

The complaint

Mr K complains that Revolut Ltd won't refund the money he lost when he was the victim of a scam.

What happened

Several years ago, Mr K saw some information online about trading. He entered his contact details on a website to register his interest and then received a number of calls from various companies offering to help him invest. But he says he didn't feel he had the time to focus on the investment at that point.

In August 2023, Mr K then received a further phone call from someone who said they worked for an investment company. Mr K says he was impressed with the caller's experience and professionalism, and thought he could use some extra income to help pay for his mother's hospital care. So he decided to continue speaking to the caller, who explained how the investment would work. Mr K was told to open an account with Revolut, and to download remote access software so the caller could help him set up an account on the investment company's trading platform – which Mr K did.

Mr K then made a number of payments from his Revolut account to purchase cryptocurrency, which he then sent on to wallet details he was given for the investment company. I've set out the payments Mr K made below:

Date	Details	Amount
14 August 2023	To 1 st cryptocurrency exchange	£500.03
30 August 2023	To 1 st cryptocurrency exchange	£499.39
31 August 2023	To 1 st cryptocurrency exchange	£4,461.81
7 September 2023	To 1 st cryptocurrency exchange	£1,187.53
8 September 2023	To 1 st cryptocurrency exchange	£2,606.48
12 September 2023	To 2 nd cryptocurrency exchange	£2,177.27
14 September 2023	To 2 nd cryptocurrency exchange	£1,495.50

Unfortunately, we now know the investment company was a scam. The scam was uncovered after Mr K tried to withdraw the profit the platform showed he had made but was given a number of excuses for why he couldn't withdraw. The investment company then stopped responding to him, and Mr K realised he had been the victim of a scam.

Revolut investigated but didn't agree to refund the payments Mr K had made. Mr K wasn't satisfied with Revolut's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Revolut should have had concerns when Mr K made the third payment here, and so intervened to warn him about potential scams. And they thought this would likely have stopped Mr K making any further payments, so recommended Revolut refund the money he had lost from the third payment onwards. Revolut disagreed with our investigator, so the complaint has been passed to me.

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 K 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 K 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 from August 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 from August 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 fraud¹;
- 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 August 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 Code², 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).

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_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/

² BSI: PAS 17271: 2017 “Protecting customers from financial harm as result of fraud or financial abuse”

- Since 31 July 2023, under the FCA's Consumer Duty³, 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"*⁴.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ 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 from August 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;

³ 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.

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

⁵ 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.

- have acted to avoid causing foreseeable harm to customers, for example by 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 from August 2023, Revolut should in any event have taken these steps.

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

The first two payments Mr K made as a result of the scam here weren't for particularly large amounts. I also don't think there was anything else particularly unusual or suspicious about them. So I wouldn't have expected Revolut to recognise that he was at risk of financial harm from fraud as a result of them.

However, I'm satisfied Revolut ought to have recognised that Mr K was at heightened risk of financial harm from fraud when he tried to make the third payment here, for £4,461.81 on 31 August 2023.

I appreciate that Mr K's account had only been opened relatively recently and Revolut didn't have a significant amount of previous activity to compare these payments to when assessing whether they were unusual or out of character. But this payment was for a significant amount, and for an amount significantly larger than any other payment made out of Mr K's account previously. It was also identifiably related to cryptocurrency which, around this time, I think Revolut should have recognised meant it carried an elevated risk of being related to a fraud or scam.

At this point, Mr K had also tried to make three payments to a cryptocurrency exchange in just over two weeks, with the last two payments being made on consecutive days. The payments appeared to be increasing over time, with the third payment being significantly larger than the first two. And the payments had been funded by credits into Mr K's account for similar amounts shortly before the payments were made. And this matches a pattern of behaviour often seen when customers are falling victim to a scam.

So I think Revolut should have recognised that Mr K was at risk of financial harm from fraud here.

To be clear, I do not suggest that from August 2023 every payment used to purchase cryptocurrency presented such a heightened risk of fraud that Revolut should have warned its customer before processing them. Instead, as I've explained, I think it was a combination of the characteristics of this payment and the circumstances in which the payment was made to a payment service provider that, at the relevant time, was acting as a payment processor for a cryptocurrency provider, that ought to have given Revolut sufficient cause for concern that Mr K could be at risk of suffering financial harm from fraud when he attempted to make

the payment on 31 August 2023. In those circumstances, it should fairly and reasonably have taken additional, proportionate, steps before completing the payment.

What did Revolut do to warn Mr K?

Revolut hasn't suggested that it showed Mr K any kind of warning, or took any other steps to make him aware of the risks of scams, at the time he made these payments.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

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 August 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 August 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 this payment 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 August 2023, Revolut ought to have attempted to narrow down the potential risk further. I'm satisfied that when Mr K made this payment, 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 K was at risk from.

In this case, Mr K was falling victim to an investment scam – he believed he was making payments in order to invest with the investment company, who would trade on his behalf and provide him with returns on his investment.

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 K gave. I'd expect any such warning to have covered off key features of such a scam, such as an advertisement on social media, promotion by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value.

I acknowledge that any such warning relies on the customer answering questions honestly and openly, but I've seen nothing to indicate that Mr K wouldn't have done so here.

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

I've thought carefully about whether a warning of the type I've described would have likely prevented any further loss in this case. And, on the balance of probabilities, I think it would have.

There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr K's payments, such as finding the investment through an advertisement online, being assisted by a broker, being asked to download remote access software and being told they had made significant profit following a small initial deposit. So I think it's likely a warning highlighting these features would have resonated with him.

I've also seen no indication that Mr K expressed mistrust of Revolut or financial firms in general. And I've not seen any evidence that the scammer told him to mislead any bank that contacted him about the payments, to conceal the true purpose of the payments or to ignore any warnings he was given. And as neither Revolut nor any other bank involved in the journey of the funds showed him a warning about cryptocurrency scams or explained the common features of such scams to him, I've not seen anything to suggest Mr K would have ignored or moved past any warning he was given.

Therefore, on the balance of probabilities, had Revolut provided Mr K with an impactful warning that gave details about cryptocurrency investment scams and how he could protect himself from the risk of fraud, I believe it would have resonated with him. He could have paused and looked more closely into the investment company before proceeding, made further enquiries into cryptocurrency scams and whether or not the broker he was speaking to was regulated in the UK or abroad, discussed what was happening with family and friends, or tried to remove his money from the platform – which is what ultimately led to the scam being uncovered. I'm satisfied that a timely warning to Mr K from Revolut would very likely have caused him to take similar steps – revealing the scam and preventing his further losses.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr K paid money using his Revolut account to another account in his own name with a cryptocurrency exchange, rather than directly to the fraudster. So he remained in control of his money after he made the payments, and there were further steps before the money was lost to the scammer.

But as I've set out in detail above, I think that Revolut still should have recognised that Mr K might have been at risk of financial harm from fraud when he made the payment on 31 August 2023, and in those circumstances it should have provided him with a warning about the risk of cryptocurrency scams. If it had taken those steps, I am satisfied it would have prevented the losses Mr K 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 K's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr K'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 K 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 K could instead, or in addition, have sought to complain against those firms. But Mr K 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 a consumer'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 K's loss from the payment of 31 August 2023 onwards (subject to a deduction for Mr K's own contribution which I will consider below).

Should Mr K bear any responsibility for his losses?

Revolut has argued that Mr K should have done more to protect himself here by doing a greater level of due diligence on the investment company before making the payments. And I've considered whether it would be fair for Mr K to bear some 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.

But this was a sophisticated scam, where Mr K was given access to a professional-looking trading platform which showed the deposits he was making, trade information, and the profit he was supposedly making. And I think it's reasonable that being given access to a platform of this kind will have made Mr K think the investment company was legitimate.

Mr K has also said the investment company asked him to provide two forms of photo ID and carried out know-your-customer and anti-money laundering checks when he opened his account on its platform, in the same way he would expect a legitimate company to have done. And I think it's reasonable that this will also have made Mr K think the company was legitimate.

From what I've seen, Mr K doesn't appear to have been guaranteed specific returns on the investments he was making or been told the profit he was making was increasing at a rate that was obviously unrealistic or too good to be true. So I don't think there was anything about what Mr K was told about his investments that should have caused him significant concern.

And Mr K has said he tried to research the investment company online before agreeing to make any payments, and didn't find any negative information about it. So he appears to have tried to check that the investment company was legitimate. And as he wasn't a particularly experienced investor when making these payments and hadn't received any guidance on what checks he could carry out from any of the banks involved in the payments, I don't think it's unreasonable that he didn't carry out any further checks than this.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening that could have caused Mr K some concern – such as being contacted by a number of different companies after filling in the form online and being asked to give the investment company remote access to his device. But, based on what I've seen, I don't think it was unreasonable that, at the time, he either didn't pick up on these things or wasn't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say that Mr K acted unreasonably when making the payments here, or that he should bear some responsibility for his loss.

Summary

For the reasons set out above, I think Revolut should have identified that Mr K was at risk of financial harm from fraud as a result of some of the payments he made here. And I think the warning I would have expected it to show in response to this risk would have prevented Mr K making the payments, and so losing the money he did. I also don't think it would be fair for Mr K to bear any responsibility for the money he lost. So I think Revolut should now refund the money Mr K lost as a result of this scam, from the third payment onwards.

My final decision

I uphold this complaint and require Revolut Ltd to:

- Refund Mr K the money he lost as a result of this scam, from the third payment of £4,461.81 on 31 August 2023 onwards – for a total of £11,928.59.
- Pay Mr K 8% simple interest on this refund, from the date of the payments until the date of settlement.

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

Alan Millward
Ombudsman