

The complaint

Mrs A is unhappy Revolut Ltd won't reimburse her for the money she lost when she fell victim to a scam.

What happened

Mrs A is represented in this complaint by a solicitor, for simplicity I will refer to Mrs A throughout this decision, even when referencing what her representatives have said on her behalf.

Mrs A fell victim to a safe account scam. She was contacted by individuals claiming to be from a bank she held an account with (which I'll call "M") who said her accounts were at risk and that she needed to move her money into her Revolut account and then from there on to an account belonging to a third party – they said this account belonged to a manager at M. Unfortunately, and unknown to her at the time, Mrs A was actually speaking with fraudsters.

Believing that she was genuinely dealing with a legitimate banking institution, Mrs A ended up moving significant funds into her Revolut account. From there, Mrs A made two payments to the beneficiary account details provided by the scammer. In total, Mrs A transferred £5,000.

It appears Mrs A was then having problems making further payments into her Revolut account, so she was told by the scammers to instead move the money through an account she held with another bank ("N"). N then made contact with Mrs A and told her they believed she could be the victim of a scam. Mrs A realised what had happened, and reported the matter to Revolut to see if it could help stop the payments or recover her funds. Revolut logged the fraud and contacted the business the funds had been sent to, to see if any funds remained that could be recovered.

Ultimately though, Revolut told Mrs A that it wouldn't be reimbursing her for the payments she had made from her account. Revolut explained it felt it had provided adequate warnings before allowing the payments to go through.

Unhappy, Mrs A referred the matter to our service. One of our Investigators looked what had happened, and agreed with what Revolut had said. They felt that Revolut had done enough to warn Mrs A about the risk of scams.

I issued my provisional decision on this case in December 2023, explaining why I considered that Revolut had not done enough to protect Mrs A from this scam, and why it should therefore refund the money she had lost. Mrs A accepted my provisional findings, Revolut provided a detailed response setting out why it did not agree with my proposed findings.

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 my provisional decision I explained why I considered that Revolut should have done more to intervene from the first payment Mrs A made to the scam, and why I felt that, had it done so, it is likely Mrs A's loss could have been prevented. Nothing Revolut has said in response to my provisional decision has led to me changing my findings regarding this case, but given that Revolut's response to my provisional decision was very detailed, I will set out my findings again, specifically in light of the comments Revolut has made.

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 A 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 A 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

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 February 2022 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 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

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 February 2022 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).

What did Revolut do to protect Mrs A, and what should it have done?

As I explained in my provisional decision, I do consider that the very first payment Mrs A made to the scam was unusual enough in the context of her normal account usage that it was reasonable for Revolut to intervene at that stage. The payment was for £4,000, far in excess of any of the payments Mrs A had previously made from this account, and was to a new payee. And evidently Revolut did consider this payment to be a risk, as it flagged it as unusual.

Revolut did provide a warning when Mrs A was setting up this new payee. This warning 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”

But this warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case.

When Mrs A tried to make the £4,000 payment Revolut then presented her with a general scam warning message. This message stated that there was a high risk the payment was a

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

scam, and explained that scammers may trick customers into sending money by pretending they are someone else. Mrs A was then presented with a series of options and asked to choose the purpose of the payment she was making. These options included “transfer to a ‘safe account’”. However, Revolut’s records show that Mrs A dismissed this message without selecting a reason for the payment. Revolut says that it then sent Mrs A an email saying that the payment was potentially suspicious and asking her to go to the app to either approve or cancel the payment.

So, the payment in question had been flagged as potentially suspicious, Mrs A had then dismissed a general warning without giving a reason for the payment, and then approved the payment after receiving an email again saying it could be suspicious. I can therefore understand why Revolut may have felt it had done enough to warn Mrs A of the potential for this to be a scam payment. However, looking at the overall picture, I do think that Revolut could have done more.

Specifically, when Mrs A dismissed the scam warning without giving a reason for the payment, I think this should have been a red flag to Revolut that it needed to question Mrs A more directly about what was happening. I don’t think that the email that was sent at this point was adequate, it gave Mrs A very general information, and doesn’t appear to have required her to read any further warnings about scams. So, by this stage, while Mrs A had seen several warnings, none of those warnings appear to have included any detailed information about what scams could look like.

Overall, I can’t agree that the warnings provided were a proportionate response to the risk that the payment presented. While I accept that Revolut attempted some steps to protect Mrs A from fraud, the warnings it provided were too generic to have the necessary impact, unless Mrs A already had doubts about who she was speaking to. And I’m mindful that Mrs A was in a highly pressured situation and believed that she was talking to her genuine bank. So, at the point of making the transactions, I haven’t seen sufficient evidence that she had any doubts, and I can understand why the general warnings she received wouldn’t have necessarily broken the spell for her.

Having thought carefully about the risk the 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 Mrs A’s account. I think it should have done this by, for example, directing Mrs A to its in-app chat to discuss the payment further.

And I think that kind of direct contact with Mrs A would likely have made the difference here. While there’s obviously a balance to strike, Revolut ought fairly and reasonably to have satisfied itself that Mrs A hadn’t fallen victim to a scam, and I’m persuaded it could’ve done this by asking a few open-ended questions.

Mrs A doesn’t appear to have been given a cover story to use by the scammer, and doesn’t appear to have been told that Revolut was in any way involved in the fraud she thought was being perpetrated on her accounts. So, I think she would have been truthful in any direct communication with Revolut. I think had Revolut contacted Mrs A to ask for some information about what she was doing, she would likely have explained what was happening or otherwise have given some indication that all was not as it should be. Revolut could also have used that opportunity to explain the most common types of scams in more detail to Mrs A.

I think it’s fair to say that, had Revolut done this, then it is likely that the spell of the scam would have been broken and that Mrs A wouldn’t have proceeded with the payments. So, I think Revolut could have prevented the losses Mrs A incurred.

Should Mrs A 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.

It appears that M's phone number had been spoofed by the scammers, so calls appeared to be coming from Mrs A's legitimate bank account provider. All the actions Mrs A subsequently took must be seen in that context – i.e. that she sincerely believed she was following the instructions of a legitimate bank's fraud team, who had told her that they were trying to protect her money. Given this background, and the enormous pressure Mrs A was under to do what she was told by the scammers to 'keep her money safe', I can see why she took the actions she did. So, I don't think she was partly to blame for what happened. It follows that I don't consider it fair to say Mrs A should bear responsibility for some of the loss here.

So, in summary, I consider that Revolut could have done more to protect Mrs A from the risk of financial harm. Had Revolut contacted Mrs A directly and asked some open questions about what was happening, I'm persuaded it is more likely than not the scam would have come to light, and Mrs A wouldn't have lost out on the £5,000 she ended up transferring.

Putting things right

To resolve this complaint Revolut should:

- Refund the £5,000 (less any sums that have been recovered and subsequently returned to Mrs A).
- Pay 8% simple interest per annum on this amount, calculated from 22 February 2022 until this complaint is settled.

My final decision

I uphold this complaint. Revolut Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 12 September 2024.

Sophie Mitchell
Ombudsman