

The complaint

Mr K is unhappy Revolut Ltd won't reimburse money he lost to a scam.

What happened

In September 2021 Mr K fell victim to an investment scam. He was persuaded to make a small initial payment from another of his bank accounts (at a bank that I'll call N). When he tried to make a larger payment to his Revolut account, N stopped the payment to discuss it with him. N advised that he was likely falling victim to a scam. As a result Mr K messaged the fraudsters to say that he wouldn't continue with the investment. However, by November 2021, Mr K was persuaded to continue with the investment. He made a payment of £1,050 from his Revolut account to a payment service provider with links to cryptocurrency. He says that following this deposit, the fraudsters cut contact with him.

In May 2022, he was contacted by someone claiming to represent a major bank. They said that they could recover his investment that was now worth £16,000. Mr K was told that in order to release this money he'd need to pay a percentage of it into a cryptocurrency wallet.

On 19 May 2022, Mr K made a payment of £3,200 to the same payment service provider as the first payment, but was told that it hadn't gone through and the correct amount he'd need to pay was actually £3,250. Mr K made that payment too and unfortunately for him, both payments had actually gone through.

After making those payments, on 26 May 2022, Mr K reported to Revolut that he believed he'd been the victim of a scam. It asked him for information about what had happened but, on 14 June 2022, it said that it wouldn't reimburse him.

Around this time Mr K was contacted by another person. They claimed that the withdrawal of Mr K's profits had failed because of anti-money laundering checks and that he'd need to pay another £6,600 to release his investment. Mr K says he initially declined to pay these additional amounts but, after a further call from the individual on 14 June 2022 (the same day Revolut said it wouldn't reimburse him), he took out a loan with a third party and made two card payments totalling £6,500 to a cryptocurrency provider, before converting the funds into cryptocurrency and sending them to the fraudster.

Mr K, through a representative, complained to Revolut about all the payments. He argued that Revolut should have picked up on the activity as being suspicious and questioned the payments before they left his account. Revolut disagreed. It said that it had warned Mr K but he had proceeded with the payments regardless.

The matter was referred to our service but one of our Investigators didn't uphold the complaint. They thought that Revolut should have been suspicious of the £3,250 payment and questioned Mr K. However, they thought that, taking into account a conversation that Mr K had with N and the fact that he continued to make payments even after he suspected he'd been the victim of a scam, Mr K would have continued regardless of any warning.

Mr K's representatives didn't agree. They argued that the warning provided by N wasn't as

good as it could have been and, more importantly, Mr K was entirely honest about what he was doing. Had Revolut provided a better warning, they argued, Mr K wouldn't have gone ahead with the payments.

So the matter was referred to me for a decision and on 16 October 2023 I issued my provisional decision on this complaint. I wanted to give both parties a chance to submit any further evidence and/or arguments before I issued my final decision.

In summary, I provisionally decided that:

- Mr K authorised all the payments in dispute.
- The conversation N had with Mr K about an earlier payment was not, by the time of the £3,250 payment, directly relevant to Mr K's circumstances.
- A written warning about investment scams provided in relation to that payment would have been a proportionate response to the risk it presented but would be unlikely to have sufficiently resonated with Mr K to have deterred him from making the payment.
- However, I provisionally decided that Revolut's failure to provide any education or advice to Mr K when he initially reported the scam caused him to carry on making payments and Revolut should bear responsibility for his loss from the penultimate payment.
- I also provisionally decided that the responsibility for that loss should be shared with Mr K, given his very serious concerns that he'd fallen victim to a scam prior to making the final two payments.
- So, I provisionally recommended that Revolut reimburse a total of £3,250 (that is 50% of the final two payments), as well as 8% simple interest per annum on that amount from the date of the payments to the date of settlement.

Mr K accepted my provisional decision, but Revolut did not. In summary, it said:

- It does not owe a duty to prevent fraud or scams. It is bound to execute valid payment instructions, which is a strict duty and is subject only to very limited exceptions. There is no obligation on it to take additional steps or make additional checks before processing a payment if it suspects the possibility of financial harm from fraud and by suggesting that it does have these obligations, I have erred in law.
- While it recognises its obligations to put in place adequate procedures to counter the risk that its accounts may be used to further financial crime, this does not amount to a requirement to detect and prevent all fraud.
- The recent Supreme Court judgement in the case of *Philipp vs Barclays Bank Plc UK [2023] UKSC 25* confirmed that where a bank receives a payment instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. This is a strict duty, and the bank must carry out the instruction promptly without concerning itself with the 'wisdom or risks of the customer's payment decisions'.
- Reimbursement codes and rules such as the Contingent Reimbursement Model (CRM Code) do not apply. Revolut is not a signatory to the CRM Code, and (at the

time of response) the Payment Systems Regulator's ("PSR") APP scam reimbursement rules are not yet in force. Despite this it appears that I've applied the CRM Code to this complaint.

- The proposed reimbursement rules will allow an exemption to reimbursement on the basis that a customer has acted with gross negligence. Deciding gross negligence is likely to involve a consideration of whether a consumer has regard to the warnings given by the PSP. Revolut gave warnings to Mr K that were negligently ignored and my failure to properly take those warnings into account is irrational.
- Mr K's loss did not take place from his Revolut account as he made payments to his own crypto wallets before taking further action to transfer cryptocurrency to the scammer, so it should not be responsible for reimbursing him in this scenario where it is merely an intermediate link in the fraud.
- Neither the CRM Code nor the mandatory reimbursement rules cover payments of this nature.
- Mr K was grossly negligent in continuing with the final two payments, despite having acknowledged that he might be falling victim to a scam.
- It disagrees that Mr K would have stopped making further payments, given that he'd already ignored warnings provided by it and his current account provider.

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 in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I'm not persuaded to depart from the outcome reached in my provisional decision. I'll explain why.

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 K 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 May and June 2022 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 EMIs like Revolut did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;¹

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/

- 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.

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 *“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

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”

(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 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 May and June 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 K was at risk of financial harm from fraud and could it have prevented his losses from the penultimate payment?

There no longer appears to be any dispute about the payments prior to the penultimate payment, so I'm only considering whether Revolut should have prevented Mr K's loss from that point onwards.

I see no reason to depart from my provisional finding that Revolut's response to Mr K's scam claim was poor. It failed to provide any education or advice – in particular it failed to confirm that he was falling victim to a scam or advise him to not make any further payments.

In addition, Mr K then went on to make two further payments to a cryptocurrency provider on the same day his scam claim was declined. If the risk that Mr K might be drawn back into the scam without adequate education and advice wasn't clear when he reported the scam, it certainly should have been at the point he made a £5,000 card payment to a cryptocurrency exchange on the same day his claim had been declined. That transaction was only the third payment that had been made using Mr K's Revolut account, all of which were related to the scam and it was the largest by some measure.

At either the point Mr K reported the scam or when he attempted to make the penultimate payment, I think Revolut ought to have done more and provided warnings that confirmed he was falling victim to a scam, as well as advise him against making further payments.

Revolut argue that Mr K's willingness to make further payments despite having reported the matter as a scam to it and the fact Mr K was talked back into the scam after his conversation with N, shows that he would have proceeded regardless of any warnings or advice it gave. I disagree, I don't think Mr K's actions are that of someone determined to continue making payments regardless of any warnings, but instead someone who was clearly agonising about what action to take. He was talked back into making the payments by the fraudsters and I have no reason to think that he wouldn't have been equally receptive to advice given by Revolut (as he had been, at least initially, when he spoke to N in September 2021). And, that advice should have been unequivocal – no legitimate company would ask you to pay cryptocurrency to recover an investment and that he was certainly falling victim to a scam.

By this point (as perhaps wasn't the case in November 2021 – when Mr K had only made a modest investment) I think it would have been apparent to him that he was throwing good money after bad. On balance, I think that a very clear scam warning would have been more persuasive than any subsequent attempts by the fraudsters to persuade him to keep making payments. So, I think Revolut's failures did cause Mr K's loss from the penultimate payment onwards.

Is the deduction to the amount awarded to Mr K in my provisional decision fair?

Revolut argue that Mr K acted with gross negligence and therefore would not be entitled to any reimbursement under the PSR's APP scam reimbursement rules. It suggests that he should therefore not be entitled to any reimbursement.

The PSR's rules are not relevant to my decision and the PSR has recently reminded firms that APP scam victims can still bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules)⁴. Neither do I seek to apply the terms of the CRM Code here, I've explained the basis on which I think that fairly and reasonably, Revolut should reimburse some of Mr K's loss.

So, I'm not considering whether Mr K acted with gross negligence, but rather, taking into account what the law says about contributory negligence, as well as what's fair and reasonable, whether there should be a deduction from the amount due to Mr K.

In considering this point, I've taken into account Mr K's means and sophistication and the fact that the matter at hand comes within Revolut's, as an FCA-authorized EMI, expertise. While I recognise that Mr K must have made the final two payments with a very strong suspicion that he was being defrauded, I consider Revolut's failings to be equal to his, given how apparent the risk ought to have been at the point he reported the scam and made additional payments and, as such, my decision remains that a 50% deduction is fair.

Should Revolut fairly and reasonably be held responsible for Mr K's loss?

⁴ "The reimbursement rules and their award limit differ from the rules which govern complaints under the Financial Ombudsman Service's dispute resolution rules (DISP). PSPs should therefore inform victims of APP scams that, in addition to their right to seek reimbursement under the reimbursement rules, they have the right to bring complaints against sending and receiving PSPs if they are dissatisfied with their conduct and consider this has caused their loss. Such complaints may ultimately be referred to the Financial Ombudsman Service." PSR PS23/4 7.18

In reaching my decision about what is fair and reasonable, I have taken into account that Mr K paid money using his Revolut account to another account in his own name, rather than directly to the fraudster, so he remained in control of his money after he made the payments, and there were further steps before the money was lost to the scammer.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr K might have been at risk of financial harm from fraud when he reported the scam and made the penultimate payment, and in those circumstances it should have provided a warning and/or declined the penultimate payment and made further enquiries. If it had taken either of those steps, I am satisfied it would have prevented the losses Mr K suffered. The fact that the money used to fund the scam wasn't lost at the point it was transferred to Mr K's own cryptocurrency account does not alter that fact and I think Revolut can fairly be held responsible for Mr K'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 K 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 K could instead, or in addition, have sought to complain against those firms. But Mr K 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 K's compensation in circumstances where: he has only complained about one respondent from which he is entitled to recover his losses in full; has not complained against another 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 K's loss from the penultimate payment (subject to a deduction for Mr K's own contribution).

My final decision

I uphold this complaint in part and direct Revolut Ltd to pay Mr K:

- 50% of the final two payments in dispute - £3,250.
- 8% simple interest per annum on that amount from the date of the payments to the date of settlement⁵.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 November 2024.

Rich Drury

Ombudsman

⁵ If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.