

The complaint

Mr H complains that Revolut Ltd won't refund money he lost when he fell victim to a scam.

What happened

Mr H was speaking with someone on a dating app, who I'll call 'M'. M told him about significant profits they had made investing through an investment platform which I'll call 'V'. Mr H downloaded V's trading app and felt it appeared trustworthy, he says M also showed him evidence of the profits she had made, so he began to invest, following advice M gave to him. Mr H initially made a small investment of £100 and believed he had earned good profits on this investment. He says he asked to withdraw some profits, but his request was refused, and he was told to make further payments for money laundering checks. Mr H carried on making payments to V for investments and believed he had made a very significant profit over the next couple of weeks.

Unfortunately, and unknown to Mr H, V was not a legitimate investment, he was dealing with a scammer. When he again asked to withdraw his profits, he was told he must pay a large tax bill first, and at this stage Mr H became suspicious and realised he had been scammed.

In total, Mr H made card payments and transfers of over £110,000 to buy cryptocurrency which he then passed on to the scammers. The payments he made are detailed below.

Payment	Date	Amount	Payee
Payment 1	17/04/2023	£100	Card payment
Payment 2	19/04/2023	£3,500	Card payment
Payment 3	19/04/2023	£100	Card payment
Payment 4	21/04/2023	£4,100	Card payment
Payment 5	21/04/2023	£60	Card payment
Payment 6	25/04/2023	£24,300	Bank transfer
Payment 7	28/04/2013	£22,500	Bank transfer
Credit	28/04/2023	£504.95	Credit from crypto exchange
Payment 8	30/04/2023	£11,200	Bank transfer
Payment 9	01/05/2023	£11,100	Bank transfer
Payment 10	01/05/2023	£55	Bank transfer
Payment 11	01/05/2023	£13,900	Bank transfer
Payment 12	02/05/2023	£18,400	Bank transfer
Payment 13	03/05/2023	£6,894	Bank transfer
Credit	04/05/2023	£124.50	Credit from crypto exchange

Mr H contacted Revolut to let it know what had happened, but it declined to refund any of the disputed payments. Revolut said that the payments were not out of character for Mr H, given his previous account usage, and that the loss had been from Mr H's accounts with the cryptocurrency exchanges, so it did not consider it was liable for that loss.

Unhappy with this, Mr H referred his complaint to our service. Our investigator thought Revolut should have provided Mr H with a tailored warning relating to cryptocurrency investment scams at the time of Payment 2. Had it done so, our investigator considered it more likely than not that Mr H would not have made any further payments to the scam. So, they recommended that Revolut refund Mr H's loss from that point onwards, minus 50% as they also considered Mr H should share some responsibility for his loss.

Mr H accepted the investigator's findings, but Revolut did not. It maintains that the activity on Mr H's account was not unusual enough to warrant intervention, and that it does not have an obligation to prevent fraud and scams. Revolut also says that, in any case, Mr H's loss was from his cryptocurrency accounts, not from his Revolut account. So, it does not consider it should bear any responsibility for that loss.

As an agreement couldn't be reached, the 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 H 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.

In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 April 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 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.

For example, it is my understanding that in April 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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

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_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/

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 customer’s 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 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

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”

open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 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 April 2023, Revolut should in any event have taken these steps.

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

Mr H's Revolut account had been open for several years at the point the scam payments were made. So, Revolut had an extensive account history against which to compare any new payments. And the initial payment Mr H made was small, and was to a cryptocurrency exchange Mr H had used before, so I don't think this payment would have been an immediate cause for concern.

I'm also aware that cryptocurrency exchanges generally stipulate that the card used to purchase cryptocurrency at its exchange must be held in the name of the account holder, as must the account used to receive cash payments from the exchange. Revolut would likely have been aware of this fact too. So, it could have reasonably assumed that payments Mr H was making would be to a cryptocurrency wallet held in Mr H's name.

But by April 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions. This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr H made in April 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

And the second payment Mr H made to the scam, for £3,500, was significantly larger than any other payment that had debited Mr H's account previously. So, while Mr H had previously made cryptocurrency related transactions, meaning the purchase of cryptocurrency was not entirely out of character, bearing in mind the value of this payment I think that the circumstances should have led Revolut to consider that Mr H was at heightened risk of financial harm from fraud. In line with good industry practice and regulatory requirements, I am satisfied that it is fair and reasonable to conclude that Revolut should have warned Mr H before this payment went ahead.

What did Revolut do to warn Mr H, and what should it have done?

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 this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, when Mr H attempted to make Payment 2, knowing that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment scams. I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr H by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

If Revolut had provided a cryptocurrency investment scam warning, would that have prevented the losses Mr H incurred after that point?

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr H's payments, such as being approached on a social media type platform by someone offering investment opportunities, being advised on trades by an unregulated third-party, being promised unrealistic returns, and being unable to withdraw any 'profits'.

I've also seen no indication that Mr H was asked to, or agreed to, disregard any warnings provided by Revolut. Neither do I think that the conversations I've seen demonstrate a closeness of relationship that Revolut would have found difficult to counter through a warning. I understand that Mr H did not agree to the fraudsters demands for him to pay taxes on his withdrawal and it was his difficulty in withdrawing money that led him to realise he had been scammed, so he was clearly willing to question what he was being told by the scammer if he had been given reason to doubt that what he was doing was part of a legitimate investment.

With all this in mind, I'm satisfied that Mr H was not so taken in by the fraudsters that he wouldn't have listened to the advice of Revolut.

I've also seen no evidence that Mr H was provided with warnings by the firm from which the funds used for the scam appear to have originated. His Revolut account appears to have been linked to that account for several years and therefore would have likely been an established and trusted payee.

Therefore, on the balance of probabilities, had Revolut provided Mr H with an impactful warning that gave details about cryptocurrency investment scams and how he could protect himself from the risk of fraud, I believe it would have resonated with him. He could have paused and looked more closely into the investment scheme before proceeding, more likely than not revealing the scam and preventing his further losses.

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

In reaching my decision about what is fair and reasonable, I have taken into account that the funds lost to this scam originated with another bank, and were passed to Mr H's cryptocurrency accounts before being sent on to the scammers.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr H might have been at risk of financial harm from fraud when he made Payment 2, and in those circumstances it should have provided Mr H with a relevant warning about that payment. If it had taken those steps, I am satisfied it would have prevented the losses Mr H suffered. The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to Mr H's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr H'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 H 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 H could instead, or in addition, have sought to complain against those firms. But Mr H 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 H's compensation in circumstances where: the consumer 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 H's loss from Payment 2 (subject to a deduction for Mr H's own contribution which I will consider below).

Should Mr H 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's fair and reasonable in the circumstances of this complaint.

There's a general principle that consumers must take responsibility for their decisions. I've duly considered whether Mr H should bear some responsibility by way of contributory negligence. And considering the details of this scam I do think it is fair that he bear some responsibility for his losses.

I say this because Mr H has said he found out about this investment after he was contacted by someone on a dating app who told him they had made good profits, not the usual route where one would find legitimate investment advice. And by the time of Payment 2, Mr H appears to have believed he had made a proportionally very large profit on his initial small investment, this really does strike me as being something Mr H should have seen was too good to be true, this is not the kind of return that a legitimate investment would generally offer, not even a high risk one such as cryptocurrency. I understand that Mr H says V's trading platform appeared professional, but I've been unable to locate any independent reviews (either positive or negative) of V, so it would seem that Mr H decided to invest without seeking any independent opinions regarding whether it was a legitimate or trustworthy business. I'm also aware that, after his initial small investment, Mr H was told he couldn't withdraw his profits without making more payments into the scheme, and I think this should have been a point of further concern to him.

So, having thought carefully about this, I do think that Mr H ought to bear some responsibility for his losses and that the refund due to him should be reduced by 50% accordingly. I also note that Mr H appears to have credited some funds back into Revolut from his cryptocurrency account at a later stage in the scam, and those funds should also be deducted from any refund due to him.

Putting things right

To resolve this complaint Revolut should:

- Refund 50% of Mr H's loss (minus any credits received as detailed in the table above) from Payment 2 onwards (inclusive); and
- Pay 8% simple interest per annum on the refunded amount, calculated from the date of each payment to the date of settlement (less any tax properly deductible).

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 February 2025.

Sophie Mitchell
Ombudsman