

The complaint

Miss E complains that Revolut Ltd did not refund a series of transactions she lost to a scam.

What happened

Miss E fell victim to a task-based job scam and made the following payments from her Revolut account:

Date	Amount (£)	Payment type
5 June 2023	156.00	Push to Card
5 June 2023	541.36	Push to Card
5 June 2023	1,555.40	Push to Card
5 June 2023	2,000.81	Push to Card
5 June 2023	3,505.65	Push to Card

Following the last payment, Miss E was told that the company had not received the last two deposits. At that point, she became suspicious and felt she had been the victim of a scam. She soon contacted Revolut to raise a scam claim.

Revolut responded and did not agree to refund Miss E, as they said they had provided her with warnings for some of the payments, but she chose to continue with them. They also said they were unable to recover any funds from the beneficiary accounts, so could not help Miss E further.

Miss E referred the complaint to our service and our Investigator looked into it. They felt that by the final payment of £3,505.65, a pattern of fraud had emerged and they noted that this payment had been placed on hold by Revolut for checks. However, even though Miss E appeared to be eager for the funds to be released as soon as possible, Revolut did so without asking any additional questions about what the payment was for. And they felt that if Revolut had asked further questions, the scam would likely have been revealed.

The Investigator recommended a refund of the final payment plus 8% simple interest from the date of the declined transaction to the date of settlement. They also felt a deduction in the redress to account for Miss E's contribution to the loss was reasonable. In summary, they felt Miss E could have seen that paying her own funds to top up a work account was a red flag, and all communication with her employer was through a messaging service, which was unusual. So, they recommended a reduction in the redress of 50%.

Both parties disagreed with the outcome. Miss E's representative felt the trigger point should have been earlier, at the £1,555.40 payment as they thought this was unusual for the account. But they accepted that a 50% reduction in the redress was fair.

Revolut did not think the payment of £3,505.65 was unusual enough to warrant intervention and they did not think they could have spotted the payment was being made as part of a scam. And they said they had to follow Miss E's instruction when she asked for the payment to be made.

As an informal agreement could not be reached, the complaint has been passed to me for 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 Miss E'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 E 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 E 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

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

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 June 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:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- requiring Miss Es 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

provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

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.

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).

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 June 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 Miss E was at risk of financial harm from fraud?

Miss E's Revolut account was an existing account which she used relatively regularly. Because of this, there was genuine account activity for Revolut to compare the scam payments to. I can see Miss E did generally make payments of up to around £400, with some other one-off larger payments also.

Because of this, I don't think the initial, lower value payments were unusual enough to warrant intervention from Revolut before they were processed. And I can see that the value of the transactions did begin to increase throughout the day on 5 June 2023. Though these went to a number of different individuals, so I don't think it would have been immediately clear a fraud pattern was emerging. Having reviewed the statements as a whole, I think Revolut should reasonably have intervened prior to the final payment of £3,505.65 being made to ask further questions about what the payment was for and who it was going to specifically.

What did Revolut do to warn Miss E and what kind of warning should it have provided?

Revolut did refer the final payment for additional checks, and they asked her to confirm the details of the individual she was paying. Miss E was able to do so and pushed Revolut to provide a response as soon as possible as she needed the funds to be released quickly. I think Miss E's desperation for the funds to be released should have been a sign that something was not right. Despite this, no other meaningful questions were asked, and the funds were released.

⁴ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

Revolut has said it provided a general warning when Miss E set up a new payee that said:

“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 that fraudsters can impersonate others, and we will never ask you to make a payment”

While this warning does contain some information relevant to Miss E's circumstances, the warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and I think lacks sufficient context to have been impactful in the circumstances of this case. I don't consider it to be a proportionate response to the risk that the final payment presented.

Overall, I can't agree that any of the warnings provided were a proportionate response to the risk that the final payment presented. While I accept that Revolut has attempted to take some steps to prevent harm from fraud, the warnings it provided were too generic to have the necessary impact, unless Miss E already had doubts about who she was speaking to (and, at the point of making the transactions, I haven't seen sufficient evidence that she had those doubts).

Having thought carefully about the risk the final payment 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 E's account. I think it should have done this by, for example, directing Miss E to its in-app chat to discuss the payment further and ask appropriately probing questions. While I can see it did refer Miss E to the in-app chat, I do not think it asked sufficiently probing question in the circumstances.

If Revolut had asked probing questions, would that have prevented the losses Miss E suffered from the final payment?

Considering the type of scam Miss E fell victim to, I think basic questions about what the payment was for, who it was going to and why would have revealed it. I say this because Miss E believed she was making payments directly to individuals in order to fund her job, which was a well-known type of scam in June 2023 that I think Revolut should have been on the lookout for. And having reviewed the correspondence between Miss E and the scammer, I can't see that she was coached to lie to Revolut, so I see no reason why she would not have been honest in her answers.

So, I think probing question about the final payment prior to it being processed would have revealed the scam and prevented Miss E from making the payment.

Should Miss E 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's fair and reasonable in the circumstances of this complaint.

Having carefully considered the matter, I think there should be a deduction in this case of 50% of the redress. I'll explain why in more detail.

Miss E was offered a flexible job opportunity, seemingly without having to go through a formal interview process, which I think could have been seen as unusual. And she was told that in order to earn higher levels of commission, she would have to deposit her own funds onto the work system, which is not typical of a genuine job opportunity. Finally, Miss E only communicated with her employer through a messaging service, which again I think could have been seen as unusual. On balance, considering everything, I think there was enough

for Miss E to have reasonably realised something was not right, especially as the amounts she was asked to pay continued to increase, so I think she has contributed to her losses in the circumstances.

On balance, I think a 50% reduction in the redress is fair in the circumstances and accounts for the losses Miss E has contributed to.

Putting things right

Revolut Ltd should reimburse the final payment of £3,505.65 and add 8% simple interest from the date of the transaction to the date of settlement.

Revolut Ltd can reduce the redress by 50% to account for Miss E's contribution to the loss.

My final decision

I uphold Miss E's complaint in part, and now direct Revolut Ltd to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 10 September 2024.

Rebecca Norris

Ombudsman