

The complaint

Mr N complains that Revolut Ltd hasn't protected him from losing money to an investment scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything in detail here. But in summary, I understand it to be as follows.

Mr N has explained that, while he was browsing a video sharing service, an advert popped up offering an investment opportunity, which involved making instant returns using online trading options. Mr N left his contact details and was later contacted, through an online messaging service.

Mr N has said that he was able to see live trading platforms, the website was detailed and sophisticated, the company was registered on Companies House and he found little or no evidence of negative reviews online. As well as this, Mr N has said that, after making an initial investment (of £100 through an account he held with another financial firm), he was presented with online screens which appeared to show investments making good returns and he was able to make a withdrawal to his bank of €35.

All of this led Mr N to believe that he was dealing with a genuine company and that this was a legitimate investment opportunity, but unknown to him at the time he was dealing with fraudsters. Mr N proceeded to invest more and, as part of the scam, he was instructed by the scammer to open a Revolut account. Mr N made the following debit card payments totalling £7,441.59, from his Revolut account – the payments were made through a digital currency platform to accounts controlled by the fraudsters;

Payment 1	31 May 2023	£998.96
Payment 2	12 June 2023	£3,266.14
Payment 3	12 July 2023	£3,176.49

Mr N realised he'd been scammed when he asked the fraudsters for documentation in relation to taxes he was asked to pay in order to make a withdrawal. On receipt of the documents, he noticed that they weren't legitimate.

Mr N raised the matter with Revolut, but it didn't agree to reimburse Mr N his loss.

Unhappy with Revolut's response Mr N brought his complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, it was our Investigators view that Revolut should have recognised that Mr N could have been at a heightened risk of financial harm when he made the second payment (the payment for £3,266.14 on 12 June 2023) and that it should have intervened. It was our Investigators view that had an intervention taken place the scam could have been prevented and Mr N wouldn't have lost his money from this point.

But our Investigator also thought Mr N should bear some responsibility for his loss. In summary our Investigator thought the rate of return for the investment was too good to be true and that it ought to have appeared suspicious that the fraudster had said returns could be 'guaranteed'. Our Investigator also noted that Mr N had fallen to a similar scam previously and given this, should've been more cautious and done more research before investing.

Overall, our Investigator thought Revolut should refund Mr N 50% of his loss, from and including the second payment and that it should pay interest on this amount.

Revolut didn't respond to our Investigators opinion. Through his representatives, Mr N responded but didn't agree with our Investigator. In summary, Mr N maintained that he had carried out research into the company, which had given it a sense of legitimacy. He also didn't agree that things seemed too good to be true.

As agreement couldn't be reached, the complaint has been passed to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In 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 N 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. In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 June 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 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.

For example, it is my understanding that in June 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)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

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 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.

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

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

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

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 these payments would be credited to a cryptocurrency wallet held in Mr N's name.

By June 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. 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.

I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr N made from June 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.

I'm also mindful of the fact that this was a new account. Mr N only opened the account on the advice of the fraudster. That put Revolut in a more difficult position in respect of spotting

payments that might have had an associated fraud risk because there was no historical data concerning his typical account usage that could've served as a basis of comparison.

Nonetheless, I agree with the Investigator's conclusions that it ought to have had concerns at the point Mr N was attempting to make the second payment. I find that the value of the payment alongside the fact that it was being made to a third-party cryptocurrency exchange was significant enough to necessitate Revolut taking some steps to warn Mr N.

I have also considered that the account opening purpose was consistent with the transaction Mr N was making. However, for reasons already explained, by the time this payment was made Revolut ought to have recognised that cryptocurrency transactions carried an elevated risk of the likelihood of the transaction being related to a fraud or scam. Therefore, I think it fair and reasonable to have expected Revolute to have had some concerns.

What did Revolut do to warn Mr N?

From the evidence that has been shared with me, Revolut didn't provide Mr N with a warning when he was making the second payment. 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 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.

Taking that into account, I think Revolut ought, when Mr N attempted to make payment 2 knowing (or strongly suspecting) that the payment was going to a cryptocurrency exchange, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

At this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of such scams, for example referring to: an advertisement on social media, promoted 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 recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr N by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

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

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams 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 N's payments, such as finding the investment through an advertisement on social media, being assisted by a broker, being asked to download remote access software and a small initial deposit which quickly increases in value.

There's no evidence to suggest Mr N was asked, or agreed to, disregard any warning provided by Revolut. On the balance of probabilities, if Revolut had provided him 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 broker before proceeding, as well as making further enquiries into cryptocurrency scams and the company with which he was dealing. I'm satisfied that a timely warning to Mr N from Revolut would very likely have caused him to do so, revealing the scam and preventing his subsequent losses.

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

In reaching my decision about what is fair and reasonable, I have taken into account that payment 2 would seem to have been made to an account in Mr N's own name (before going to accounts controlled by the fraudsters) and that, at the point the funds left his Revolut account, he hadn't experienced any financial loss. But as I've set out in some detail above, I think that Revolut still should have recognised that he might have been at risk of financial harm from fraud when he made that payment, 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 loss Mr N suffered from payment 2. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to his own account does not alter that fact and I think Revolut can fairly be held responsible for his 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 N 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 he could instead, or in addition, have sought to complain against those firms. But he's 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 his compensation in circumstances where: he 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 N's loss from payment 2 (subject to a deduction for his own contribution which I will consider below).

Should Mr N bear any responsibility for their losses?

There is a general principle that consumers must take responsibility for their decisions, and I am mindful of the law relating to contributory negligence and the impact a finding of contributory negligence may have to reduce the damages recoverable by a claimant in court proceedings.

I have duly considered whether Mr N should bear some responsibility by way of contributory negligence, and I'm satisfied he should in the circumstances of this case. I say this because

I consider there to have been enough warning signs that he was being scammed, which Mr N does not appear to have reasonably acknowledged or acted upon.

Mr N had been told that he could realise profits of 1% per day and with minimal risk, within a short space of time. I think the promise of a return of this magnitude and so soon after investing ought to have stood out to Mr N as being improbable, to the point of simply being too good to be true. As it should when Mr N saw the balance of his investment seemingly increase to in excess of £80,000. I can't see that Mr N questioned how such high levels of returns could be realised.

Alongside this, I've not seen that Mr N was provided with any documentation regarding his investment (other than when the scam came to light) or that he questioned why he should take a loan out to enable him to invest more money. I don't think a legitimate investment firm would recommend to its customers that they obtain credit in order to invest, or that they would ask for remote access, as happened here.

As a result, I'm satisfied Mr N should've had reasonable cause for concern, but it doesn't appear that he made adequate enquiries into the legitimacy of what he was being told. I might understand how in isolation any one of these things may not have prevented Mr N from proceeding. But when taken collectively I think there were sufficient red flags here that reasonably ought to have led Mr N to have acted far more cautiously than he did.

So, I think Mr N did have a role to play in what happened and I think that the amount Revolut should pay to him in compensation should fairly and reasonably be reduced to reflect that role. I think that a fair deduction is 50%.

Recovery

For completeness, I'll address recovery. After these payments were made, because they were debit card payments, the only potential avenue to recover them would have been through the chargeback scheme. However, Mr N didn't make the debit card payments to the scammer. Instead, he made them to a legitimate crypto exchange, which would have provided the services intended. So Revolut could only have brought chargeback claims against the crypto exchange (and not the scammers) but these wouldn't have succeeded given the circumstances. So I can't say Revolut unreasonably hindered recovery of the funds.

Putting things right

For the reasons explained, I uphold this complaint in part and now ask Revolut Ltd to:

- refund Mr N £3,221.31 (being 50% of the sum of the second and third payments).
- pay interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement (if Revolut Ltd deducts tax from this interest, it should provide Mr N with the appropriate tax deduction certificate).

My final decision

For the reasons given above my final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 21 March 2025.

Stephen Wise
Ombudsman