

The complaint

Mr J complains that Revolut Ltd hasn't refunded him after he fell victim to an investment scam.

What happened

Mr J saw an advert for an investment opportunity on social media. It appeared to feature a celebrity endorsement and spoke of money to be made from investing in cryptocurrency.

Mr J clicked on the advert and completed his details on a form. What he didn't realise is that this was a fabrication created by scammers, and there was no legitimate investment opportunity.

These scammers then contacted Mr J to talk him through the supposed investment. He was persuaded to invest a small amount, only £50, to begin with. On 27 March 2023 he paid money from his Revolut account, using his debit card, to a cryptocurrency wallet the scammers had told him to set up. The funds were then sent on at the scammer's instruction. Mr J believed he was crediting a trading account held elsewhere. But the money was actually moving into the scammer's control.

Mr J was able to process a withdrawal from his trading account to his cryptocurrency wallet, and then onto his Revolut account. This appears to have been a tactic to draw him into the scam. He sent a further £150 on 28 March 2023 and was then able to withdraw again.

Later the same day, Mr J went on to make another six payments to his cryptocurrency wallet within the space of nineteen minutes. The values were: £500, £550, £500, £450, £150, and £50.

Mr J continued to send money over the next couple of days. Mr J was trying to withdraw some of his investment at this point, believing he'd generated £16,000 in returns. But the scammer told him he'd need to pay fees, which he went on to do. It was when the scammer kept asking for more and more money, without successfully withdrawing anything, that Mr J realised he'd been scammed.

Mr J reported what had happened to Revolut, but it said it couldn't help. It said Mr J was responsible for the payments as he'd properly authorised them. It discussed the possibility of attempting a chargeback claim if Mr J provided more information. But it also said the likelihood of the success of such a claim was small.

Unhappy with Revolut's response, Mr J brought his complaint to our service. One of our investigators considered it and recommended the complaint be upheld. She said that whilst Mr J had authorised the payments Revolut ought to have recognised the signs that Mr J was at risk of financial harm through fraud. She said it ought to have stepped in to question the payments and that, if it had, the scam could have been prevented. She said that ought to have happened when Mr J attempted his seventh payment (and eight overall) to the cryptocurrency wallet on 28 March 2023. Because of that, she said Revolut ought to bear some responsibility for Mr J's loss from that point.

Our investigator also recognised that Mr J ought to bear some responsibility for his loss as his actions hadn't been reasonable, in the face of some suspect features of the proposed investment and what the scammer was saying would happen. She said he'd bear full

responsibility for the payments made before that seventh payment, and 50% responsibility from then on.

Mr J accepted the investigator's findings, but Revolut didn't. In summary, it said:

- The investigator's findings departed from the law without explanation;
- Revolut owes no duty to prevent fraud or scams;
- Reimbursement codes and rules (with the Contingent Reimbursement Model Code specifically referenced) do not generally apply;
- Self-to-self (otherwise known as me-to-me) transactions did not equate to a scam as the funds sent remained in the customer's control, and the point of loss came later along the payment journey (namely the payment from Mr J's cryptocurrency wallet to the scam);
- Mr J may be considered to have acted with gross negligence.

The complaint has been passed to me as an informal agreement hasn't been reached.

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'm reaching a broadly similar outcome to that of our investigator and for similar reasons.

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 March 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 March 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 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.

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/

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.

- 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 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 March 2023 that Revolut should:

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

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

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 cruel scam here, nor that he authorised the payments he made by card to his cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

Whilst I have set out in detail in this decision the circumstances which led Mr J to make the payments using his Revolut account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr J might be the victim of a scam.

I'm 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 the payments made would be credited to a cryptocurrency wallet held in Mr J's name.

By March 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. And by March 2023, when these payments took place, further restrictions were in place. 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.

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 March 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, I'm not suggesting as Revolut argues that, as a general principle (under the Consumer Duty or otherwise), Revolut should have more concern about payments being made to a customer's own account than those which are being made to third party payees.

As I've set out in some detail above, it is the specific risk associated with cryptocurrency in March 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, 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 most of the payments in this case were going to an account held in Mr J's own name should have led Revolut to believe there wasn't a risk of fraud.

It ought to have considered the payments that were being made, the nature of them, and that they fitted well-established and understood fraud trends. Mr J made several payments in very quick succession to what was identifiably a cryptocurrency wallet. That these payments were made so quickly – within just nineteen minutes – ought to have given Revolut significant cause for concern. It's difficult to think of a legitimate reason to send money in this way whilst on the other hand it is a known sign that someone could be caught up in a scam.

Whilst the payment values were individually relatively low, by the fifth payment on 28 March 2023, the total value had exceeded £2,000. And so the evidence of risk had grown rapidly in a very short space of time.

I'm also mindful that the purpose of the payments differed from the stated purpose of the account, which was 'vaults and transfers'. There was no mention of cryptocurrency payments when the account was established.

With these points in mind I am satisfied that Revolut ought to have recognised Mr J was at risk of financial harm through fraud by the time he made the fifth payment (of £450) on 28 March 2023.

What did Revolut do to warn Mr J?

Revolut hasn't suggested it gave any warnings or intervened in any payments. And Mr J doesn't believe there were any.

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 Revolut ought, when Mr J attempted to make the fifth payment on 28 March 2023, knowing (or strongly suspecting) 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 a 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.

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, 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.

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 J 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 warning of the type described, would that have prevented the losses Mr J suffered from the payment I've identified?

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 J's payments, such as finding the investment through an advertisement endorsed by a public figure, being assisted by a broker, and being guided through the opening of cryptocurrency wallets. The returns being generated so quickly would also have been a key common feature that ought to have been highlighted.

I've also reviewed the text conversation between Mr J and the fraudsters (though I note that Mr J appears to have spoken to the fraudster quite often, not just communicated through messaging, and I haven't heard those conversations). I've found nothing within those conversations that suggests Mr J was asked, or agreed to, disregard any warning provided by Revolut. I've also seen no indication that Mr J expressed mistrust of Revolut or financial firms in general that might have led to him considering disguising the truth.

Neither do I think that the conversation demonstrates a closeness of relationship that Revolut would have found difficult to counter through a warning. And I'm mindful Mr J did ultimately identify the scam himself, rather than through the intervention of any other party.

I've taken into account that Mr J had received modest actual returns at the point of suggested intervention, but the weight of evidence that I've outlined persuades me that Mr J was not so taken in by the fraudsters, or unwilling to take on warnings, that he wouldn't have listened to the advice of Revolut.

I've also had it confirmed that Mr J was provided with no warnings by the firm from which the funds used for the scam appear to have originated (another account Mr J holds with a high-street bank).

Therefore, on the balance of probabilities, had Revolut provided Mr J 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 broker before proceeding, as well as making further enquiries into cryptocurrency scams and whether or not the broker was regulated in the UK or abroad. I'm satisfied that a timely warning to Mr J from Revolut would very likely have caused him to take steps to look into the broker and supposed investment further – revealing the scam and preventing his further losses

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 Mr J purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters.

I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

In reaching my decision, I have taken into account that the payments were made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from another account at a regulated financial business.

But as I've set out in some detail above, I think that Revolut still should have recognised that consumer might have been at risk of financial harm from fraud when they made that fifth payment on 28 March 2023, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Mr J 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 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: he has only complained about one respondent from which he is entitled to recover his 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 point described above (subject to a deduction for his own contribution which I will consider below).

Should Mr J bear any responsibility for their losses?

Our investigator explained why Mr J ought to bear responsibility for a portion of his loss and he accepted that position. And, as such, there isn't an outstanding dispute on this matter. Revolut may not have responded or commented directly on this point. But then it considers Mr J ought to be held fully responsible for his actions. With the positions of both parties in mind, there's little need for me to comment.

I may confirm though that I agree Mr J will bear partial responsibility for his loss from the £450 payment on 28 March 2023 onward. He did little to confirm the legitimacy of the proposed investment. And, whilst a promised rate of return hasn't been set out to this service, the fact that Mr J believed he'd made £16,000 in just a few days suggests it must have been too good to be true and so considered with a good deal of scepticism.

I appreciate he does appear to have received some money back earlier on in the scam, but I don't find this is sufficient to outweigh other highly questionable elements and the scam's overall believability.

Putting things right

On Mr J's acceptance, Revolut should:

- Refund 50% of Mr J's loss from the payment of £450 on 28 March 2023 onward; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to date of settlement.

My final decision

I uphold this complaint against Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 December 2024.

Ben Murray
Ombudsman