

The complaint

Mrs M is unhappy that Revolut Ltd won't reimburse money she lost as a result of a scam.

What happened

In January 2023, Mrs M saw an advert online promoting cryptocurrency trading. She expressed an interest and was contacted by someone claiming to represent a trading platform.

In order to invest she was instructed to open an account with Revolut and a legitimate cryptocurrency exchange – K. Mrs M made an initial payment of £100 on 24 January 2023. On the same day she asked to withdraw her profits and received £798.05 back into her Revolut account.

On 26 January 2023 she made a further payment of £500 to K. And then, despite some apparent caution, on 29 January 2023, Mrs M was persuaded to send £20,000 to K ("the penultimate payment"). Most of the money came from her account at another bank – "H", including the £20,000 – though some payments were funded by her husband.

The following day Mrs M's husband appears to have become further involved in the scam – he sent £1,000 to the fraudsters via K on 31 January 2023.

A week or so later Mrs M invested a further £5,500 using the same method. She was under the impression that her money was insured up to £20,000. By 13 February 2023, it appears that Mrs M was told that her investment had increased in value to \$75,000. Despite this increase, Mrs M declined to make further investments – mentioning that she'd need to persuade her husband to keep investing. The fraudster promised her that they'd be able to make \$15,000 on each trade, with no chance of losing money.

Mrs M appears to have been unable to persuade her husband to invest further. In March 2023, she asked to withdraw her investment but was strongly advised by the fraudster not to do so.

In April 2023, Mrs M received an email advising her that she'd need to pay tax on her investment in order to withdraw it. Towards the end of April 2023, Mrs M's husband made two payments totalling just over £10,000 from his own accounts.

In May 2023, when Mrs M's investment was still not released, she reported the scam to Revolut. She said that the fraudsters were still contacting her claiming that her funds could be recovered for a fee.

Revolut declined her claim for reimbursement and Mrs M complained to our service. Our investigator upheld her complaint in part. They thought that Revolut should have recognised that Mrs M was at risk of financial harm from fraud when she made the penultimate payment to the scam and had Revolut intervened, as it should have done, the scam would have been revealed and the loss prevented. However, they also thought that Mrs M should bear some

responsibility for what happened. So, they recommended that Revolut reimburse 50% of Mrs M's loss.

Revolut didn't agree, in summary it said:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc [2023] UKSC 25*.
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment ("APP") fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law.
- Mrs M was grossly negligent by ignoring the warnings it gave. The PSR's mandatory reimbursement scheme will allow it to decline claims where a consumer has been grossly negligent, taking into account any warnings a firm has provided.
- Mrs M's loss did not take place from her Revolut account as she (largely) made payments to her own cryptocurrency wallet before transferring that cryptocurrency to the fraudster. It's unfair and irrational to hold Revolut responsible for any of the loss where it is only an intermediate link in a chain of transactions. Other firms will have a better understanding of the destination of the funds and/or Mrs M's finances and account activity.
- The reasons given by Mrs M for opening the account were consistent with the activity she undertook.
- Mrs M was being assisted by the fraudsters throughout and would have likely misled Revolut had it, or another firm, intervened.
- Mrs M already knew that what she was being offered was too good to be true – Revolut pointing that out would not have changed her decision to go ahead.

As no agreement could be reached the case was 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.

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 M 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 M 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 January 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 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

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).

- 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 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 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

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/

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”

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 January 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
- 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 M was at risk of financial harm from fraud and were the steps it took to warn her sufficient?

I'm satisfied that Revolut ought to have found the third payment Mrs M made to K to be suspicious. The account had recently been opened and while it's arguable that the nature of the payment was aligned with the stated account opening reasons, the amount of the payment and the fact it was going to a well-known cryptocurrency exchange ought to have caused Revolut concern. Revolut are well aware of the risk of multi-stage cryptocurrency scams and by January 2023 should have recognised that payments to cryptocurrency providers carry an elevated risk of financial harm from fraud.

So a payment of a considerable amount to such a firm ought to have attracted some scrutiny. The warning Revolut did provide before Mrs M made a previous payment was generic and was not a proportionate response to the risk the penultimate payment presented – it needed to do more.

Having thought carefully about the risk the payment presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mrs M's account. I think it should have done this by, for example, directing Mrs M to its in-app chat to discuss the payment further.

Had Revolut intervened in the way it ought to have done, would Mrs M's loss from the penultimate payment have been prevented?

Revolut argues that had it intervened in the way I've suggested, Mrs M wouldn't have listened – she was being directed by the fraudster at every turn and would have simply followed their instructions.

I've considered the evidence carefully here, but I don't agree with that assessment. It's first important to note that H did not provide any warnings to Mrs M and Revolut only provided a generic warning before one of the payments. There's also no evidence that she received warnings from elsewhere.

The conversation between Mrs M and the fraudster is the best evidence of how she might have responded to a warning. While I accept Mrs M sought guidance from the fraudsters at times in relation to what was an unfamiliar set of circumstances, for example when opening her Revolut account, I don't think it follows that she would have actively misled Revolut about what she was doing – there's no evidence to show she would have done.

So, on balance, my starting point is that she would have given a truthful account of events, if asked.

That account of events would have had several hallmarks of a well-known scam – an advert found online, access to a trading account and platform, the use of remote access software, a small initial deposit, which quickly turns into a much larger sum and being assisted or guided by a broker. In other words – this was a textbook cryptocurrency investment scam and Revolut would have been left in little no doubt as to what was happening.

So, I've gone onto consider whether Mrs M would have been receptive in the face of a very strong and clear warning that she was falling victim to a scam.

It's worth noting that a warning on the penultimate payment would have come at a time when Mrs M had nothing to lose – she actually appears to have made a profit at that point. I acknowledge that withdrawal would have given her (and was probably designed to build) trust in the fraudsters. Nevertheless, Mrs M could have walked away from the scam without having lost anything.

I'm also conscious that Mrs M's husband seems to have been much more reluctant and sceptical about the scheme. Though he did make some payments after the penultimate payment – Mrs M mentions on several occasions that he was unwilling to invest further. Her own hesitancy is also reflected in the messages between her and the fraudster – particularly before the penultimate payment – which is clearly a very significant amount of money for Mrs M and her husband. For example, she says *"If I do this 20k hand over... I trust your judgement that you won't lie to me, and be open and honest with me"*. I think that had Revolut added, in a more authoritative and knowledgeable way, its own clear warning, this is likely to have built on Mrs M and her husband's existing doubts and concerns. On balance, I think Mrs M is unlikely to have proceeded and her loss would have been prevented. That means I agree with the investigator – the starting point is that Mrs M should be reimbursed from the penultimate payment.

Should Mrs M bear any responsibility for her loss?

But I also need to consider whether Mrs M should bear any responsibility for her loss. I've taken into account that Mrs M doesn't appear to have had any investment experience. I've noted the provision of the trading platform – which would likely have appeared legitimate – and that Mrs M was able to withdraw money from the investment – more than she'd actually invested. I can imagine this gave significant credibility to the fraudster's claims.

Nevertheless, I do note that Mrs M seemed to recognise that what she was being offered could be too good to be true and that was an obvious conclusion given the enormous returns on her initial investment and the claim that a large part of her investment was covered by insurance (and therefore couldn't be lost). In light of this, I think that she should have taken further steps to ensure that the platform she was dealing with was legitimate prior to investing what I understand to be a life-changing amount of money.

Had she done that, it doesn't seem to be in dispute that she'd find little about the investment platform online, which might reasonably have struck her as unusual. And some relatively straightforward further enquiries would likely have led to her discovering that her circumstances were typical of a cryptocurrency investment scam.

Overall, considering the fault on both sides, I think that a 50% deduction to the reimbursement of the final two payments is fair.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs M's money was moved to an account under her own control before being lost to the fraudsters.

But as I've set out above, I think that Revolut still should have recognised that Mrs M might have been at risk of financial harm from fraud when she made the penultimate payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Mrs M 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 Mrs M's own account does not alter that fact and I think Revolut can fairly be held responsible for Mrs M'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 Mrs M 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 Mrs M could instead, or in addition, have sought to complain against those firms. But Mrs M has not chosen to do that and ultimately, I cannot 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 M'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 have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mrs M's loss from the penultimate payment (subject to a deduction for Mrs M's own contribution).

Putting things right

The final two payments totalled £25,500. As noted, Mrs M received a return which amounted to more than she'd invested up to the point of the penultimate payment. Our investigator recommended that £198.05 of that return (that is the amount of that return which exceeds Mrs M's payments to fraud at that point) should be deducted from the amount reimbursed to

Mrs M prior to the 50% deduction. This approach seems reasonable and neither party has made any further representations about it. So, to be clear I've decided that Revolut should deduct £198.05 from £25,500 and then pay Mrs M 50% of that amount – a total of £12,650.98

My final decision

For the reasons given above, I uphold in part this complaint and require Revolut Ltd to pay Mrs M:

- 50% of the final two payments, taking into account the returns from the scam in the way that I've set out above.
- 8% simple interest on that amount from the date of payment to the date of settlement⁵.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 December 2024.

Rich Drury
Ombudsman

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