

The complaint

Mr B complains that Revolut Ltd (Revolut) is refusing to refund him the amount he lost as the result of a scam.

Mr B is being represented by a third party. To keep things simple, I will refer to Mr B throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr B met an individual I will call X via an online anonymous chat website. Mr B exchanged contact information with X and they communicated daily via WhatsApp, text, calls and video calls, exchanging personal stories and building a trusting relationship.

After speaking for a while, X told Mr B about an investment she was involved in that was making a healthy profit. This involved buying and "staking" cryptocurrency. X explained she was able to make very good profits. X told Mr B that he could make £400+ per day if he invested £15,000.

Interested in the opportunity Mr B decided to invest but before he could he had to obtain funds that had been placed in other investments.

X guided Mr B on how to make payments into the investment via the cryptocurrency exchange Binance and showed him the different applications used in the process.

Mr B found he was making an immediate return on his investment and encouraged by X he invested more.

By mid-January Mr B was reportedly earning around £1,200 per day from the investment.

Having seen a healthy balance on his account Mr B decided to make a withdrawal but was unable to. Mr B spoke to X and the customer service department from the platform he was using and was advised he would be unable to make a withdrawal until more funds had been deposited.

X had mistakenly entered Mr B into a bonus scheme that meant he would receive a 20% bonus when his balance reached £100,000. X told Mr B she had not realised that her actions would lead to her "team" all being committed to the bonus scheme.

X then tried to help Mr B by transferring some funds to his investment account, encouraging Mr B to do the same. X explained that she was unable to help with the full amount required to reach the bonus goal as she had also helped other people on her team that had not paid her back.

Mr B says he realised he had been scammed when he was no longer able to see his funds in the "pool" and was asked to make a further payment to retrieve them.

Mr B made the following payments in relation to the scam from his Revolut account:

Payment	Date	time	Payee	Payment Method	Amount
1	29 December 2022	2:55pm	Binance	Debit Card	£5,000
2	29 December 2022	2:59pm	Binance	Debit Card	£1,000
3	30 December 2022	11:01am	Binance	Debit Card	£5,000
4	30 December 2022	11:03am	Binance	Debit Card	£1,000
5	30 December 2022	1:12pm	Binance	Debit Card	£500
6	3 January 2023	9:20am	Binance	Debit Card	£5,000
7	8 January 2023	12:28pm	Binance	Debit Card	£5,000
8	13 January 2023	3:32am	Binance	Debit Card	£5,000
9	26 January 2023	11:55am	Binance	Debit Card	£4,000
10	30 January 2023	3:12pm	Binance	Debit Card	£2,000

Our Investigator considered Mr B's complaint and thought it should be upheld in part. Revolut disagreed. In summary it argued that:

- 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.
- It is irrational (and illogical) to hold Revolut liable for customer losses in circumstances where Revolut is merely an intermediate link, and there are typically other authorised banks and other financial institutions in the payment chain that have comparatively greater data on the customer than Revolut, but which the FOS has not held responsible in the same way as Revolut.
- Revolut does not owe a duty to prevent fraud or scams.
- Our service appears to be treating Revolut as if it were a signatory to the CRM Code.

As an informal resolution could not be agreed this complaint has been passed to me to decide.

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 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 Mr B modified the starting position described in Philipp, by – among other things – 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” (section 20).

So, Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

I must also take into account that the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in December 2022- January 2023 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.

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 did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;¹
- requiring consumers to provide additional information about the purpose of

¹ 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_fo urfold_reduction_in_card_fraud_and_had_offers_from_banks/

- 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

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)².
- 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 customers’ accounts and scrutinise transactions.
- The October 2017 BSI Code³, 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).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer’s control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer’s own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- The main card networks, Visa and Mastercard, don’t allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers’ right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of

² 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.

³ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So, it was open to Revolut to decline card payments where it suspected fraud.

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 December 2022- January 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); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi - stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in December 2022- January 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Mr B was at risk of financial harm from fraud?

It isn't in dispute that Mr B has fallen victim to a cruel scam here, nor that he authorised the payments he made via his debit card to a cryptocurrency exchange (*from where that cryptocurrency was subsequently transferred to the scammer*).

Whilst I have set out in detail in this decision the circumstances which led Mr B to make the payments using his Revolut account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr B might be the victim of a scam.

The first payment Mr B made in relation to the scam was for the sum of £5,000 to a known cryptocurrency exchange. Mr B had his account for some time before he made this payment, and it was not usual for him to make payments of this size.

However, considering the above and the increased risk Revolut was aware came with making cryptocurrency payments at the time I think this payment should have put Revolut on notice that Mr B could be at risk of financial harm, and it should have intervened.

What did Revolut do to warn Mr B?

Revolut has explained that when Mr B made a payment, he was required to confirm it was him making it via 3DS secure on his device.

While I don't discount this entirely, as it would have confirmed it was Mr B authorising the

payment and not a third party without Mr B's permission, it is difficult to see how it would resonate with Mr B or the specific circumstances of the payments in question.

I don't think that providing this specific mechanism was able to deal with the risk that the payment presented. I think Revolut should have done more.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to the ones Mr B made in relation to the scam will be entirely genuine. I've given due consideration to Revolut's primary duty to make payments promptly.

Taking that into account I think Revolut should have had concerns when Mr B made the first payment. Considering the value of the payment, the risk associated with it at the time, and that it was out of keeping with how he usually operated his account. I think a proportionate intervention would have been for Revolut to have at least provided a tailored warning covering off the risk of cryptocurrency scams.

Overall, I can't agree that Revolut provided a proportionate response to the risk that payment 1 presented.

Having thought carefully about the risk payment 1 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 be made from Mr B's account. I think it should have done this by, for example, directing Mr B 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 consumer suffered from payment 1?

Mr B had started talking to someone online who had explained to him that he could make a profit from investing in cryptocurrency of £400 per day after making an initial investment of £15,000. Mr B had not met X in person.

There is some indication that Mr B was not entirely honest when making payments from other accounts to his Revolut account for the investment. When we asked Mr B about this, he said he didn't understand the importance of the questions, he was concerned the other banks wouldn't want him to move his funds to another account provider, and that he knew his other banks didn't allow cryptocurrency payments. He says that he would have no need to have been dishonest with Revolut had it intervened as he knew Revolut allowed such payments.

I've not seen enough to say Mr B was coached about what to say had Revolut intervened as I think it should have. Ultimately, as Revolut didn't provide an intervention like that I've described above, it can provide no compelling evidence that such a warning would not have resonated with Mr B and that he would have continued to make the payment.

The details of the scam explained above were common with cryptocurrency scams at the time and had Revolut intervened as I've explained it should have, I'm satisfied Revolut would have recognised the risk the payment possessed and provided a sufficient warning to Mr B that would have stopped him from making the first payment and those that followed.

Revolut is therefore responsible for Mr B's loss from payment 1 onwards.

Is it fair and reasonable for Revolut to be held responsible for Mr B's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mr B purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr B might have been at risk of financial harm from fraud when he made payment 1 and provided an appropriate intervention. If it had taken those steps, I am satisfied it would have prevented the losses Mr B suffered from payment 1 onwards. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Mr B's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr B's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered that Mr B has only complained against Revolut. I accept that it's possible that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr B could instead, or in addition, have sought to complain against those firms. But Mr B has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr B's compensation in circumstances where: Mr B has only complained about one respondent from which he is entitled to recover his losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr B's loss from payment 1.

Should Mr B bear any responsibility for his losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what I consider to be fair and reasonable in the circumstances of this complaint.

There were relatively sophisticated aspects to this scam. Mr B was able to see his investment growing and X had built trust with Mr B after meeting him on an online site not associated with investing at all.

But I still think Mr B should have had concerns. Mr B was promised unrealistic returns on his investment that were too good to be true, and while some positive reviews were available online for the investment platform there were also negative reviews available on trusted review websites pointing towards the platform being a scam. Had Mr B taken more care before making the payments I think he could also have prevented his loss.

With the above in mind, I think it would be reasonable for Mr B to share responsibility for his loss and a 50% deduction from the amount Revolut pays him should be made.

Recovering the payments Mr B made

I have also thought about whether Revolut was able to recover the payments Mr B made. But Mr B made payments into the scam via his debit card. When payments are made by card the only recovery option available to Revolut is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr B was dealing with a scammer. But Mr B didn't make the debit card payments to the scammer directly, he paid a separate cryptocurrency exchange. This is important because Revolut would only have been able to process chargeback claims against the merchant he paid, not another party (such as the scammer).

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mr B's payments into cryptocurrency. Therefore, it provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr B paid.

Putting things right

To put things right I require Revolut Ltd to:

- Refund the payments Mr B made into the scam from payment 1 onwards (less 50%).
- Revolut Ltd should add 8% simple interest per year to the amount it pays Mr B from the date of loss to the date the payment is made (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 January 2025.

Terry Woodham
Ombudsman