

The complaint

Miss A complains that Revolut Ltd won't reimburse her money she lost after being a victim of fraud.

What happened

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

Miss A held an account with Revolut. In May 2023, Ms A received a call from an individual purporting to be from the UK High Court. Unfortunately, unbeknown to Miss A at the time, she was talking with someone intent on defrauding her.

The fraudster told Miss A that she owed money to HMRC or would face a prison sentence. She was instructed to make a number of payments, which she proceeded with from her Revolut account. These were carried out on the same day to a third-party account as follows:

1. £698 at 15:07
2. £1,984 at 15:13
3. £1,548 at 15:23

Once Miss A had transferred the funds, the call was terminated by the fraudster and Miss A realised she'd been the victim of fraud. So she contacted Revolut to report the incident.

Revolut looked into Miss A's claim but decided not to reimburse the funds lost. It told Miss A that it wasn't liable for the transactions as it provided a warning when processing the first of the three payments. As Miss A acknowledged this warning and decided to proceed with the payment, it told her it hadn't made an error.

Miss A remained unhappy with the response, so she came to our service for an independent review. An Investigator considered the evidence provided by both parties and recommended Revolut refund Miss A the final payment made, as it ought to have done more to protect Miss A from that point.

Revolut disagreed with the Investigator's assessment and recommendations, so the matter has now been passed to me for a decision to be made.

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 Miss 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 Miss A 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 May 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 May 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 A was at risk of financial harm from fraud?

Miss A's account was a well-established one; it was opened a few years prior to the transactions subject to this complaint. So Revolut had a fair overview of how Miss A operated her account.

I have carefully looked through Miss A's prior account activity as part of my review of this complaint and can see, generally, that Miss A tended to use her account for low value card payments, transfers, and foreign currency exchange. There are occasional higher payments also made from the account, but these tend to stand out.

Taking this into consideration, I don't find either of the first two transactions carried out by Miss A to have stood out enough to warrant any further intervention by Revolut other than low friction screen warnings. The first transaction appeared in line with Miss A's normal account expenditure. And the second also fell in line with the occasional higher transactions Miss A made from her account. I must also take into consideration the difficult task in which Revolut has in fulfilling its obligation to make payments without delay—in line with its customer's instruction—and intervening in payments that present a risk.

However, from the point Miss A made the third transaction, a concerning pattern of payments had formed. Miss A had made three payments to a new payee within the space of sixteen minutes. This not only represented an unusual increase in expenditure on the account but followed known patterns of fraud such as payments being made in quick succession of each other. This ought to have alerted Revolut to significant risk of financial harm from fraud.

What did Revolut do to warn Miss A?

Revolut has provided our service with two warnings it displayed to Miss A when she created a new payee and when authorising the first payment to the fraudster.

When setting up a new payee, Revolut displayed a warning asking if Miss A knew and trusted the payee she was setting up. It also provided a generic warning alerting Miss A that if she was unsure, she shouldn't proceed. This was followed up with warnings that fraudsters can impersonate others and that Revolut would never instruct her to make a payment.

Miss A progressed past this warning and authorised the first payment to the fraudster. This payment was declined and Revolut displayed a further warning telling Miss A that it had been identified as highly suspicious. It proceeded to tell Miss A that if she attempted to make the payment again it wouldn't be declined, but reiterated that she had been warned of the suspicious nature of the transaction.

While these warnings weren't specific to the fraud Miss A was victim to, they were proportionate to the risk associated with those payments.

What kind of warning should Revolut have provided?

While the warnings provided by Revolut as part of the first payment were proportionate to the risk associated with them, I find Revolut ought to have done more when Miss A made the third payment.

As I've set out above, the risk associated with the third payment was significant. And I find that the risk was sufficient enough to warrant contact from a representative of Revolut to probe the purpose of that payment. I find that it should have done this by, for example, directing Miss A to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the losses Miss A suffered from payment 3?

There is no evidence to suggest that Miss A was being coached through the payment process, or that she was directed to lie to Revolut if it contacted her probing the purpose of the payment she was attempting to make. So it's likely she would have told Revolut the true reasons she was making it.

Had Miss A disclosed the true circumstances she was in when making the payment, it would have been obvious to Revolut that she had fallen victim to a fraud: as this is a common method used by fraudsters. This would have caused Revolut to relay the appropriate warnings associated with these frauds and likely prevented her from continuing with the payment process: ultimately preventing Miss A's loss.

Should Miss 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.

Miss A was victim to a sophisticated fraud. Firstly, the call she'd received from the fraudsters imitated the genuine telephone number of the UK Courts and Tribunal Judiciary. And Miss A discovered this by carrying out a cursory search online, which confirmed the number as genuine on its official website. I find that this would have been convincing enough for any reasonable person, who was unaware of the possibility of number spoofing, that the person they were speaking with was legitimate.

Revolut has argued that the screenshot provided by Miss A showed a return on the search of the telephone number as being dangerous, and this was above the return showing it as a genuine number of the Courts and Tribunals Judiciary. It argues that this ought to have caused Miss A concern and provided her an opportunity to step back and consider the situation. But I don't agree. It is reasonable she prioritised information she had seen from an official source over that of alternative websites not affiliated with the Court and Tribunals Judiciary.

Revolut has also argued that, from the evidence provided, Miss A appears to have made the transactions after disconnecting the call with the fraudsters. And it asserts that meant there was no pressure on her to make the payments at the time she did. I have considered the screenshot provided by Revolut in support of this assertion, but am unable to identify how it has reached this conclusion. The screenshot provided merely gives the time the call commenced rather than when it was disconnected, so I don't find its assertion reasonable.

Further, having considered additional screenshots Miss A provided to Revolut when she reported the fraud, this does show the call time. And this supports Miss A's testimony that she was on the telephone for the entirety of the time the transactions were being made.

The fraud Miss A was subjected to is one that preys on fear and urgency to make payments in order to avoid detention and prosecution. Miss A confirmed, through reasonable means, that she was talking with a legitimate representative of the courts and was provided official looking documentation purporting to be from HMRC confirming that she owed money. She was kept on the phone by the fraudsters, as is commonly the case in these types of fraud, to prevent Miss A from being able to take a step back and think about the situation with clarity. And this was no doubt to instil fear of reprisal and create a sense of urgency in making the payments.

Overall, I find Miss A shouldn't be held liable for her loss for these reasons.

My final decision

For the reasons I've given above, I uphold this complaint and direct Revolut Ltd to:

- Reimburse Miss A £1,548
- Pay 8% simple annual interest on this amount from 29 May 2023 to the date it settles

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 8 October 2024.

Stephen Westlake
Ombudsman