

The complaint

Mrs S complains that Revolut Ltd ('Revolut') won't reimburse the money she lost when she fell victim to a scam.

What happened

Mrs S is represented in this case but as the transactions were from her account, I'll refer to her throughout my decision.

Mrs S says that she received a text message about a data entry and analysis job opportunity on a platform I'll refer to as K. Although she didn't know at the time, the job was fake, and Mrs S was the victim of a scam. Mrs S had to register on the platform and complete tasks with the aim of promoting products. During this process, Mrs S was required to maintain a balance on the platform, which was funded by buying cryptocurrency using the peer to peer system and transferring it to wallet details provided to her.

Mrs S was told that she would receive a salary of 500 USD after a week and 1,000 USD on the fifteenth day if she did well. She would also be paid commission on completion of sets of tasks.

I have set out in the table below the transactions Mrs S made from her Revolut account on the instructions of the scammer.

Transaction no.	Date	Amount	Recipient
1	20/02/23	£87	Individual 1
2	22/02/23	£425	Individual 2
3	22/02/23	£288	Individual 3
4	23/02/23	£700	Individual 4
5	23/02/23	£613	Individual 5
6	23/02/23	£3,650	Individual 6
7	23/02/23	£3,700	Individual 6
8	23/02/23	£1,200	Individual 6
Total		10,156.65	

Mrs S was able to withdraw £89.95 on 21 February 2023 and £416.50 on 24 February 2023. She realised she was the victim of a scam when she kept being asked to deposit further funds and to borrow money to do so. Mrs S reported the scam to Revolut in early March 2023.

Revolut didn't agree to reimburse any of Mrs S' loss. It said that before she authorised the transactions it warned her of the risk of making the payments. Revolut went on to say that it had attempted to recover Mrs S' funds but hadn't been successful.

Mrs S was unhappy with Revolut's response and brought a complaint to this service. She said Revolut failed to properly protect her when the payments were made.

When it provided its file to this service Revolut also said Mrs S hadn't done enough to check the job opportunity was legitimate.

Our investigation so far

The investigator who considered this complaint recommended that Revolut refund 50% of payment seven onwards and pay interest on this award. He said that by that time there was a dramatic increase in spending on the account (£8,663 in a day) and a concerning pattern of payments had emerged. As a result, the investigator said that Revolut ought to have asked some questions about the reason for the payment, at which point he thought the scam would have been uncovered. But he felt that liability from this point should be shared with Mrs S as she ought reasonably to have had concerns and completed more research.

Revolut didn't agree with our Investigator's assessment. In summary it said:

- The warnings it provided were appropriate and proportionate in the circumstances. Whilst Mrs S' spending had increased, the amounts weren't huge, and she was paying other Revolut customers – which is a common way to use its service.
- Mrs S didn't complete any research. If Mrs S had looked K up online she'd have seen comments saying it was a scam.
- Given that Mrs S followed the scammer's instructions to tell Revolut she was buying goods or services, it is unlikely any further intervention by Revolut would have made a difference.
- 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.
- Our service appears to be treating Revolut as if it were a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).
- The Payment Service Regulator's ("PSR") mandatory reimbursement scheme will not require it to refund payments where the victim has ignored warnings with gross negligence. The assessment of negligence should take account of the nature of the warning, the complexity of the scam, the claims history of the customer and whether a firm could reasonably be expected to pause or otherwise prevent the payment from being made. Mrs S was careless and should not be reimbursed.

As no agreement could be reached, the case was passed to me for a 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 Mrs 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 Mrs S 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 February 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

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).

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 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 February 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 S was at risk of financial harm from fraud?

Mrs S opened her Revolut account in August 2022. I've considered her transaction history in the 12 month period prior to the scam. In that period, she made low value transactions only. I don't think the early transactions in the table above ought reasonably to have concerned Revolut or led to do it taking additional steps (beyond the warnings I will discuss below) and will explain why.

Whilst some of the transactions exceeded previous payments, they remained relatively low in value. And a pattern of payments consistent with common scam types wasn't evident in the early transactions. For example, there wasn't a clear pattern of increasing payments. There's a balance to be struck between Revolut identifying concerning payments and responding appropriately to any concerns, and minimising disruption to legitimate payment journeys.

But I'm satisfied that by the time Mrs S made transaction seven in the table above Revolut ought reasonably to have taken additional steps to satisfy itself she wasn't at risk of falling victim to a scam. Mrs S had made a series of payments to multiple new payees over the course of a few days. On the day she set up payment seven, Mrs S had already transferred £4,963 to three new payees and the payment request took her to £8,663 in one day. This was highly unusual given the usual activity on her account. The value of the individual transactions was also rising.

Overall, I'm satisfied that Revolut should have identified payment seven as carrying a heightened risk of financial harm and should have taken additional steps before allowing it to debit Mrs S' account.

What did Revolut do to warn Mrs S?

Revolut says that each time Mrs S set up a new payee it provided her with 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.”

In addition to this, Revolut says that when Mrs S made payment six in the table above, she received a set of educational story messages. It has provided example screens. These relate to scams in general and to scam victims losing millions of pounds each year, and to fraudsters being professionals who trick people to send money. Mrs S was then asked the reason for the payment. She chose goods and services and received a warning tailored to this payment reason. This warning started by saying there was a high probability that the payment was a scam.

What kind of warning should Revolut have provided?

Given what I have said above, I'm not persuaded that Revolut needed to anything more when the first six transactions were made.

Having thought carefully about the risk payment seven presented, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mrs S' account. I think it should have done this by, for example, directing Mrs S to its in-app chat to discuss the payment further.

I consider that Revolut should have asked more about the payment purpose, why Mrs S was making a second out of character payment to a new payee in a few hours, about the increased spending on the account in the days before, who the payees were and whether she had been advised to make the payment. At the same time, I think Revolut ought reasonably to have provided scam warnings.

Whilst I wouldn't have expected Revolut to provide a warning tailored to task based job scams, I consider that if Revolut had asked the kind of questions I have set out above, it would have identified that the payment Mrs S was making wasn't legitimate.

I'm not satisfied Revolut went far enough to protect Mrs S when she made payment seven.

If Revolut had provided a warning of the type described, would that have prevented the losses Mrs S suffered from payment 7?

I'm persuaded it's more likely than not that if Revolut had intervened as I think it should have, it would have uncovered that Mrs S was falling victim to a scam and her further loss prevented.

I accept that the scammer advised Mrs S to choose the paying for goods or services payment option when Revolut asked her for this information when she made payment six. Given the options that were available to her I'm not persuaded this was an unreasonable choice or that Mrs S had any intention of deceiving Revolut when she followed the scammer's advice. There wasn't an obvious payment reason listed as the other options were transfer to a safe account, investment, tax authority request, police or law enforcement, or something else.

I also don't consider that Mrs S' choice of payment reason for a previous transaction means that if Revolut asked probing questions as I have suggested above, and provided appropriate warnings, the scam would not have been uncovered. Mrs S was told to use this

option because Revolut doesn't accept cryptocurrency rather than because she shouldn't disclose that she was making payments relating to a job opportunity.

I consider that if Mrs S was asked the type of questions I have suggested above her explanation for making them would, to Revolut as the expert, not have seemed genuine and the scam would have been uncovered.

It's also clear from the messages Mrs S exchanged with the scammer that by the time she made payment seven she had real concerns. Mrs S explained that she had no more money and that she felt like it had all gone. When the scammer asked Mrs S whether she knew she would get all her money back, Mrs S said she wasn't sure. So I think that a warning provided by Revolut would have given the perspective Mrs S needed and reinforced her own developing concerns. As a result, I consider she would more likely than not have concluded that the scheme was not genuine and decided not to go ahead with any further payments.

Ultimately, as Revolut didn't question the payment Mrs S made, it can provide no compelling evidence that she would have misled it about the purpose of the payments or the surrounding circumstances if it had effectively intervened when I think it should have.

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

Revolut has argued that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory. It also argues that the Payment Service Regulator's ("PSR") proposed mandatory reimbursement scheme will not require Revolut to reimburse Mrs S.

I do not seek to treat Revolut as if it were a signatory to the CRM Code. I've explained in some detail the basis on which I think, fairly and reasonably, Revolut ought to have identified that Mrs S was at risk of financial harm from fraud and taken further steps before payment seven debited her account.

The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint.

Should Mrs S 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.

I recognise that there were relatively sophisticated aspects to this scam, not least a platform, which was used to access and manage the user's apparent earnings and tasks. I note that Mrs S also seems to have been part of an instant messaging group with other people who claimed to be making money and that she was able to make a small withdrawal early on. I can imagine this would have given some validation to the scheme.

But on balance, I agree with the investigator that a 50% deduction is fair and reasonable in all the circumstances of this case. The nature of the job was unusual and implausible, and I think this ought to have led Mrs S to ask questions, complete some additional research and to look at reviews. Mrs S was told that if she completed tasks on five consecutive days, she would earn 500 USDT. This is a significant amount for work that does not appear to be particularly time-consuming or arduous. And buying and transferring cryptocurrency to be paid is very unusual.

I also consider that at the point at which I have said Revolut needed to do more Mrs S had concerns about the legitimacy of the scheme and recognised that her funds weren't safe. I have referred to what Mrs S said in messages to the scammer above. And Mrs S sought to borrow funds from a friend and asked the scammer to guide her through the process to be paid for the week so that she could prove to the friend that the scheme was genuine. The scammer also offered to help Mrs S and loan her money so that she could clear her negative balance and continue, which I consider should have concerned Mrs S.

Overall, I consider it fair to reduce the amount Revolut pays Mrs S to reflect the role she played in what happened.

Calculation of loss

Mrs S received two payments from the scammers. The first was on 21 February 2023 (after Mrs S had only made one payment) and a second credit of £416.50 was made on 24 February 2023.

I consider that the fairest way to approach redress would be the total credits received by Mrs S to be split between her and Revolut before the 50% calculation is made. Mrs S should receive 50% of £4,646.77.

My final decision

For the reasons stated I require Revolut Ltd to:

- Pay Mrs S £2,323.39; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of payment to the date of settlement.

If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 October 2024.

Jay Hadfield
Ombudsman