

The complaint

Mr S complains that Revolut Ltd (Revolut) is refusing to refund him the amount he lost as the result of a scam.

Mr S is being represented by a third party. To keep things simple, I will refer to Mr S throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr S found an advertisement on social media for a company I will call X that specialised in cryptocurrency investment. X appeared to be endorsed by a well-known celebrity.

Mr S did an online search on X and didn't find anything negative so interested in the investment opportunity he clicked on the link provided which took him through to X's website where he completed a data capture form providing his contact information.

Soon after providing his contact information Mr S received a call from X where his investment goals were discussed. X appeared to be very professional, and Mr S was required to pay an initial \$250 start-up fee which he paid from an account he held elsewhere.

X then received a second call from someone claiming to be his account manager. X explained their background and was able to answer all of Mr S's questions with confidence.

Mr S was required to provide copies of his identification documents as part of the investment processes and X helped Mr S open an account on its platform and cryptocurrency wallets that would be required to fund the investment. Mr S was also provided with his own password protected login to X's platform.

After making some payments into the investment Mr S was persuaded by X to make further payments so he could upgrade from bronze to silver level which would allow for higher returns.

After making multiple trades that appeared to make a high return Mr S attempted to make a withdrawal from the platform on 11 July 2022. But before he could make a withdrawal Mr S was told he would have to pay fees first. One of these fees was explained to be a "de-risk" fee and would cost £20,000. Mr S agreed to pay the fee over multiple payments.

Having paid the fees requested by X Mr S tells us that he noticed X's name had changed. This was a red flag to Mr S as he had not been directly informed about the change. When Mr S attempted to question X about the change, he found he was no longer able to make contact and realised he had fallen victim to a scam.

Mr S made the following payments in relation to the scam:

Payment	Date	Payee	Payment Method	Amount
1	24 May 2022	Wisenex	Debit Card	£2,498.77
2	9 June 2022	Mr S	Transfer	£50.00
3	13 June 2022	Mr S	Transfer	£150.00
4	14 June 2022	Mr S	Transfer	£50.00
5	20 June 2022	Mr S	Transfer	£200.00
6	30 June 2022	Wisenex	Debit Card	£3,012.32
7	30 June 2022	Wisenex	Debit Card	£3,012.48
8	30 June 2022	Wisenex	Debit Card	£1,230.13
9	10 July 2022	Mr S	Transfer	£25.00
10	11 July 2022	Mr S	Transfer	£200.00
11	11 July 2022	Mr S	Transfer	£100.00
12	11 July 2022	Mr S	Transfer	£25.00
13	11 July 2022	Mr S	Transfer	£25.00
14	12 July 2022	Wisenex	Debit Card	£4,228.01
15	12 July 2022	Wisenex	Debit Card	£2,093.21
16	12 July 2022	Wisenex	Debit Card	£4,227.43
17	12 July 2022	Wisenex	Debit Card	£2,093.59
18	13 July 2022	Mr S	Transfer	£50.00
19	18 July 2022	Coin Jar	Transfer	£10.00
20	21 July 2022	Wisenex	Debit Card	£4,278.33
21	21 July 2022	Wisenex	Debit Card	£2,982.93

Our Investigator considered Mr S's complaint and thought it should be upheld in part. Revolut didn't agree, so this complaint has been passed to me to decide.

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 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 S modified the starting position described in Philipp, by – among other things – expressly requiring Revolut to refuse or delay a payment “if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks” (section 20).

So Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

I must also take into account that the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I 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 May-July 2022 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 did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;¹
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments;
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with “due skill, care and diligence” (FCA Principle for Businesses 2), “integrity” (FCA

¹ For example, Revolut's website explains it launched an automated anti-fraud system in August 2018: https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fo urfold_reduction_in_card_fraud_and_had_offers_from_banks_/

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)².

- 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 Code³, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer’s control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer’s own name. And, 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.

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 May-July 2022 that Revolut should:

² 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.

³ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in May-July 2022, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr S has fallen victim to a cruel scam here, nor that he authorised the payments he made to third parties and to his cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

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

The first payments Mr S made in relation to the scam were not of such a significant value that I would have expected them to trigger Revolut's fraud prevention systems, but payment 7 was for a more significant value of over £3,000 and was the second payment Mr S made the same day bringing the total value of payments sent that day, in quick succession, to a cryptocurrency exchange to over £6,000.

With the above in mind, I think Revolut should have had concerns that Mr S may have been at risk of financial harm, and it should have provided a proportionate intervention based on the risk the payment presented.

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

When Mr S attempted to make transfers from his account with Revolut he was presented with a warning that stated:

"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. Remember fraudsters can impersonate others, and we will never ask you to make a payment".

Mr S was making payments into accounts in his own name so I don't think this warning would have been effective and caused Mr S to have any concerns.

Mr S also received an email from Revolut that warned about scams, but this was not presented at the time Mr S was making the payment and there is little indication that the email was reviewed in full before Mr S made any further payments. So, I don't think it went far enough to be considered an effective intervention.

Having considered the risk payment 7 carried and the knowledge Revolut would have had at the time I think a proportionate intervention would have been for Revolut to have sought the reason Mr S was making the payment and to have provided a tailored warning based on that payment reason.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr S suffered from payment 7?

I've thought carefully about whether a warning of the type I've described would have resonated with Mr S and prevented him from making payment 7 onwards. Having done so, I think it would.

There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr S's payments, such as finding the investment through an advertisement on social media endorsed by a well-known celebrity, being assisted by a broker and being assisted in opening cryptocurrency wallets so that payments could be made.

Had the warning Revolut provided covered some of these key hallmarks, as I think it should have, I think it would have raised red flags with Mr S, and as Mr S had no desire to lose his funds, I think it's most likely he would have stopped making payment 7 and the payments that followed.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr S purchased cryptocurrency which 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 have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

In reaching my decision, I have taken into account that the Final Payment was made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from other accounts at regulated financial businesses.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr S might have been at risk of financial harm from fraud when he made payment 7, and in those circumstances it should have provided a tailored warning. If it had taken those steps, I am satisfied it would have prevented the losses consumer suffered. The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to Mr S's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr S'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 S 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 S could instead, or in addition, have sought to complain against those firms. But Mr S 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 S's compensation in circumstances where: the consumer has only complained about one respondent from which he is entitled to recover his 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 S's loss from payment 7 (subject to a deduction for Mr S's own contribution which I will consider below).

Should Mr S bear any responsibility for his losses?

I've thought about whether Mr S should bear any responsibility for his loss connected to payment 7 onwards. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint including taking into account Mr S' own actions and responsibility for the losses he has suffered.

I recognise that there were relatively sophisticated aspects to this scam, not least an apparently credible and professional looking platform from which Mr S was able to view his trades.

But I think there were some red flags Mr S should have taken notice of, for example, It's clear from the chat transcript that Mr S had questioned the high returns he appeared to be making that were too good to be true and there were negative reviews about X available online.

Had Mr S taken notice of these clear red flags he could also have taken extra care and prevented the scam. So, I think in the circumstances it would be fair to reduce compensation by 50% on the basis that Mr S should share blame for what happened.

Could Revolut have done anything to recover Mr S' money?

The payments were made by card and transfer to a cryptocurrency provider. Mr S then sent that cryptocurrency to the fraudsters. So, 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 Mr S was provided with the cryptocurrency, which he subsequently sent to the fraudsters.

Putting things right

To put things right I require Revolut Ltd to:

- Refund Mr S 50% of all of the payments made in relation to the scam from payment 7 onwards less any refunds received after this payment was made.
- Add 8% simple interest to the amount it pays Mr S from the date the payments were made to the date he is refunded (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 March 2025.

Terry Woodham
Ombudsman