

The complaint

Mr B complains that Revolut Ltd did not refund a series of payments he lost to a scam.

What happened

Mr B found an advert on social media for a trading company that I'll call 'X' for the purposes of this decision. He went onto their website which looked professional and he saw some positive reviews of them online, so signed up. He began trading in cryptocurrency, via a wallet in his name. After one deposit, he received back around 20% in returns and was encouraged to continue investing by the brokers advising him. He made the following payments from his Revolut account, which he opened for the purpose of the investment:

Date	Credit	Debit
27/04/2022		£5,000
13/05/2022	£244	
24/05/2022		£5,000
27/06/2022		£6,600
30/06/2022		£12,500
20/07/2022	£3,342.67	
04/08/2022		£10,000
04/08/2022		£10,000
05/08/2022		£19,000
22/08/2022	£16,940	
15/09/2022		£7,000
15/09/2022		£1,000
Total	£20,526.67	£76,100
Total loss		£55,573.33

Eventually, the balance on the trading account reached one million pounds, and Mr B had doubts as it seemed too good to be true. He was pushed to make more trades, but he had no funds left to invest. He tried to withdraw his funds but was given excuses as to why this could not happen. Following this, he was told his account had been wiped out and he now owed X \$50,000. As a result of this, Mr B felt he had been the victim of a scam and raised a scam claim with Revolut via a representative.

Revolut did not agree to reimburse Mr B as they felt they had provided adequate warnings for the payments in question, however Mr B chose to continue with them. And they attempted to recover his funds from the beneficiary account, however Mr B had already forwarded the funds from his crypto wallet to the scammers so none could be recovered.

Mr B referred the complaint to our service and our Investigator looked into it. They felt that Revolut should have referred the first payment for additional checks, as Mr B incorrectly selected 'safe account' as the payment purpose, which is a known type of scam. And they thought it was more likely the scam would have been revealed if Revolut had asked probing questions about the payment as they saw no reason to think Mr B would not have been truthful in his answers. So, they recommended a full refund of all Mr B's losses, plus 8%

simple interest from the date of the transactions to the date of settlement.

Revolut did not agree with the outcome and felt our service had decided the complaint as if they had a legal obligation to refund Mr B. 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 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 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 Mr B 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 April 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

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).

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.

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).
- 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.

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 April 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); 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.

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

The first payment that Mr B made to the scam on 27 April 2022 was for £5,000. I can see that Revolut asked Mr B what the purpose of the payment was, as it was of a relatively large value for the first outgoing payment on the account. Mr B selected 'safe account' as the

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

payment purpose from a drop-down list.

It isn't clear why Mr B selected this option, as it did not match the correct payment purpose. In any event, a 'safe account' is a known type of scam that Revolut should have been aware of at the time, so I think they should have been on notice that something was not right, and that Mr B's account may have been at risk of financial harm as a result of this.

What did Revolut do to warn Mr B and what should they have done?

Revolut provided Mr B with a new payee warning 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 Mr B's circumstances, the 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. I don't consider it to be a proportionate response to the risk that the initial payment presented.

Mr B was also provided with a general warning specifically about safe account scams, however I don't think this was a proportionate response to the risk level the payment posed. Mr B had selected the payment purpose of a known type of scam, and I think Revolut needed to establish the circumstances surrounding the payment before allowing it to debit the account. And I therefore think it should have referred him to the in-app chat for additional questions about the payment

If Revolut had manually intervened, would that have prevented the losses Mr B suffered from the initial payment?

Had Revolut had a conversation with Mr B via the in-app chat, I've seen no reason why he would not have been open and honest with them. I say this because Mr B has not indicated that he was given a cover story by the scammers, and he genuinely believed he was investing his money with a legitimate company. So, I don't think he had any reason not to be honest with Revolut had they questioned him in more detail about the payment. I've gone on to consider whether a more in-depth conversation would reasonably have uncovered the scam at the time.

While there is not a set list of questions that I would have expected Revolut to ask, I do think some basic questions and warnings would most likely have uncovered the scam. I say this because Mr B found the investment via social media, which can be an initial sign of a scam and at least prompt more detailed questions about the investment along with a cryptocurrency investment scam warning. I think it would have been reasonable for Revolut to highlight Mr B could search the Financial Conduct Authority ("FCA") website to ensure the business he was dealing with was registered in the United Kingdom ("UK").

Had Mr B been advised to do this, he would have seen a general warning about X on the FCA website that was first published a year prior to Mr B making the investment. It isn't possible for me to know exactly what the warning showed at the time Mr B made the investment, but I can see just a few months afterwards it said that X was providing financial services in the UK without the authorisation of the FCA and that individuals should be wary of dealing with unauthorised firms. On balance, I think this along with a general warning from Revolut about cryptocurrency investment scams would most likely have revealed the

scam and prevented Mr B from making further payments towards it.

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.

I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss. In reaching my decision, I have taken into account that the final payment was made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from another account at regulated financial businesses.

But as I've set out above, I think that Revolut still should have recognised that Mr B might have been at risk of financial harm from fraud when they made the initial £5,000 payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Mr B suffered. 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 them 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: the Mr B has only complained about one respondent from which they are entitled to recover their 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 the first payment of £5,000 onwards.

Should Mr B 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 done so, I don't agree that a deduction for Mr B's contribution to the loss would be reasonable in the circumstances. I say this because while it is not usual to find an investment company through social media, Mr B did do some online research prior to investing. He found that the website appeared professional with all of the features you would expect of an investment company. And he found positive reviews online, which now appear to have been removed by the review websites. But at the time, he had no reason to doubt the legitimacy of the company.

While there was a general warning on the FCA website about X, I would not have expected Mr B, an inexperienced investor, to know how to check this at the time. Mr B also dealt with a number of different departments within X, which convinced him that he was dealing with a genuine company. Finally, once the scam started Mr B was able to make some withdrawals, which added to the feel of authenticity and encouraged him to carry on making deposits.

With all of this in mind, I don't think Mr B needs to bear any responsibility for the losses as a result of any negligence in his actions and I therefore do not recommend a reduction in the award based on this.

Putting things right

Revolut should now reimburse the losses set out in the table above which I calculate as £55,573.33. It should add 8% simple interest to this from the date of the transactions to the date of settlement.

My final decision

I uphold Mr B's complaint and direct Revolut Ltd to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 October 2024.

Rebecca Norris
Ombudsman