DRN-4590869

## The complaint

Mr M complains that Revolut Ltd won't refund money he lost when fell victim to two scams.

Mr M is being represented by solicitors in this complaint.

## What happened

The complaint concerns seven debit card transactions totalling around £28,000 which Mr M made from his Revolut account between February and April 2023.

Mr M has said that all but the last two transactions were made in connection with an investment opportunity with a firm "X", who he came across on a social media platform. He made a small initial deposit from his main bank account with "B" and, encouraged by the profits he was making, he continued making deposits through a newly opened Revolut account he set up under X's instructions. Mr M was able to make a small withdrawal. He also took out a loan with B to fund the investment. When he requested to make a withdrawal and was asked to pay a large sum of money in various fees and capital gains tax, Mr M realised he'd been scammed.

Mr M states the last two transactions were sent to a firm "Y" who offered to help him recover his investments with X in exchange for an upfront fee. He paid this fee in two instalments. But following this, Y stopped contact with him, and he discovered that he'd fallen victim to a scam.

To facilitate payments to X and Y, Mr M first transferred funds from his account with B to Revolut. He then purchased cryptocurrency from a cryptocurrency provider, before depositing it into wallets as instructed by representatives from X and Y.

The following payments were made from Mr M's Revolut account –

| | **Date** | **Amount** |
|---|---|---|
| Payment 1 | 13 February | £960 |
| Payment 2 | 20 February | £7,500 |
| Payment 3 | 24 February | £1,000 |
| Payment 4 | 28 February | £1,000 |
| Payment 5 | 2 March | £16,000 |
| Payment 6 | 3 April | £1,000 |
| Payment 7 | 14 April | £600 |
| | | |
| | **Total payments** | **£28,060** |

Revolut declined to refund Mr M's losses and a complaint was referred to our service. Our investigator thought that Payment 2 ought to have flagged as suspicious and, given the destination, Revolut should have provided a tailored written warning about cryptocurrency scams. The investigator also thought that Payment 5 warranted a direct 'human' intervention.

But they weren't persuaded that either intervention would have stopped Mr M from going ahead with the payments. They noted that the account activity showed continued cryptocurrency-related payments following the scam payments. The investigator also noted that when it notified him of its decision to close his account, Mr M told Revolut that he was expecting £167,000 from a cryptocurrency provider into his account. The investigator thought this indicated that he'd fallen victim to a scam despite the earlier scams.

Mr M's representative disagreed with the investigator's findings and asked for an ombudsman's decision. In summary, the representative said that the conversation regarding the large deposit had been completely misinterpreted. Mr M was within his rights to make cryptocurrency payments after the scam – those weren't part of a scam.

After the case was passed to me, I wrote to Mr M's representative informally. I gave additional reasons for why I didn't think it would be fair to hold Revolut liable for the losses suffered. The representative disagreed with my provisional findings and requested a formal 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.

At the outset, I'm not entirely clear on the timeline and specifics of the two scams that Mr M says he fell victim to. We've been told that the first five payments were in relation to the investment scam perpetrated by X, and the last two were to the recovery scam orchestrated by Y.

While the scam chat correspondence between Mr M and individuals linked to the scams indicate that the last two payments were made to recover the original payments (plus the supposed profits), the chats also shows that Mr M had initially engaged in the services of Y for the purposes of investing with it. This appears to be around the same time as his dealings with X.

For instance, there are messages exchanged with Y on 14 March – i.e., two days prior to the last known payment to X and three weeks prior to the first 'recovery' payment to Y. Also, on 23 March, Y confirms that funds had been received into Mr M's account with it. I question the nature of this exchange given Mr M says he only made two payments to Y (in April), and they were to recover his funds.

So, on the face of it, it doesn't appear to be a case of an investment scam followed by a recovery scam as has been presented in the complaint submission. I note that Mr M's representative hasn't addressed this discrepancy despite my mentioning this in my previous correspondence.

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. It's not in dispute that Mr M authorised the payments in question.

But, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to be good industry practice at the time, I consider it fair and reasonable in 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 (including in relation to card payments),

- 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.

EMIs are set up with the purpose of sending and receiving money and the type of payments they're generally used for tends to be somewhat different to banks and building societies. Often, the payments will be for larger sums. Where there's little or no previous account history, as was the case here, what should reasonably strike Revolut as concerning for a first payment isn't down solely to the transaction amount involved.

I've considered that the disputed transactions were sent to a cryptocurrency platform. I accept that buying cryptocurrency is a legitimate exercise. But by February 2023, there had been an increased prevalence of investment scams involving cryptocurrency. Both the financial services regulator, the Financial Conduct Authority (FCA), and Action Fraud had warned of cryptocurrency scams. This type of insight is something that regulated businesses, including Revolut, ought to take notice of.

Although it was identifiably cryptocurrency related, there weren't any other factors that made Payment 1 particularly unusual such that I think it ought to have triggered on Revolut's fraud detection system.

But by the time Mr M made Payment 2, given what I've said above, I'm satisfied that Revolut ought to have recognised that it carried a heightened risk of financial harm from fraud. A pattern of increased spending on cryptocurrency transactions began to emerge. In the circumstances, and at that time, I consider that a proportionate response to that risk would have been for Revolut to have provided Mr M with a written warning about the most prevalent type of cryptocurrency scams, i.e., investment scams, tackling some of the typical features.

But, had it done so, I'm not persuaded that the warning would have prevented Mr M's loss. I'll explain why.

A few days later, one of the transfers Mr M made from his account with B to Revolut flagged as suspicious. He was required to phone B to discuss it. I've listened to three call recordings, from 28 February and 1 March. These are in relation to £16,500 which Mr M transferred to Revolut, before making Payment 5. When asked about the reason for the payment, Mr M told B he was moving money to Revolut to spend on a trip he intended to make to South Africa in May 2023. He said there was a conference he wanted to attend, and he planned to

also make a holiday out of the trip. Mr M confirmed that the loan he'd taken out with B was to fund the trip.

The first two calls happened on 28 February – Mr M had to ring back because the block hadn't been removed. It was during that second call that the agent explained there was a lot of fraud and scam prevalent, and the bank wanted to ensure he wasn't falling victim to a scam. Mr M agreed to take 24 hours to think whether he wanted to go ahead with the payment.

In the third call, which happened the following day. Mr M expressed nervousness about B blocking his payments and restricting his account. Crucially, he also confirmed that no one had advised or instructed him to move the money or set up the Revolut account. We know that this wasn't true, given he opened the Revolut account under X's instructions who also told him to make payments via that account.

In the call, Mr M did say he doesn't normally borrow money. He said he would have another think before deciding what to do next. The agent cancelled the payment instruction. But the following day (2 March), Mr M decided to the send the payment and B executed his authorised instruction.

There's no indication in the written correspondence with the scammer that he was given a cover story. There's also no suggestion that he was told to lie. But I'm mindful that Mr M's interaction with the scammer wasn't limited to chat messages – there's mention of phone calls in those messages. So, it's not clear whether the story Mr M provided B was on his own volition or whether he was in fact told to lie. Either way, I'm satisfied that Mr M didn't want B to know the real reason for his payment.

I've kept in mind that despite discovering he'd been scammed by X, Mr M continued engaging with Y whose offering was very similar – as already mentioned it wasn't limited to recovering funds. The chat correspondence shows Mr M had misgivings about Y four days before he made Payment 7. Yet he went ahead with that payment.

We're aware that after discovering Y was also a scam, Mr M continued to make cryptocurrency related transactions from his Revolut account. And in September 2023 – months after the disputed transactions were made – Mr M said he was expecting to make a withdrawal of around £167,000 from his subsequent investments. This is despite seemingly low value 'deposits' into the investment and his awareness that he'd previously been scammed twice.

Mr M's representative has said that the correspondence between him and Revolut regarding the withdrawal has been misinterpreted, and that Mr M says he may have used a hyperbole in using that figure when it notified him of the pending account closure. But having thought carefully about the representative's submission, I'm not convinced. Especially considering Mr M's later admission that he was desperate to get his money back.

While I recognise someone who has lost as much as Mr M has would be feeling desperate, I don't think this explains his specific actions which I've described above. Given he went ahead with payments to Y, it doesn't seem that understanding scam tactics resonated with him even after he discovered he'd been scammed by X. Taking this into account, on the balance of probabilities, it doesn't seem that he would've stopped from going ahead with Payment 2 had Revolut provided a written warning specific to cryptocurrency scams.

Much for the same reasons, I don't think a direct intervention (such as directing Mr M to Revolut's in-app chat) at the time of Payment 5 would have positively impacted his decision-making.

In requesting a formal decision on this complaint, Mr M's representative has said that scammers use Revolut to perpetrate the scam because its intervention is weak and easy to circumvent. The representative has forwarded an email Mr M received from one of the scammers which lists Revolut as one of the tools used for successful trading. It is being asserted that had Revolut asked questions, it would have thrown doubt into Mr M's mind.

The representative also disagrees with my finding that intervention by Revolut would not have made a difference because of Mr M's actions in response to B's intervention. The representative argues that Mr M didn't mislead Revolut, therefore it would be completely unfair to base a decision on a hypothetical scenario. And that it is hard to look past the failure on Revolut's part of allowing Mr M to lose his money without any intervention – that it would not be fair and reasonable to allow it to get away with not intervening on payments of this type.

I've carefully considered the comments that have been put forward. I think it's important that I start by reminding Mr M's representative of our service's approach when deciding complaints. Causation is a critical determinative factor. For me to uphold this complaint, it isn't enough to make a finding that Revolut failed to intervene when I think it should have. I would also need to be satisfied that but for that omission, Mr M would have stopped in his tracks.

I accept that Revolut would have known that the payment was going to a cryptocurrency provider, which B didn't. So, I recognise that Mr M's explanation to B is unlikely to have worked with Revolut had a direct intervention happened when he made Payment 5. But I'm mindful that Mr M didn't want B to know why he was making the payments. Probably because he recognised that it would try to stop them if he explained the true purpose.

I can't say for certain how Mr M would have responded to Revolut's intervention. While his representative argues that it's unfair to base a decision on a hypothetical scenario, in such circumstances, I need to make my decision on the balance of probabilities. In other words, what I consider to be more likely than not Mr M's response based on the information that is available.

As I've set out above, what I have is contemporaneous evidence of Mr M misleading another business on three calls. While I acknowledge that the questions and warnings provided by B weren't specific to cryptocurrency scams, Mr M's answers suggest he was willing to mislead his bank – either because he'd been coached or out of his own volition.

I acknowledge that Mr M appeared to have some hesitation when B intervened. But he had two separate opportunities (on 28 February and 1 March) to reflect on whether he wanted to go ahead with the payment. And in the end, he chose to. It's unclear whether his decision was in any way influenced by the scammer. But ultimately, I'm satisfied that Mr M had been made aware that there was a possibility he was being scammed, and he had time to think and make additional checks.

On balance, give not just his actions in relation to B's intervention, I'm more persuaded that Mr M would have wanted Revolut to execute his instructions. I appreciate that his representative doesn't agree with this finding. But having considered the appeal, I haven't been persuaded to change my outcome.

In conclusion, I'm not persuaded that any failure on Revolut's part is the proximate cause for Mr M's loss. I fully acknowledge that he's lost a lot of money. But having considered the matter very carefully, for the reasons given, it wouldn't be fair of me to hold Revolut

responsible for his loss.

## My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 January 2025.

Gagandeep Singh
**Ombudsman**