

The complaint

Mr B is unhappy that Revolut Ltd won't refund money he lost to a crypto investment scam.

Mr B is supported in making his complaint by a representative, but for ease, I'll only refer to Mr B in this decision.

What happened

Mr B says that in 2022 he was looking for a crypto investment opportunity to maximise his pension. After researching online – Mr B came across a crypto investment website purporting to be endorsed by Elon Musk, and after accessing the site, he received a call from a representative of an investment company (which I'll refer to here as 'P').

Mr B provided his personal details for an account to be set up with 'P' after which he was contacted by another representative of 'P' (the scammer). Mr B says he also downloaded remote access software which he says the scammer told him would allow him to learn how to navigate and use the trading platform.

The scammer then advised Mr B that to allow him to purchase Bitcoin to facilitate his trades – he needed to open accounts with Revolut – which he did on 19 July 2022; and with a legitimate crypto exchange (which I'll refer to here as 'B').

Mr B says he was reluctant to follow the scammer's advice to start off with a large investment amount – instead making an initial payment of £95 via 'B', to check the trading account worked. Mr B made a successful withdrawal of £79 on the same day.

Happy that the process worked – Mr B then made a payment of £3,000 to 'B' from his Revolut account, having first transferred that sum from an existing account held with another bank (which I'll refer to here as Bank N).

Mr B said the scammer kept him updated and said the investment was going well, but that he needed to invest more funds to prove liquidity. Mr B told the scammer that he didn't have any more funds – at which point he said the scammer pressured him into taking out a £20,000 loan (with a company I'll refer to here as 'Z').

The loan was paid into Mr B's account with Bank N on 12 August 2022 and then transferred to Revolut on the same day. From here, Mr B made a £20,000 payment to 'B' as part of the investment.

The scammer then told Mr B his profits were growing and advised him to make a further £20,000 payment. Mr B says he didn't use loan funds for this payment, instead transferring £20,000 of his savings from his account with Bank N to his Revolut account on 12 August 2022 before using those funds to make a second £20,000 payment to 'B'.

On 15 August 2022 Mr B applied for a second £20,000 loan, this time with Bank N. Mr B has confirmed my understanding that this loan was used to settle the £20,000 loan with 'Z' on 16 August 2022.

Mr B says the scammer then told him his account had been frozen and that he needed to make a payment of £32,000 to unlock the account. Mr B then realised he'd been the victim of a scam and raised a complaint with Revolut.

The disputed payments were as follows:

| Date | Amount |
|-------------------|----------------|
| 11 August 2022 | £95 |
| 11 August 2022 | Credit of £79 |
| 11 August 2022 | £3,000 |
| 12 August 2022 | £20,000 |
| 12 August 2022 | £20,000 |
| Total Loss | £43,016 |

In short, Revolut said it had no historical information on Mr B's typical account usage - given this was a newly opened account. And it said its customers regularly use their services to invest in crypto; and so, it didn't consider there to be anything unusual in the payments Mr B made to 'B' and didn't flag any payments as suspicious - nor was he asked for a payment purpose.

Revolut said that Mr B had been provided with a new beneficiary warning before making the first payment to 'B'. And it said he'd acted '*negligently*' by ignoring this warning and said it wouldn't refund the payments.

Unhappy with Revolut's response, Mr B referred his complaint to the Financial Ombudsman. He maintained that Revolut hadn't done enough to protect him and wanted the lost funds reimbursed together with 8% interest and £500 for the distress and inconvenience caused.

One of our Investigators considered the complaint and partly upheld it. Essentially, she thought Revolut should've flagged the first £20,000 Mr B sent on 12 August 2022 as suspicious and as a minimum, provided him with a tailored scam warning based on the payment purpose.

Our Investigator explained why she thought such a warning would've resonated with Mr B, and given the surrounding circumstances of how the investment came about, Revolut would've likely identified that he was falling victim to a crypto investment scam.

But our Investigator thought Mr B should share liability for his loss by way of contributory negligence. She therefore asked Revolut to refund 50% of the payments made from 12 August 2022 – plus 8% simple interest from the date of transaction to the date of settlement.

Mr B accepted our Investigator's findings. Revolut didn't and in summary it said:

- the fraudulent activity didn't occur from Mr B's Revolut account. The funds went from that account to a legitimate account with 'B' held in Mr B's name and in his control, and it was from that account the funds were lost;
- *'for the [Financial Ombudsman] to effectively apply the reimbursement rules to self-to-self transactions executed by Revolut is an error of law. Alternatively, the [Financial Ombudsman] has irrationally failed to consider the fact that these transactions are self-to-self and therefore obviously distinguishable from transactions subject to the regulatory regime concerning APP fraud'*.
- It was unfair of the Financial Ombudsman to hold Revolut responsible for 50% of Mr B's loss when it was '*merely an intermediate link*' and there are other businesses involved in the payment journey here that should be held to account.

Revolut was also concerned that we'd not fully investigated the circumstances surrounding the two loans that Mr B took out to fund the investment. It argued that understanding how Mr B responded to any due diligence checks carried out by the loan providers was vital in understanding whether Mr B had acted dishonestly and with negligence.

Finally, Revolut said that it was Bank N who had suffered the loss here – not Mr B. And that our Investigator was essentially asking Revolut to refund Bank N for a loan it ‘*inexplicably*’ gave to Mr B for the purposes of a scam. Revolut said ‘*this would be neither fair nor reasonable*’. It said the responsibility for the loss should lie with Bank N if it didn’t carry out proper due diligence before offering the loan – or with Mr B if sufficient diligence was conducted by Bank N when Mr B applied for the loan, but he wasn’t truthful. Either way, Revolut said holding it accountable for Mr B’s loss amounted to an ‘*irrational outcome*’.

Our Investigator considered the points Revolut made – but maintained her opinion that it could’ve prevented Mr B’s loss if it had intervened in the first £20,000 payment.

Our Investigator also pointed out that we’d not had a complaint from Mr B about either Bank N or ‘Z’ and that we couldn’t compel Mr B to complain. She further explained that Mr B had applied for the loan with Bank N online – with no direct involvement of Bank N – and that he had put the loan propose as ‘*refinance*’. Our investigator explained that this was part of her rationale as to why Mr B should be held 50% liable for his loss. She also pointed out that it is Mr B who has suffered the loss – as he is repaying the loan to Bank N.

Revolut still disagreed and so Mr B’s complaint has been passed to me for a final 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.

Having done so, I’ve decided to uphold it in part – for largely the same reasons as our Investigator.

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 Mr B 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 Mr B and the Payment Services Regulations to carry out their 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 immediately¹. 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 am 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 August 2022 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 am mindful that in practice all banks and EMI's like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- 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 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

¹ 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).

² 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/>

systems” (FCA Principle for Businesses 3)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 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 Code⁴, 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 crypto 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 crypto 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 crypto 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 August 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;

³ 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.

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

- 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 crypto 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 B was at risk of financial harm from fraud?

It isn't in dispute that Mr B has fallen victim to a cruel scam here, or that he authorised the disputed payments he made to 'B' to purchase crypto which was subsequently credited to his account with 'B'.

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

Mr B opened his account on 19 July 2022 and other than a credit for £100 on 11 August 2022, the disputed activity was the only payments to take place prior to the scam. So, Revolut had no meaningful account activity to compare the disputed payments to.

But that doesn't mean Revolut wasn't able to recognise suspicious activity – only that the information it had on which to make that assessment was limited.

I've thought about what Revolut did know about Mr B when he came to make the first payment. That information was limited. Other than the payment amount and destination, it knew his personal details and that the account had been recently set up. When opening the account Mr B had stated he intended to use the account for '*Spend or Save Daily*'.

Mr B was making the payments to fund an investment in crypto – so they might've seemed at odds with his intended account usage. But the payments weren't made direct to 'B' – instead they were made to 'B' via a legitimate payment processor. Therefore, I don't think Revolut would've had any obvious concern that Mr B's account wasn't being used for its intended purpose.

I've gone on to consider the size of the payments made. The first payment for £95 was a very low value and wouldn't have caused Revolut any obvious concern. The second payment (£3,000) was arguably a value that carried more risk. But I'm mindful that this payment, by this time, was made to a legitimate existing payee ('B'), and that it isn't unusual for customers to make larger one off payments in the course of normal account activity.

By the time of the first £20,000 payment Mr B had transferred £23,000 to 'B' in less than 24 hours. This payment was also made within three minutes of a £20,000 credit entering Mr B's account – and left his account with a balance of just £9. I also think that by this point, Revolut should've been concerned that Mr B was making payments to 'B' in very quick succession which were increasing in value.

Considering all those factors together, I think that the first £20,000 payment carried an elevated risk of financial harm from fraud, and I'd have expected Revolut to have provided a warning that was proportionate to the risk that the payment presented.

What did Revolut do to warn Mr B?

I've gone on to consider whether the warning that Revolut did give was proportionate to the risk the first £20,000 payment presented. I don't think it was. I'll explain why.

Revolut says it only provided one warning to Mr B at the point he set up the new payee instructions to 'B' in advance of the first payment for £95. The warning read:

'Do you know and trust this payee? If you're unsure, don't pay them, as we may not be able to help you get your money back'.

Revolut has confirmed to us that no further warnings were generated in relation to any of the subsequent payments.

This new payee warning was very general in nature and, I understand, appeared whenever a new payee was being created. It didn't relate to the circumstances Mr B found himself in and I don't think it was a proportionate response to the risk the first £20,000 payment presented.

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 it would've been fair and reasonable for Revolut, in the circumstances of Mr B's case, to have initiated a human intervention with Mr B when he attempted to make the first £20,000 payment; so Revolut could understand more about the purpose of that payment.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr B suffered from the first £20,000 payment?

I've thought very carefully about whether a warning of the type I've described would've resonated with Mr B and prevented him from making the first £20,000 payment. Having done so, I think it would. I'll explain why.

The circumstances of Mr B's case had many features that are common to this type of crypto investment scam. Mr B had seen an advert on social media from a well-known celebrity endorsing investing in crypto. He was contacted by the scammer, who was acting on his behalf, and who got him to install remote access software to assist in opening accounts with both Revolut and with 'B'. Mr B made a small initial deposit which quickly increased in value and was also advised by the scammer to take out a loan to cover the first £20,000 payment. A payment that Mr B was told was needed to prove liquidity and essentially have access to his profits. This information should've all been of great concern to Revolut.

Importantly, I think, Mr B was also about to make a much larger payment – one that would turn a modest investment (and potential loss) into something much more significant. I think he's likely to have been more receptive to a warning at a point where he had more to lose.

In addition, Mr B didn't receive any specific warnings from Revolut. And Bank N (from where the money originated) has been unable to provide any evidence that it intervened in the payments before they were processed.

When applying for the second loan with Bank N, Mr B stated the purpose as '*refinance*'. But given Mr B has confirmed this loan was taken out to repay the loan with 'Z' – *not* to fund the

investment, I don't think Mr B was trying to mislead Bank N by stating the purpose of the loan as he did.

So, I don't believe there's any compelling evidence that Mr B would've misled Revolut when questioned about the purpose of the £20,000 payment or the surrounding circumstances.

I've also taken into account that Mr B came to the realisation himself that he might be the victim of a scam. This appears to have come about following the scammer's advice that he needed to make a further payment of £32,000 to unblock his account soon after the second £20,000 payment was made. He also went against the scammer's advice when deciding to make a small first payment to 'B' (£95) to check he could make a withdrawal before investing a larger amount.

I think this demonstrates that Mr B was not oblivious to the potential risk and, all things considered, I've concluded that a warning of the type I've described would've resonated with Mr B and dissuaded him from going ahead with the first £20,000 payment and therefore prevented his losses from that point.

Is it fair and reasonable for Revolut to be held responsible for Mr B's loss?

In reaching my decision about what is fair and reasonable, I've taken into account that Mr B purchased crypto from a legitimate crypto exchange ('B'), rather than making payments directly to the fraudster. He received crypto into his own account before transferring that crypto to the scammers. So, Mr B remained in control of that crypto after he made the payments, and there were further steps before it was lost to the scammer.

I've also taken into account that the money that funded these transactions came from two regulated firms (Bank N and 'Z'), and Mr B might potentially have a claim against them in respect of their actions (although neither firm is a party to this complaint and so I make no finding about their role here).

But as I've set out above, I think that Revolut still should've recognised that Mr B might've been at risk of financial harm from fraud when he made the first £20,000 payment, and in those circumstances Revolut should've made further enquiries about the payment before processing it. If it had done that, I'm satisfied it would've prevented the losses Mr B suffered.

The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Mr B's own account with 'B' does not alter that fact and I think Revolut can fairly be held responsible for Mr B's loss in such circumstances. I don't think there's 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 B 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 B could instead, or in addition, have sought to complain against those firms. But Mr B 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 B'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 Mr B's loss from the first £20,000 payment (subject to a deduction for Mr B's own contribution which I'll consider below).

Should Mr B bear any responsibility for his 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. Having considered the matter carefully, I think there should be a deduction here.

I think that, as a layman with little investment experience, there were several features of the scam that would've appeared convincing. Mr B was introduced to it through an advert on social media (that a reasonable person might expect to be vetted in some way before being published). And, while I haven't seen the specific advert Mr B saw, I've seen many similar ones and they can appear to be very convincing – often linking to what appears to be a trusted and familiar news source – in this case, a well-known celebrity.

Mr B was also contacted by two representatives of 'P' whom he found to be both professional and helpful – and he's said that the information and advice they provided him with was consistent with his understanding of Bitcoin. Mr B has also said the scammer regularly kept him updated on how well his investment was doing.

I've also reviewed the information that would've been available to Mr B at the time and whilst there are negative reviews about 'P', there was no regulatory warning about 'P' on the FCA's website until 19 August 2022.

However, I do think that Mr B should've been more sceptical to the information he was seeing on his trading platform and what he was being told. Mr B was told he needed to make the £20,000 payment to '*prove liquidity in Blockchain*' – which in my experience - usually means an investor has been told they've made a significant return on their investment; and need to pay a percentage of that return to secure it. Mr B has told us that he could see from his trading platform with 'P' that his investment was worth over £20,000 having only invested £95 and *before* he made the £3,000 payment. And after that payment was made, Mr B says his investment increased to over £50,000. It was at this point Mr B says he was told he needed to make the £20,000 payment to prove his liquidity.

I think that Mr B could fairly put such a high return on his initial investment down to good fortune, but I think he should've been more cautious. I think that Mr B should've realised that the investment might not be genuine when he was seeing such high returns after making the £95 and £3,000 payments, seemingly over a short period of time. And when he was told he needed to make a £20,000 payment to essentially secure those returns – this should've caused Mr B to further question the legitimacy of the investment, particularly as he didn't have those funds readily available to him.

And when the scammer encouraged Mr B to take out a loan with 'Z' to fund the £20,000 payment, this should, in my opinion, have further caused Mr B to have realised that the investment might not be genuine.

Overall, I think that it's fair for responsibility to be shared for Mr B's loss from the first £20,000 payment, given that the returns showing at that point ought to have seemed too good to be true and having to pay £20,000 to secure those returns with borrowed money should've caused Mr B to question the investment's legitimacy.

My final decision

For the reasons given above, I uphold this complaint in part and direct Revolut Ltd to pay Mr B:

- the loss from the point of the first £20,000 payment (£40,000) less 50% (£20,000);

- 8% simple interest per year on that amount from 12 August 2022 to the date of settlement (less any tax lawfully deductible).

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

Anna Jackson
Ombudsman