

## The complaint

Mr I complains that Revolut Ltd won't refund money he lost to a scam.

## What happened

Mr I fell victim to a fake job scam after he was contacted via email by someone offering him a job. They said they'd seen his CV on an online job site and offered him a position which involved rating hotels online. He was told he would be paid for completing tasks, but needed to use his own money to buy cryptocurrency so he could unlock these tasks. He was told he'd receive his money back plus commission. Mr I opened an account with the company he believed he was working for, and was added to an online chat group with others doing the same work. Unfortunately, and unknown to Mr I, the job was not legitimate, he was being scammed. As the scam progressed, Mr I was asked to pay increasingly large amounts to unlock the tasks, but aside from two withdrawals early on in the scam Mr I was unable to retrieve either the money he had paid in or any profits. Ultimately, he made the following card payments over the course of a couple of weeks:

	Date	Amount
Payment 1	22/09/2023	£55.37
Withdrawal	23/09/2023	£105.97
Payment 2	23/09/2023	£100
Payment 3	23/09/2023	£300
Withdrawal	23/09/2024	£468.38
Payment 4	24/09/2023	£1,200
Payment 5	24/09/2023	£446
Payment 6	25/09/2023	£605.44
Payment 7	25/09/2023	£240.50
Payment 8	27/09/2023	£478
Payment 9	29/09/2023	£169.88
Payment 10	30/09/2023	£249
Payment 11	30/09/2023	£10
Payment 12	01/10/2023	£44
Payment 13	04/10/2023	£3,225.19

When Mr I realised he had been scammed he told Revolut what had happened but it didn't consider it had any responsibility for his loss. It said it had no responsibility to prevent scams and that Mr I had been grossly negligent by ignoring warnings it gave.

Our Investigator upheld the complaint in part. They thought that, by the time of the fourth payment made to the scam, Revolut ought to have taken steps to narrow down the scam risk, and then provided a tailored warning. The investigator thought that, had that happened, the scam would likely have been stopped. So, the investigator said that Revolut should refund the money Mr I had lost from this payment onwards, less a deduction of 50% in recognition of Mr I's own contributory negligence.

Revolut disagreed, it maintains that Mr I should have been aware that the job he was being offered was not legitimate. As no agreement could be reached, the matter has been escalated to me to determine.

### **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 Mr I 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*".

In this respect, section 20 of the terms and conditions said:

#### ***"20. When we will refuse or delay a payment***

*We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:*

- *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 I and the Payment Services Regulations to carry out his instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in September 2023 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But 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 also must 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 September 2023 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.

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>1</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.

For example, it is my understanding that in September 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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 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>2</sup>, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry

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<sup>1</sup> For example, Revolut's website explains it launched an automated anti-fraud system in August 2018:

[https://www.revolut.com/news/revolut\\_unveils\\_new\\_fleet\\_of\\_machine\\_learning\\_technology\\_that\\_has\\_seen\\_a\\_fourfold\\_reduction\\_in\\_card\\_fraud\\_and\\_had\\_offers\\_from\\_banks/](https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/)

<sup>2</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

practice now (regardless of the fact the BSI was withdrawn in 2022).

- Since 31 July 2023, under the FCA's Consumer Duty<sup>3</sup>, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *"consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers"*<sup>4</sup>.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency<sup>5</sup> 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.
- 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 in September 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;
- have acted to avoid causing foreseeable harm to customers, for example by

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<sup>3</sup> Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

<sup>4</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

<sup>5</sup> Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;

- 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 September 2023, Revolut should in any event have taken these steps.

*Should Revolut have recognised that Mr I was at risk of financial harm from fraud?*

Mr I's Revolut account was opened not long before this scam took place. So, Revolut had a limited account history against which to compare the payments Mr I was making. And the initial payments Mr I made were small, so even though they were evidently payments to purchase cryptocurrency, I don't think these payments would have been an immediate cause for concern. However, by the time of the fourth payment to the scam, I think a pattern was emerging which should have flagged to Revolut that something untoward could be going on.

I'm aware that cryptocurrency exchanges generally stipulate that the card used to purchase cryptocurrency at its exchange must be held in the name of the account holder, as must the account used to receive cash payments from the exchange. Revolut would likely have been aware of this fact too. So, it could have reasonably assumed that payments Mr I was making would be to a cryptocurrency wallet held in Mr I's name. But by September 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions. And by September 2023, when these payments took place, further restrictions were in place. This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr I made in September 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services

to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

So, considering that by the time of the fourth payment Mr I made to the scam a pattern had emerged of increasing payments within a short period of time, and given what Revolut knew about the destination of the payment, I think that the circumstances should have led Revolut to consider that Mr I was at heightened risk of financial harm from fraud. In line with good industry practice and regulatory requirements (in particular the Consumer Duty), I am satisfied that it is fair and reasonable to conclude that Revolut should have warned Mr I before this payment went ahead.

*What did Revolut do to warn Mr I and what should it have done?*

Revolut did intervene in the very first payment Mr I tried to make to the scam. But this intervention was very limited. Revolut froze Mr I's card, advised him that the transaction was suspicious, and asked him to review it and confirm if he had made that payment. This warning included no information about scams. Given the limited scope of this intervention, I don't think it could reasonably be expected to have put Mr I on notice that he was at risk of falling victim to a scam. But in any case, given the relatively low value of this initial payment I don't think that further intervention was warranted at this stage.

However, as explained above, by the time of the fourth payment to the scam, I think Revolut should have realised the potential risk posed by the payments Mr I was making, and so taken further steps to intervene.

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 primary duty to make payments promptly.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with other firms, has developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by September 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by September 2023, on identifying a heightened scam risk, a firm such as Revolut should have

taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

In this case, Revolut knew that Payment 4 was being made to a cryptocurrency provider and its systems ought to have factored that information into the warning it gave. Revolut should also have been mindful that cryptocurrency scams have become increasingly varied over the past few years. Fraudsters have increasingly turned to cryptocurrency as their preferred way of receiving victim's money across a range of different scam types, including 'romance', impersonation and investment scams.

Taking that into account, I am satisfied that, by September 2023, Revolut ought to have attempted to narrow down the potential risk further. I'm satisfied that when Mr I made Payment 4, Revolut should – for example by asking a series of automated questions designed to narrow down the type of cryptocurrency related scam risk associated with the payment he was making – have provided a scam warning tailored to the likely cryptocurrency related scam Mr I was at risk from.

In this case, Mr I was falling victim to a 'job scam' – he believed she was making payments in order to receive an income. As such, I'd have expected Revolut to have asked a series of simple questions in order to establish that this was the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Mr I gave. I'd expect any such warning to have covered off key features of such a scam, such as making payments to gain employment, being paid for 'clicks', 'likes' or promoting products and having to pay increasingly large sums without being able to withdraw money. I acknowledge that any such warning relies on the customer answering questions honestly and openly, but I've seen nothing to indicate that Mr I wouldn't have done so here.

Nothing I've seen or been told by Mr I indicates that he was given a cover story or otherwise told to be dishonest with Revolut, and any warning tailored to the scam Mr I was falling victim to would have likely resonated with him given that the particular scam he was a victim of bore many of the hallmarks of similar scams. So, I think it is likely that a tailored warning would have caused enough doubt in Mr I's mind to uncover the scam and so prevent him from making any further payments to it.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr I purchased cryptocurrency which likely credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters. I'm also aware that the payments from Mr I's Revolut account were funded by deposits from accounts he held overseas, made using an international money transfer service.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr I might have been at risk of financial harm from fraud when he made Payment 4, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Mr I 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 I's own account does not alter that fact and I think Revolut can fairly



be held responsible for Mr I'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 I 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 I could instead, or in addition, have sought to complain against those firms. But Mr I 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 I'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 Mr I's from Payment 4 onwards (subject to a deduction for Mr I's own contribution which I will consider below).

### **Should Mr I 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.

And, having thought carefully about this, I do think Mr I could have done more to protect himself from this scam. There were aspects of the scam that were convincing – the scammers appear to have copied details of a legitimate business, and Mr I says they provided detailed and comprehensive training which further convinced him of their legitimacy – but I nonetheless I think he ought reasonably to have had concerns about the legitimacy of the job offered, once he became aware of the requirement to send funds before he could earn profits. I think this should have given Mr I pause for thought and so led to him looking more deeply into this job he was apparently being offered.

Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Revolut could have done anything to recover the payments Mr I made to the scam. But given that the payments were made by card to a cryptocurrency provider, and Mr I sent that cryptocurrency to the fraudsters, Revolut would not have been able to recover the funds. In addition, I don't consider that a chargeback would have had any prospect of success given there's no dispute that the cryptocurrency exchange provided cryptocurrency to Mr I.

### **Putting things right**

To resolve this complaint Revolut should:

- Refund to Mr I 50% of his loss from Payment 4 onwards .
- Pay 8% interest on this refund from the date of each payment to the date of settlement.

**My final decision**

I uphold this complaint, Revolut Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 26 September 2024.

Sophie Mitchell  
**Ombudsman**