

## The complaint

Mrs A complains that Revolut Ltd won't refund money she lost when she fell victim to a cryptocurrency investment scam.

Mrs A is being represented by solicitors in this complaint.

## What happened

Mrs A says that in June 2023, she came across an article for an investment trading broker "B" on the news feed on her PC. After reading the article, which talked about B's use of artificial intelligence in cryptocurrency trading to generate profits and the returns people had made, she clicked on a link which took her to B's website. Mrs A left her contact details after having reviewed the company's website and, shortly after, she was contacted by an individual who claimed to be a representative of B. They talked her through the cryptocurrency investment opportunity and Mrs A decided to open an account with B.

Under the instructions of her 'account manager', Mrs A opened an account with a financial platform "T" which – amongst other products – offers cryptocurrency wallets. This was to facilitate cryptocurrency deposits into her account with B. Mrs A's account manager advised her to deposit funds into T by sending payments from her existing Revolut e-money account which she hadn't used frequently. So, Mrs A first transferred funds from her bank account to her e-money account with Revolut, before transferring it to her account or wallet with T.

Seeing her investment making profits, under the guidance of her account manager, Mrs A made a further deposit a couple of weeks later. When she subsequently asked to withdraw her profits, Mrs A was informed that she needed to pay a withdrawal fee. But she didn't receive her profits despite making the withdrawal payment. Then excuses started coming, including the withdrawal of B's licence by the Financial Conduct Authority ("FCA") in the UK. It was only after Mrs A contacted the FCA herself that she discovered she had been scammed.

The following transactions are relevant to this complaint –

	<b>Date</b>	<b>Type</b>	<b>Payee/details</b>	<b>Amount</b>
Payment 1	6 June	Transfer	Mrs A's account with T	£1,000.00
Payment 2	19 June	Transfer	Mrs A's account with T	£8,000.00
Payment 3	22 June	Transfer	Mrs A's account with T	£4,465.00
			<b>Total loss</b>	<b>£13,465.00</b>

Revolut declined to refund any of the disputed payments, saying that Mrs A had authorised them and a new beneficiary warning was provided at appropriate times. Revolut also said that it asked Mrs A to confirm the payment purpose when she authorised the first transaction and she selected 'safe account' when 'cryptocurrency' and 'investment' were also included in the list of options. Therefore, the warning it provided at the time was based on the option selected.

Unhappy with this, Mrs A referred her complaint to our service through her representative. Our investigator thought that Revolut ought to have taken additional steps when Mrs A selected safe account as the payment purpose for the first transaction, given that answer ought to have put in notice that there was a possibility the payment was being made in relation to a scam. The investigator was persuaded that had Revolut questioned Mrs A further, it's more likely than not that she would have been forthcoming about the true nature of her payment. And following a warning specific to cryptocurrency investment scams, the scam would likely have been uncovered and losses prevented. The investigator didn't think Mrs A should hold responsibility for what happened and so they recommended a full refund of the disputed transactions along with interest.

Mrs A accepted the investigator's outcome, but Revolut didn't. In summary, it says that the conclusions are irrational given the customer testimony (which it says is inconsistent with prior behaviour) has been preferred over reliable data on the efficacy of online interventions. It says Mrs A was not truthful regarding her payment purpose. And the investigator's finding about selecting safe account as payment purpose is at odds with a final decision previously issued by an ombudsman on a case which involves the same alert as Mrs A's case.

### **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, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

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 Mrs A modified the starting position described in *Philipp*, by 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”.*

So Revolut was required by the implied terms of its contract with Mrs A and the Payment Services Regulations to carry out her instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately<sup>1</sup>. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I’m satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in June 2023 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

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’m mindful that in practice all banks and EMIs like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>2</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.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, I’m 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>3</sup>.

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<sup>1</sup> The Payment Services Regulation 2017 Reg. 86 states that “the payer’s payment service provider must ensure that the amount of the payment transaction is credited to the payee’s payment service provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

<sup>2</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/)

<sup>3</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.

- 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>4</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.

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 June 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

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<sup>4</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

- 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 Mrs A was at risk of financial harm from fraud?*

It isn't in dispute that Mrs A fell victim to a cruel scam. Nor is it disputed that she authorised the payments which she now seeks reimbursement for.

I don't think there was anything particularly unusual about the first transaction such that I think it ought to have flagged as suspicious on Revolut's systems. But it did flag as unusual on Revolut's fraud detection systems. As Revolut recognised the transaction as possibly scam related, I've considered whether it intervened appropriately when it held the transaction and made further enquiries.

*What did Revolut do to warn Mrs A?*

After notifying Mrs A that the transaction could be a scam, Revolut asked her to select the payment purpose from a list of options. It then displayed a warning relevant to the option chosen. Mrs A selected 'safe account' and Revolut provided a written warning covering the most common features of safe account scams.

Revolut states Mrs A's selection makes sense as she was transferring funds to her own account which had access to and control of. It also states that Mrs A wasn't truthful about the payment purpose as she was in fact investing funds and had the opportunity to select 'investment' or 'cryptocurrency' when prompted for a payment purpose.

*What kind of warning should Revolut have provided?*

The investigator asked Mrs A why she had selected the option that she did, but she couldn't recall. I can't say for certain, but Mrs A's response suggests that she might not have reviewed the list of options she was presented with and possibly went with the first one off the list.

Regardless, Revolut ought to have been concerned when 'safe account' was selected, given safe account scams are very common and it's rarely a legitimate reason for sending money to another account. In the circumstances, I don't consider displaying a scam warning on the screen and giving Mrs A the option to cancel the payment or go ahead with it was a proportionate response to the risk identified.

Revolut submits that this finding contradicts a final decision previously issued by an ombudsman on a separate complaint where it was the respondent firm. But Revolut knows very well that this service considers each case on its own individual merits, and it wouldn't be appropriate for me to comment on a decision issued by another ombudsman on a different case. While it's not inconceivable that a consumer might think that the safe account option could apply to a legitimate transaction, as I've mentioned, these types of scams are very common. And so, I would expect the payment service provider to take appropriate steps to satisfy itself that the consumer hasn't fallen victim to a safe account scam.

Having thought carefully about the risk the transaction presented based on Mrs A's response, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the transaction before allowing it to

debit Mrs A's account. I think it should have done this by, for example, directing Mrs A to its in-app chat to discuss the payment further.

*If Revolut had attempted to establish the circumstances surrounding payment one, would the scam have come to light and Mrs A's loss prevented?*

Had there been a direct intervention and questions asked about the payment purpose selected, it's more likely than not that Mrs A would have explained she had made a mistake and selected the safe account option in error. I say this because there's no indication that she had been coached by the scammer into providing misleading answers.

Given that the payment had triggered on Revolut's systems prior to it knowing the payment purpose, I would have expected it to continue with its enquiries once Mrs A would likely have confirmed that she was purchasing cryptocurrency for investment purposes.

Even if she had been purchasing cryptocurrency from a legitimate platform, it didn't follow that Mrs A's money was safe, or that she wasn't at risk of financial harm due to fraud or a scam. By the time Mrs A made the payments, I think Revolut had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

If Revolut had asked her about the investment opportunity, I think it's likely Mrs A would have explained what she was doing and how she came to know of B – I can't see that she had been given a reason to think she had to hide this information from Revolut. Had Revolut provided a scam warning covering the typical features of investment scams involving cryptocurrency - being asked to install software, promise of high profits in a short period of time with minimal or no risk, social media promotion possibly involving celebrity endorsement, etc. – on balance, I'm satisfied that Mrs A would have looked further into B and the investment opportunity in general following Revolut's intervention. Indeed, it's likely that she would have come across the various regulator warnings about cryptocurrency scams that had been published by then.

I'm persuaded that a meaningful intervention from Revolut at that time would likely have exposed the scam. And I think it's more likely than not that an intervention would have caused Mrs A to stop from going ahead with the first payment – and subsequent payments – thereby preventing her loss.

*Is it fair and reasonable for Revolut to be held responsible for Mrs A's loss?*

In reaching my decision about what is fair and reasonable, I've taken into account that Mrs A purchased cryptocurrency which credited an e-wallet held in her own name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.

I've carefully considered Revolut's view that it shouldn't be held responsible for losses that occurred on a third-party site. But as I've set out in some detail above, I think that Revolut still should have recognised that Mrs A might have been at risk of financial harm from fraud when she made the first payment. And in those circumstances, it should have taken additional steps before processing it. If it had taken those steps, I'm satisfied that it would have prevented the losses that Mrs A suffered. The fact that the money wasn't lost at the point it was transferred to T doesn't alter that fact and I think Revolut can fairly be held responsible for Mrs A'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 the firm that is the point of loss.

I've also considered that Mrs A has only complained about 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 Mrs A could instead, or in addition, have sought to complain against those firms. But Mrs A has not chosen to do that and ultimately, I can't compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs A'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've set out above, I'm satisfied that it would be fair to hold Revolut responsible for Mrs A's loss.

#### *Should Mrs A bear any responsibility for her losses?*

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

It is clear that at the time of making these payments Mrs A believed B to be genuine. I've done a backdated search on the internet from around the time of her payments, and there is a lack of compelling adverse information about B that I could reasonably expect Mrs A to have found within the public domain at the material time.

The same applies to the platform she was asked to send the cryptocurrency to from her wallet with T. A backdated search does bring two results which are indicative of scam warnings. But clicking through the links shows that those warnings weren't added or published until *after* Mrs A's payments. So, I'm persuaded the results would have come up in Mrs A's search before she made the payments.

The persuasive and sophisticated techniques employed, including the provision of professional looking website and a trading platform which had all the features expected of an investment platform, led Mrs A to trust B and the information they were feeding her. I'm therefore satisfied there was no contributory negligence on this occasion, as Mrs A was simply the unwitting and blameless victim of clever fraudsters. Revolut was the professional in financial matters; Mrs A was an unsuspecting layperson.

#### **Putting things right**

To put things right for Mrs A, Revolut Ltd needs to refund all the disputed transactions.

Revolut also needs to add simple interest at 8% per year to the individual refunded amounts, calculated from the date of loss to the date of settlement<sup>5</sup>.

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

**My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require Revolut Ltd to put things right for Mrs A as set out above.

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

Gagandeep Singh  
**Ombudsman**