

Complaint

Ms H is unhappy that Revolut Ltd did not reimburse her after she fell victim to an investment scam.

Background

Ms H came across an advertisement on social media promoting cryptocurrency investments. The advert appeared to be endorsed by a well-known public figure. After completing an enquiry form, she was contacted by an individual who claimed they would manage a cryptocurrency investment on her behalf. She didn't know it at the time, but this individual was a fraudster.

She was instructed to set up an account with a third-party cryptocurrency exchange to facilitate her investments. The fraudster assisted her in this process by directing her to download remote access software so they could guide her through the process. Initially, Ms H used her savings to fund her investment, starting with an initial payment of £500. However, since her investment appeared to be performing well, she was persuaded to take out loans so she could invest more.

Ms H transferred funds from an account she held with a separate bank, referred to as Bank A. The fraudsters instructed her to provide misleading information to Bank A and Revolut if either queried the transactions. All payments were made using a card linked to her Revolut account. The payments were as follows:

#	Date	Amount
1	22-Nov-22	£250
2	22-Nov-22	£246.78
3	23-Nov-22	£1,000
4	07-Dec-22	£1,000
5	07-Dec-22	£1,000
6	14-Dec-22	£1,000
7	14-Dec-22	£2,000
8	23-Dec-22	£4,890
9	23-Dec-22	£3,000
10	03-Jan-23	£19,000

11	04-Jan-23	£19,800
12	05-Jan-23	£19,500
13	06-Jan-23	£19,750
14	06-Jan-23	£19,800
15	10-Jan-23	£19,900
16	11-Jan-23	£19,990

When Ms H realised she had fallen victim to a scam, she reported it to Revolut. However, Revolut declined to refund her. Ms H was unhappy with that response and so she referred her complaint to this service. An Investigator reviewed the case and partially upheld it, concluding that Revolut should have intervened at the point of the tenth payment (£19,000). However, the Investigator also found that Bank A could've done more to prevent the scam and that Ms H bore some responsibility for her losses due to contributory negligence. The Investigator therefore recommended Revolut refund 33% of the money Ms H lost to the scam from payment 10 onwards. Bank A separately agreed to refund 33% too.

Revolut didn't agree. It said:

- The public figure allegedly endorsing the investment had publicly discredited such advertisements. There was significant public awareness that these were scams.
- There were online warnings about the company Ms H contacted before she invested, and she should have conducted due diligence. If she'd done so, she'd have seen those warnings and known not to invest.
- The lenders who provided Ms H with loans should bear some responsibility, and she should have been directed to complain to them instead.
- All payments were made to an account in her own name, meaning no financial loss occurred on Revolut's platform.

Since Revolut disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 customer 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 customer'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 Ms H 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 must also 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 November 2022 have been on the look-out for the possibility of fraud and have taken additional steps, or undertaken 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 undertaken 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
- 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).
- 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 its obligation to monitor its customer’s accounts and scrutinise transactions.
- The October 2017, BSI Code², 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,**

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

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 that at the material time 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.

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 November 2022, Revolut should in any event have taken these steps.

Should Revolut have recognised that Ms H was at risk of financial harm from fraud?

I've considered this point carefully and I'm persuaded that Revolut ought to have recognised an increased risk of financial harm due to fraud at the point Ms H asked it to make payment 10 in the table above. I'm mindful of the fact that this was a new account. That put Revolut in a difficult position when assessing the risk of fraud with any individual payment because it didn't have extensive data of Ms H's previous spending to serve as a comparator.

Nonetheless, a payment of £19,000 is large enough to justify some additional scrutiny, particularly when the payee is a cryptocurrency exchange and Revolut was aware of the increased risk associated with such payments. I can see that Revolut did intervene and asked Ms H some general questions and to clarify the source of the funds she'd just deposited into her Revolut account. Ms H insisted she was not a victim of fraud and claimed she had experience in cryptocurrency investments. She also falsely stated that she had not

been asked to download remote access software and that she was buying and holding cryptocurrency independently.

Those answers put Revolut in a difficult position. While it ought to have been concerned about the fraud risk associated with payment 10 and be mindful of the fact that scam victims are often coached by the fraudsters into misleading firms, it could nonetheless have justifiably taken some comfort from the answers Ms H gave to its questions. However, from what I've seen, Ms H also provided a copy of a bank statement to show that the funds she'd deposited into her Revolut account were from another account in her name.

That statement would've showed that Ms H had taken on an extraordinary level of personal debt in a very short period of time. On seeing that extra information, Revolut ought to have been concerned. This pattern of borrowing to invest in cryptocurrency is a well-established indicator of potential fraud. It also suggested that, despite her claimed experience, she'd not factored in how she was going to repay those loans or the volatility of the asset she was investing in. While I acknowledge that Ms H had been coached by the fraudsters, I believe Revolut should have asked additional clarifying questions to assess whether she truly understood the nature of her investment. It is likely she would have struggled to articulate a clear and informed rationale for doing what she was doing.

Revolut could then have warned her unambiguously that she was in the process of falling victim to a scam. I think it's more likely than not that she'd have opted against proceeding with the payments if this had happened. I accept that she'd been coached by the scammer to lie about the reasons for the payments. However, I find it significant that, when Bank A told her in clear terms that this investment wasn't legitimate, she immediately stopped making payments. This suggests that a well-timed and explicit warning from Revolut could have prevented further loss.

Is it fair and reasonable for Revolut to be held responsible for Ms H's loss?

Revolut wasn't the only firm involved in these transfers. The process of Ms H losing her money began when she started making transfers from her account with Bank A to her account with Revolut. I don't think this means that Revolut shouldn't have any liability for the losses she suffered, but I am persuaded that the liability should be shared with Bank A.

Ms H has referred a complaint to this service about the actions of Bank A which has been investigated separately. However, I'm satisfied that Bank A, like Revolut, had ample opportunity to protect Ms H from the risk of financial harm here, but failed to do so. For that reason, I find that the fair and reasonable way to resolve this complaint is for both Revolut and Bank A to share liability for the money Ms H lost to the scam, subject to a deduction for her own contribution.

Should Ms H bear any responsibility for her losses?

I have also considered whether Ms H should bear some responsibility for her losses. In doing so, I've taken into account what the law says about contributory negligence but kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. Having done that, I think Ms H ought to be considered partially responsible for her own losses here. She says that she conducted extensive online research before investing. However, I can see that there were multiple sources of information online that indicated the company she was dealing with was fraudulent. In other words, she either didn't see that information or proceeded with her payments anyway.

The nature of her agreement with the broker was extremely informal. As I understand it, all communications were verbal. There was no written agreement setting out the basis on which

her investment was being managed. This ought to have been a cause for concern, particularly when she was persuaded to take out several personal loans to fund her investments. In my view, she should have proceeded with far greater caution here than she did and so I think it's fair and reasonable for Revolut to make a deduction from the compensation that is payable in this case.

Since there are three parties here (Revolut, Bank A and Ms H), I find that the fairest way to apportion liability is for each to be liable for a third of the loss.

Final decision

For the reasons I've explained above, I uphold this complaint. If Ms H accepts my final decision, Revolut Ltd needs to refund 33% of the losses set out in the table above from payment 10 onwards.

It should also add 8% simple interest per annum to that sum calculated to run from the date the payments left her account until the date any settlement is eventually paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 4 March 2025.

James Kimmitt
Ombudsman