

## **The complaint**

Mr J complains that Revolut Ltd hasn't protected him from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr J has explained that in January and February 2023 he made six debit card payments totalling £67,601 from his Revolut account as a result of what he thought was a legitimate investment. He came across the 'investment' on a well-known social media platform and consequently made the debit card payments to buy cryptocurrency which was then transferred to fund his 'investment'.

Mr J subsequently realised he'd been scammed and got in touch with Revolut. Ultimately, Revolut didn't reimburse Mr J's lost funds, and Mr J referred his complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a 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.

Having done so, I agree with the conclusions reached by our Investigator – I uphold this complaint in part.

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 J 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 January and February 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;<sup>1</sup>
- 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 January and February 2023, Revolut, whereby it identified a scam risk associated with a card payment through its automated systems,

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<sup>1</sup> 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/](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/)

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 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)<sup>2</sup>.
- 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 Code<sup>3</sup>, 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

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<sup>2</sup> 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.

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

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 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 January and February 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.

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

It isn't in dispute that Mr J has fallen victim to a scam here, nor that he authorised the payments he made to the cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

I'm aware that cryptocurrency exchanges like the one Mr J paid 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 these payments would be credited to a cryptocurrency wallet held in Mr J's name.

By January and February 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<sup>4</sup>. And by March 2023 further restrictions were in place<sup>5</sup>, leaving 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.

I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

So, taking into account all of the above, I am satisfied that by the end of 2022, prior to the payments Mr J made in January and February 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.

To be clear, it is the specific risk associated with cryptocurrency in January and February 2023 that, in some circumstances, should have caused Revolut to consider transactions to cryptocurrency providers as carrying an increased risk of fraud and the associated harm.

In those circumstances, as a matter of what I consider to have been fair and reasonable, good practice, and to comply with regulatory requirements, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments. And as I have explained, Revolut was also required by the terms of its contract to refuse or delay payments where regulatory requirements meant it needed to carry out further checks.

Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact the payments in this case were going to an account held in Mr J's name should have led Revolut to believe there wasn't a risk of fraud.

So I've gone on to consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr J might be at a heightened risk of fraud that merited its intervention. And I agree with our Investigator's findings: I've taken into consideration that Mr J's account with Revolut was a new one, having been set up shortly before on 2 January 2023; I don't think the first payment ought to have appeared unusual enough for Revolut to intervene. But by the time of payments two and three, on 19 January 2023, and bearing in mind what I've said above about cryptocurrency, Revolut really ought to have realised Mr J was at a heightened risk and that its appropriate intervention was warranted.

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<sup>4</sup> See for example, Santander's limit of £1,000 per transaction and £3,000 in any 30-day rolling period introduced in November 2022.

NatWest Group, Barclays, Lloyds Banking Group and Santander had all introduced some restrictions on specific cryptocurrency exchanges by August 2021.

<sup>5</sup> In March 2023, both Nationwide and HSBC introduced similar restrictions to those introduced by Santander in November 2022.

### What did Revolut do to warn Mr J?

I understand that Revolut did not intervene in these payments, nor warn Mr J before it allowed them, that he might be falling victim to a fraud or scam.

### 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 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 that Revolut ought, when Mr J instructed his second payment, which was for £5,200, knowing the payment was going to a cryptocurrency provider, to have provided, at a minimum, a tailored written warning relevant to cryptocurrency scams, given how prevalent they had become by the end of 2022. Like our Investigator, I'm not persuaded, on a balance of probabilities, that such a warning would likely have yet made a difference, but given that Mr J proceeded to instruct payment three – which was for £8,200, again identifiably to a cryptocurrency provider and less than 40 minutes later – I think that Revolut really ought, at this point, to have attempted to establish the circumstances surrounding the payment before it allowed it to debit Mr J's account. I think that it should have done this by, for example, directing Mr J 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 Mr J suffered from the third payment onwards?

I agree with our Investigator that if Revolut had asked Mr J what payment three was for, as I've said it should have, he would have fully explained what he was doing. The money used to fund these payments originated from accounts Mr J held with third party payment service providers and we've contacted these payment service providers who have said they didn't intervene in the payments, so there's no evidence of Mr J being provided with scam warnings or that he wouldn't have been upfront if questioned about the payments. The evidence of messages exchanged between Mr J and the fraudsters also doesn't persuade me Mr J wouldn't have been upfront. Instead, I understand Revolut has said that its in-app chat is highly effective at uncovering scams; I'd expect Revolut to have been agile and dynamic in its responses, picking up on clear signs that Mr J likely was being scammed – for example, Revolut could have flagged to Mr J the current prevalence of cryptocurrency scams like this, warning him in clear and understandable terms, about the key features of common cryptocurrency investment scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value. 'Fees' becoming payable to initiate withdrawals that then don't fully materialise or are restricted would also be a common theme.

Therefore, on the balance of probabilities, had Revolut intervened as I'd reasonably expect it to have and provided impactful and dynamic warnings about cryptocurrency investment scams and how Mr J could protect himself for the risk of fraud, I believe these warnings would have resonated with Mr J. He could have paused and looked more closely into the broker before proceeding, as well as making further enquiries into cryptocurrency scams. I'm satisfied that a timely warning to Mr J in such an appropriate manner would likely have caused him to pause and that the scam would likely then have been uncovered given the information in the public domain at the time that would have included extremely concerning

reviews on the internet about the outfit Mr J was dealing with. Thus Mr J's losses from payment three onwards would likely have been avoided.

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

In reaching my decision about what is fair and reasonable, I have taken into account that the money Mr J spent from his Revolut account in making these payments originated from separate accounts he held with third-party payment service providers.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr J might have been at risk of financial harm from fraud when he made the third payment, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it most likely would have prevented the losses Mr J suffered from that point onwards. 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 J's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr J'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 J 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 J could instead, or in addition, have sought to complain against those firms. But Mr J 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 J'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 J's loss from the third scam payment onwards (subject to a deduction for Mr J's own contribution which I will consider below).

#### Should Mr J bear any responsibility for his losses?

I've thought about whether Mr J should bear any responsibility for the loss of the £59,901 I've said Revolut should have prevented (that's the total of payments three to six). In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

In this case, for the same reasons as explained by our Investigator, I don't think it's unfair to say Mr J really wasn't as careful with his payments as he should have been. There clearly would have been concerning information in the public domain that I think Mr J reasonably ought to have seen if he'd researched things properly (which I think Mr J likely would have seen if Revolut had warned him properly), this was a lot of money for Mr J to 'invest' without looking into things further than he did, and I don't think Mr J was as cautious as I'd reasonably expect in the particular circumstances here; such that I'm persuaded here that

it's fair that Mr J shares responsibility for the loss with Revolut, such that Revolut should pay Mr J 50% of the £59,901 loss, and so £29,950.50.

### Recovery

For completeness, I'll address recovery. After these payments were made, because they were debit card payments, the only potential avenue to recover them would have been through the chargeback scheme. However, Mr J didn't make the debit card payments to the scammers. Instead, he made them to a legitimate crypto exchange, which would have provided the services intended. So Revolut could only have brought chargeback claims against the crypto exchange (and not the scammers) but these wouldn't have succeeded given the circumstances. So I can't say Revolut therefore unreasonably hindered recovery of the funds.

### Interest

Our Investigator set out how Mr J borrowed £23,510 of the funds he lost, directly relevant to payments three to six. This means that of the total amount lost from payments three to six, which was £59,901, £23,510 came from borrowed money, and the balance (£36,391) came from Mr J's own funds. As I've said Revolut and Mr J should share equal responsibility for the loss; I think it's fair to say therefore, that of the £29,950.50 (50% of the total loss of payments three to six) Revolut should pay Mr J, the amount of £11,755 (50% of the amount of £23,510 Mr J borrowed) would be the relevant proportion towards repaying the proportion of the losses from the money Mr J borrowed, and the amount of £18,195.50 (50% of the amount of £36,391 Mr J lost from his own resources) would be the relevant proportion towards repaying the proportion of losses from Mr J's own resources.

This breakdown is important because, like our Investigator, I don't think Revolut should be required to pay Mr J interest on the proportion of the loss from money borrowed. This is because our normal interest award would be to compensate the consumer for having been deprived of the use of this money from the date of loss to the date of settlement. However, as Mr J borrowed this money, whilst I understand this is still a loss because he still owes this money, he hasn't suffered any loss of use because he wouldn't have borrowed or had use of the funds in the first place but for the scam. Therefore, I'm satisfied that Revolut need not pay compensatory interest on £11,755 of the £29,950.50, but instead the difference, which is £18,195.50 calculated at 8% simple per year from the date of the payments to the date of settlement.

However, Mr J has also provided evidence that he repaid £5,000 of the borrowed money on 20 August 2023, so I think it is appropriate that Revolut pays Mr J interest on this proportion of this loss (half again, so £2,500) from 20 August 2023 to the date of settlement.

### **My final decision**

For the reasons explained, I uphold this complaint in part and I direct Revolut Ltd to pay Mr J:

- £29,950.50; plus
- interest\* on the amount of £18,195.50 calculated at 8% simple per year from the date of the payments to the date of settlement; plus
- interest\* on the amount of £2,500 calculated at 8% simple per year from 20 August 2023 to the date of settlement.

\*If Revolut deducts tax from this interest, it should send Mr J the appropriate tax deduction certificate.



Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 April 2025.

Neil Bridge  
**Ombudsman**