

## The complaint

Mr M complains that Revolut Ltd ('Revolut') won't refund the money he lost after falling victim to a scam.

## What happened

In December 2022, Mr M received an update on his phone which highlighted an advert for cryptocurrency trading which was endorsed by a well-known tv personality.

Mr M was interested in earning some money as he had lost his job, so he clicked the link and provided his contact details.

Mr M was called by someone who said they worked for a trading company who I'll refer to as N. They said Mr M could invest for as little as £250 and he would be given a manager who would complete trades on his behalf.

Mr M was told to open an account with Revolut as well as an account with a cryptocurrency exchange. Mr M also opened a trading account with N.

Mr M says he looked the cryptocurrency exchange up online and saw it was a genuine firm. He says the website for N showed live currency values and appeared to be legitimate. Mr M was told that he could make returns of up to 30% and the manager would take 5% commission from his profits.

Mr M made an initial payment of £250 from an account held with another bank, who I'll refer to as bank D. Mr M saw his deposit go into his trading account and watched his balance increase based on the trades that were being made.

Ultimately Mr M made 11 payments from his Revolut account as set out below.

Date	Pmt no	Details of payment	Amount
20.12.2022		Mr M opened his Revolut account	
20.12.2022	1	Bank transfer to cryptocurrency exchange C	£50
3.1.2023	2	Bank transfer to cryptocurrency exchange C	£10,000
6.1.2023		<i>Return from investment</i>	<i>£808 cr</i>
9.1.2023	3	Bank transfer to cryptocurrency exchange C	£20,000
9.1.2023	4	Bank transfer to cryptocurrency exchange C	£10,000
10.1.2023		Bank transfer to cryptocurrency exchange C - declined	£10,000
10.1.2023	5	Bank transfer to cryptocurrency exchange C	£9,850
11.1.2023	6	Bank transfer to cryptocurrency exchange C	£10,000
12.1.2023	7	Bank transfer to cryptocurrency exchange C	£10,000
13.1.2023	8	Bank transfer to cryptocurrency exchange C	£10,000
13.1.2023		<i>Return from investment</i>	<i>£3,995 cr</i>
16.1.2023	9	Bank transfer to cryptocurrency exchange C	£20,000
16.1.2023	10	Bank transfer to cryptocurrency exchange C	£10,000

17.1.2023	11	Bank transfer to cryptocurrency exchange C	£10,000
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Mr M funded his payments to the investment using his savings and by taking out loans for £95,000. Mr M made a further £95,000 of payments from an account held with another bank, who I'll refer to as bank C.

Bank C intervened when Mr M made payments, but this intervention was after the payments that were made from his Revolut account. Mr M's Revolut payments were funded by an account he held with another bank – bank D. However, there is no evidence that bank D intervened when he made any payments from that account.

In February 2023, Mr M tried to withdraw funds from his trading account and was told he had to pay a fee of £20,000, which he paid from his account with bank C. After making this payment, the scammer stopped communicating with Mr M and he realised he'd been the victim of a scam.

Mr M raised a fraud claim with Revolut in March 2023, but Revolut declined to refund him. Through a professional representative, Mr M brought a complaint to our service.

An investigator looked into Mr M's complaint and upheld it from payment two recommending Revolut refund Mr M. But the investigator felt Mr M should share responsibility for his loss as he didn't do sufficient checks, so the refund should be reduced by 50%.

Mr M accepted the investigator's opinion.

Revolut disagreed with the investigator's recommendation and raised the following points:

- Revolut is bound by contract, applicable regulations, and the common law to execute valid payment instructions. This duty is strict and is subject only to very limited exceptions (for example if the customer has asked Revolut to act unlawfully).
- Under the PSR's 2017 Revolut has a duty to promptly process payment instructions.
- Revolut suggest that we've departed from the relevant law, but we haven't acknowledged that or explained why.
- Revolut does not owe a duty to prevent frauds and scams.
- We're overstating Revolut's duty by saying they should've taken additional steps, or made additional checks, before processing a payment.
- Revolut recognises its obligations to put in place adequate procedures to counter the risk that it may be used to further financial crime (and has such systems and controls in place), but that duty is not absolute and does not go as far as to require Revolut to detect and prevent all fraud, particularly in the face of authorised customer instructions.
- We're applying the Contingent Reimbursement Model Code (CRM Code) or mandatory reimbursement rules proposed by the PSR (and now in force), to this case. It is irrational to hold Revolut liable where Revolut is merely an intermediate link in the payment chain.

As the case couldn't be resolved informally, it was passed to me to review.

### **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.

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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 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 Mr M and the Payment Services Regulations to carry out his 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 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 December 2022 fairly and reasonably have been on the look-out for the possibility

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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).

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;<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 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)<sup>3</sup>.
- 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

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<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/>

<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.

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

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 December 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;
- 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 Mr M was at risk of financial harm from fraud?*

I'm not satisfied that Revolut should've been concerned when Mr M made his first payment, as it was only for £50.

But, when Mr M made the second payment, I'm satisfied that Revolut should've been concerned and intervened.

The payment was for £10,000, was going to an identifiable cryptocurrency exchange and Mr M had selected "safe account" as the payment purpose. I appreciate that this was a new account, but based on all of these factors, Revolut should've identified that Mr M was potentially at risk of financial harm.

*What did Revolut do to warn Mr M and what kind of warning should Revolut have provided?*

Revolut say the second payment triggered and they showed Mr M an onscreen warning. But I'm not satisfied that an onscreen warning was sufficient.

Mr M had selected a payment purpose, which is often used for “safe account” scams – which Revolut should’ve been aware of. Also, this was a large payment going to a known cryptocurrency exchange.

Based on the information available to Revolut, I think it would’ve been more appropriate for Mr M to be passed to a specialist through Revolut’s in-app chat to be asked questions about the payment.

If Revolut had asked Mr M why he was making the payment, I think it’s more likely than not he would’ve said it was for investment. Revolut should have asked follow up questions that might’ve included: how Mr M found the investment, what he knew about the company he was investing with, was anyone guiding him in his investment, what returns did he expect to make.

I think it’s more likely than not Mr M would’ve answered these questions honestly. I say this as when bank C intervened and asked Mr M these types of questions, he answered honestly, and the scam was uncovered.

Mr M had seen an advert promoted by a celebrity, he was promised unrealistic returns and the “manager” had access to his cryptocurrency wallet. All of these point to Mr M falling victim to a cryptocurrency investment scam and should’ve resonated with Revolut.

Having identified the scam, I would’ve expected Revolut to tell Mr M what a cryptocurrency investment scam looks like and explain why it was more likely than not he was the victim of a scam. In response to this, I don’t believe Mr M would’ve proceeded with making the payments. I say this because Mr M had lost his job and couldn’t afford to risk the money he was being asked to invest. So, I think Revolut could’ve prevented Mr M’s loss.

I’m aware that Mr M made the payments to his account from an account he held with bank D, however there is no indication that bank D intervened on any of the payments or provided any warnings to Mr M. The only intervention was by bank C, but this happened after Mr M had made all of his Revolut payments. That intervention uncovered the scam and prevented Mr M from making any further payments. So, I’m satisfied that similar intervention by Revolut at the earlier point when he made payment two, more likely than not would’ve had the same outcome.

*Is it fair and reasonable for Revolut to be held responsible for Mr M’s loss?*

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut was part of the payment journey and that the funds originated from Mr M’s account with bank D, went to his Revolut account, before being transferred to a cryptocurrency wallet and onto the scammer.

But as I’ve set out above, I think that Revolut still should have recognised that Mr M might have been at risk of financial harm from fraud when he made payment two, 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 Mr 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 Mr M’s own account does not alter that fact and I think Revolut can fairly be held responsible for Mr 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 Mr M has only complained against Revolut and bank C – not bank D. I accept that it’s *possible* that bank D might also have missed the opportunity to intervene

or failed to act fairly and reasonably in some other way, and Mr M could instead, or in addition, have sought to complain against that firm. But Mr M has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut. It's worth nothing that the payments from Mr M's account with bank C went directly to the scammer, so he is not receiving double benefit.

I'm also not persuaded it would be fair to reduce Mr M 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 Mr M's loss from payment two (subject to a deduction for Mr M's own contribution which I will consider below).

#### *Should Mr M bear any responsibility for his loss?*

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.

I understand that Mr M checked N's website and could see his account trades on N's platform, but I'm not satisfied that he did sufficient checks based on the information he was given, to be satisfied that the investment was genuine. I think he should've been concerned, especially with the manager wanting access to his cryptocurrency wallet and wanting to make payments for him. No genuine company would ask a customer to share security information or ask for access to a customer's account with another firm. I also think being promised a return of 30% was too good to be true and should've also been concerning. So, I would've expected Mr M to have done more checks as a result.

On that basis, I think it's fair for Mr M to share responsibility for his loss with Revolut and reduce the refund by 50%. Revolut can deduct from the refund the returns Mr M received – which total £4,803. Revolut should pay simple interest of 8% from the date of the payments until the date of settlement.

#### Recovery of funds

In this case, the funds went from Mr M's Revolut account to a cryptocurrency wallet in his name. Mr M had access to this wallet, so if any funds had remained, he could've recovered them. Revolut have taken the steps I would've expected in trying to recover Mr M's loss.

#### **Putting things right**

To put things right I require Revolut Ltd to:

- refund 50% from payment two onwards,
- deduct from the refund the returns Mr M received,
- pay 8% simple interest per year on the refund, calculated from the date of the payments until the date of settlement.\*

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

**My final decision**

My final decision is that I uphold this complaint against Revolut Ltd and require them to compensate Mr M, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 December 2024.

Lisa Lowe  
**Ombudsman**