	27 July 2023	Payee E	£1,140

Once she realised she'd fallen victim to a scam, she notified Revolut. It didn't agree to reimburse her. Ms M wasn't happy with that and so she referred her complaint to this

service. It was looked at by an Investigator who concluded that Revolut ought to have been concerned at the point she asked it to make payment 7 in the table above. In the Investigator's view, there were clear signs that Ms M was at risk of financial harm due to fraud and a proportionate response would've been a human-led intervention. However, he also considered that it was fair and reasonable for Ms M to bear some responsibility for her own losses by way of contributory negligence.

Revolut disagreed with the Investigator's view and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 Ms M modified the starting position described in *Philipp*, by – among other things – 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"* (section 20).

So Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks. In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

I must also take into account that 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 in July 2023 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 EMIs like Revolut did 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 in July 2023, Revolut, where it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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)².
- 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 *"Financial crime: a guide for firms"*.

¹ 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/

² 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.

- 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 Code³, 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).
- 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 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.

³ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

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 2023, Revolut should in any event have taken these steps.

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

The Investigator identified payment 7 as the point at which Revolut ought to have been concerned. I'd agree with that conclusion. Ms M made payments to three new payees on the same day and those payments were quite close together in time. Indeed, payment 7 came just a few minutes after payment 6. The pattern of payment activity here was strongly consistent with what is typically seen in a number of commonly occurring scams, including job scams such as the one Ms M fell victim to. I also understand Ms M had opened her account over 12 months prior to the scam and so Revolut had a lengthy period over which to build a picture as to what was normal account activity for her.

I can see that Revolut did hold one payment as pending and asked Ms M to confirm some information about the intended recipient. However, no detailed interaction took place as to the purpose of the payment. I can also see that, with several of these payments, Revolut displayed a warning to her. The content of that warning was driven by the information that was gathered from her at the time. In one instance, she told Revolut she was making the payment for "investment", and, for another, she selected the option "something else." As a result, the content of the warnings that were displayed wasn't relevant to her. However, I'm mindful of the fact that there was no option that was closely aligned with her circumstances. If she'd been given the chance to confirm that she was paying to work online, Revolut would've had the opportunity to display a warning that covered the circumstances of the scam that had targeted her.

In any event, I think the risk here was sufficiently clear that a system generated warning wouldn't have been a proportionate response. Instead, I think Revolut needed to decline the payment and direct Ms M to interact with one of its employees via the in-app chat function. I can see that it paused one of the payments and asked her about it, although the basis of its queries concerned the identity of the person she was making the payment to. There wasn't any discussion as to the purpose of the payment.

I can see that she did say in that chat that she was "buying stock." Revolut has also pointed to evidence showing that Ms M shared a screenshot of her Revolut app with the scammer and asked them to verify that she'd completed everything correctly. It argues that this indicates that, even if it had intervened in the way that I've discussed, it wouldn't have made a difference. I can understand the point it's making, but I'm not persuaded by it. It does seem likely that there was *some* superficial coaching by the scammers (although it's just as likely Ms M said something consistent with the payment purpose she'd selected because she thought it would be the quickest way to have the payment approved) but it doesn't appear that Ms M would've been in a position to provide satisfactory answers to any follow up questions, such as what she was buying stock in and why she was paying for it by sending a 'push to card' payment. The evidence suggests the fraudsters didn't provide her with such detailed information that would've allowed her to sidestep any further questions from a Revolut employee.

In other words, I think it's likely that, if payment 7 had been discussed, it would've quickly come to light that Ms M wasn't making the payment in connection with an investment. I think she would've shared the genuine reason for the payment. I would've expected a Revolut employee to recognise that it was unlikely such a job opportunity was genuine and warn Ms M appropriately. I think it's very unlikely she'd have wanted to proceed with making any

of the payments if she'd been warned that there was a strong chance she was making them in connection with a scam.

Should Ms M bear any responsibility for her losses?

I've also considered whether it would be fair and reasonable for Ms M to bear some responsibility for her losses by way of contributory negligence. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances.

I accept that Ms M did sincerely believe that this was a legitimate job opportunity, but I'm not persuaded it was reasonable for her to do so. As far as I can see, there were no formalities to the process by which she took on this role. From the evidence I've seen, the explanation she was given as to how the role worked didn't really make much sense and Ms M doesn't appear to have questioned it. The level of compensation she was told to expect didn't appear proportionate to the type of tasks she was being asked to complete, so I find it surprising that she didn't question that further. Furthermore, the arrangement was an inversion of the typical employer-employee relationship – most people expect to be paid by their employers, not the other way around.

Significantly, on 5 July 2023, another victim of the scam posted in the WhatsApp group suggesting that the company wasn't legitimate. I think that ought to have made Ms M stop and think about what she was doing. I accept that she was the victim of a cruel and cynical scam here, but I think it's fair and reasonable for her to bear some responsibility for her losses and so I think Revolut can make a deduction of 50% from the compensation it pays her.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Ms M accepts my final decision, Revolut Ltd needs to refund 50% of payments from payment 7 onwards, less any returns Ms M received. It should also add 8% simple interest per annum to those sums calculated to run from the date the payments left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 June 2025.

James Kimmitt
Ombudsman