

The complaint

Mr S is unhappy that Revolut Ltd won't refund money he lost as a result of a third-party scam.

What happened

Mr S told us that in March 2022, he clicked a link on an advert which led to a website. He said someone then called him who passed his details on to an organisation - I will refer to as T. T contacted him explaining about cryptocurrency and Mr S then set up a trading account with T. T also advised Mr S to open a Revolut account to make transferring to his cryptocurrency account easier. Mr S moved money from an account with another bank into his Revolut account. The money was then moved from his Revolut account to a legitimate cryptocurrency wallet and from there into his trading account with T.

I have summarised the transactions below:

Date	Amount (£)	Return (£)
26/04/2022	10,000	
26/04/2022	20,000	
10/05/2022		4925.5
25/05/2022	25,000	
26/05/2022	25,000	
01/06/2022	8,995	
08/06/2022	5,000	
09/06/2022	12,000	
10/06/2022	13,000	
13/06/2022	2,450	

Mr S says he was initially encouraged to invest a small amount. T showed him a profit of 2%- 3% within a day or two. Then Mr S gradually transferred larger amounts over a period of time and ultimately by June 2022, he was deceived into investing over £120,000. He was shown a profit of more than £500,000. When he made a request to withdraw some money, he was told he had to pay 10% broker fees. Mr S said he paid some of these fees but then realised it was a scam.

The investigator upheld the complaint in part. She concluded that Revolut would have been aware of investment and cryptocurrency trading scams at the time - particularly where someone is trading on the investor's behalf with funds going to the consumer's own cryptocurrency account. This is a well-known and common scam trend. She believed the scam could have been exposed and prevented. However, she felt it appropriate to make a deduction from the disputed transactions as she considered there was enough going on that Mr S ought to have been concerned about the legitimacy of the investment.

In addition, Mr S's other bank (where the money was moved from into the Revolut account - before being moved to the cryptocurrency account) agreed to share the responsibility with Revolut by paying Mr S 25% of the total disputed transactions. So, the investigator recommended Revolut pay Mr S 25% of the disputed transactions: meaning Mr S would be refunded 50% of the disputed transactions in total. Mr S would like to be compensated for more of his losses.

I issued my provisional decision on 11 January 2023. Revolut accepted my decision but Mr S did not. He felt Revolut should pay more than 25% of his losses and he also felt the sum he got back from the scam should not be deducted from the compensation. Following a number of communications with both parties, I revised the wording for redress slightly – with the aim of making the intention (which remains the same) clearer. I apologise for these changes, but redress was not straight forward in this case.

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'm required to take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

I'm sorry to hear Mr S was the victim of a cruel scam and lost a considerable sum of money as a result. I understand this loss has had a significant impact on his life and finances. In the circumstances, I can appreciate why he wants to do all he can to recover all his losses. But I can only direct Revolut to refund all Mr S's losses if it can fairly and reasonably be held responsible for them.

Did Revolut do enough to identify the risk of financial harm from fraud?

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case.

It is not in dispute that Mr S authorised the scam payments. It is also not in dispute that Mr S was duped by the scammers into instructing the bank to transfer money to a cryptocurrency account and on from there into the scammer's account. The scammers deceived him into thinking he was making a legitimate cryptocurrency investment for further trading.

As I understand it, payments to the cryptocurrency provider were used to purchase cryptocurrency which was then placed in a wallet in Mr S's name and from there the scammer moved the money into his own wallet. So, although Mr S did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

However, there are circumstances where it might be appropriate for Revolut, as an electronic money institute ('EMI') to take additional steps or make additional checks before processing a payment in order to help protect its customers from the possibility of financial harm from fraud. An example of this would be payments which are sufficiently unusual or uncharacteristic when compared with the usual use of the account. In such circumstances, I'd expect Revolut to intervene and ask some questions about the intended transaction before processing it.

Revolut says that, as the fraud occurred on the cryptocurrency account, it is not liable for any loss. But I don't agree that Revolut is not liable simply because the money was transferred to an account in Mr S's name and the fraud then happened from there. As I've mentioned above, Revolut had a responsibility to be on the lookout for unusual activity and protect consumers from financial harm.

As a financial services professional, I think Revolut would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account.

Cryptocurrency scams had been increasing in frequency and both the Financial Conduct Authority (FCA) and Action Fraud had published specific warnings about these scams in 2018. In my view, by the time of these transactions, Revolut had had time to understand these warnings and be on the look at for this particular type of fraud.

Revolut says it would be difficult for it to identify transfers as highly unusual or outside the user's normal behaviour because the account was new. However, it does acknowledge the amounts were high enough to warrant intervention. It explained that its Anti Money Laundry team acquired further information from the client due to what it accepts was 'unusual activity' on the account. Revolut explained that the customer's account movements were justified by his high income and savings. Revolut went on to say that it went even further and questioned the top-ups of the customer and when Mr S explained he was just moving his savings between his accounts – it let the transfers go ahead without asking anymore.

This was a new account and despite there being no account history, I think Revolut ought to have questioned the transaction of £10,000 (which was shortly followed by a transfer for £20,000) on 26 April 2022. It was significantly high enough to have caused concern. If Revolut had asked who Mr S was paying his money to, I think he would have explained about his cryptocurrency account and how he was trading with T. And, if Revolut had asked for example, how he'd heard about the trader, I think Mr S would have told them he'd clicked on a link which had taken him to a website, and he had shared screens with T. With further questioning, I think Revolut would have been concerned and put on notice that Mr S was falling victim to a scam.

And if Revolut had given Mr S some warnings about cryptocurrency scams including telling him that scam investment companies often provide fake trading platforms and legitimate investment companies would be unlikely to suggest sharing screens, I think this would have caused sufficient doubt in Mr S's mind not to proceed with the payment. In other words, if Revolut had carried out further or better questioning in line with the bank's duty of care, it seems probable that Mr S would have become credulous about the scam in time and stopped the £10,000 payment in its tracks. The fraud would have failed; and Mr S would not have lost £10,000 or the transfers that followed.

Could Mr S have done more to mitigate his losses?

I've thought carefully about what Revolut's obligations were, as set out above. But another key issue is whether Mr S acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Mr S should bear some responsibility by way of contributory negligence.

Mr S explained he was able to login into his own account via T's website and see his trading account with his deposits and profits and was led to believe he could withdraw at any time. Mr S told us he did look online where there were mixed reviews. He said the website looked genuine with genuine looking numbers and when he called T – a receptionist picked up the call. But Mr S was also told his initial £20 investment made a 3% profit in one day. He was then told he'd make 200% to 500% profit within a week if he invested £100,000. This rate of return was too good to be true. Mr S was told to download a remote desktop application and encouraged to take out loans to borrow the money to invest. I don't think a legitimate organisation would do this.

Overall, I'm not satisfied that a reasonable person would've believed this was a genuine situation or would've proceeded without doing more investigation and checks to verify all the information they were given – which I think would've shown inconsistencies and issues in the information provided. On that basis, I think it's reasonable for Mr S to share the responsibility with Revolut and reduce any refunds by 75% - as his other bank has already refunded 25% of the same transactions.

Therefore, Revolut should refund 25% of the payments Mr S made from 26 April 2022, along with interest. The investigator recommended Revolut add simple interest at the rate of 8% per annum from the date of transfer to the date of settlement. I think this is fair as Mr S also told us the money would otherwise have been spent on repaying friends he had borrowed from, supporting his father's monthly care costs and towards a deposit on a property.

Mr S also received a return of £4,925.50 from the fake investment on 10 May 2022– so that should be deducted from the refund. I appreciate Mr S feels it should not be deducted because it was reinvested in the next transaction. However, that next transaction is also be refunded – which would mean Mr S would be compensated for this the sum twice if it wasn't deducted.

Mr S borrowed £13,000 to invest £13,000 on 10 June 2022 – so the rate of return on 25% of the transaction that the loan funded should reflect the interest rate paid on that loan.

Putting things right

Mr S is responsible for 50% of his overall losses. He has already been compensated for 25% of his losses by his other bank. Therefore, Revolut should pay Mr S 25% of his net loss (C) where:

$C = A - B$

A = refund the transactions from 26 April 2022 to 13 June 2022

B = less £4,925.50 returned to Mr S on 10 May 2022

C = net loss = A - B

In addition, Revolut should

- Pay interest on 25% of the net losses (except for the loss on 10 June 2022 as this was funded by a loan) at 8% simple from the date of loss to the date of refund¹
- For the loss on 10 June 2022, pay interest on 25% of that loss at the interest rate associated with the loan Mr S took out - from 10 June 2022 to the date of refund¹

My final decision

My final decision is I uphold the complaint in part and require Revolut Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 March 2023.

Kathryn Milne
Ombudsman

¹ If Revolut is legally required to deduct tax from the interest should send Mr S a tax deduction certificate so he can claim it back from HMRC if appropriate.