

## Complaint

Ms E is unhappy that Revolut Ltd didn't reimburse her after she fell victim to a scam.

## Background

In July 2021, Ms E fell victim to an investment scam. While researching investment opportunities online, she encountered a video on the subject of cryptocurrency investments. After watching the video, she completed an enquiry form linked to it. Soon after, Ms E was contacted by someone claiming to represent an investment firm. She didn't realise it at the time, but this call was from a fraudster.

She initially made a small investment of £200 via an account she holds with a different business. She subsequently transferred funds from her bank account with another bank (that I'll refer to as N) into her Revolut account. The fraudster persuaded her to invest in a specific "package" requiring an upfront payment of £55,000. The fraudster convinced Ms E to open accounts with third-party cryptocurrency platforms. Using her Revolut account, Ms E made the following payments to an account in her name:

- £10,000 on 24 July 2021
- £45,000 on 27 July 2021
- £25,000 on 2 August 2021

As I understand it, those funds were subsequently converted to cryptocurrency which was transferred into the control of the fraudsters. The first two payments listed above were the £55,000 investment she believed she was entering into. The third payment came about because the fraudsters told her a margin call required that she deposit further funds immediately or lose her entire investment.

The second payment to credit the Revolut account was carried out by Ms E visiting a branch of N. While there she appeared to have some concerns about what she was doing. She messaged the scammer, saying, *"I am worried again after speaking to the bank... I need to withdraw a small amount and make sure it hits my account before I commit to a large amount."* She also sent a screenshot of negative reviews about the investment company to the scammer, who dismissed them as being posted by competitors.

Later, the fraudster claimed another margin call required an additional £30,000. Ms E didn't have sufficient funds. The fraudsters encouraged her to take out a loan. She allowed the fraudsters to remotely access her computer and apply for a loan in her name, which was ultimately unsuccessful. At this point, Ms E realised she had fallen victim to a scam.

She told Revolut, but it didn't agree to refund her. It said that she'd been warned about the risks of making the payments. Ms E wasn't happy with the response from Revolut and so she referred the complaint to this service. It was looked at by an Investigator who upheld it. The Investigator believed Revolut should have been concerned that Ms E was transferring funds to a cryptocurrency platform, given the widely recognised risks posed by investment scams involving cryptocurrency. The Investigator noted that Revolut had blocked the first payment (though it was unclear why) and that Revolut should have contacted Ms E for more

details about the first payment. He concluded that such an intervention would have prevented Ms E from continuing with the payments. He also didn't think Ms E should bear partial responsibility for her losses due to contributory negligence.

Revolut disagreed with the Investigator's view. It said that Ms E had already questioned the legitimacy of the investment company. She'd expressed her doubts to the scammers and referred to negative information she'd found online. Despite these concerns, the fraudsters managed to persuade her that the negative reviews were simply from competitors. Revolut argued this demonstrated how firmly under the fraudsters' influence Ms E had become. It was therefore unlikely any intervention could succeed.

Furthermore, Revolut argued that N's decision to require Ms E to attend a branch for one of the payments showed that N had concerns about the transaction. Ms E, however, proceeded with the payment. Revolut suggested that, even if it had attempted to intervene, she would likely have continued with the payments regardless. Revolut argued that the bank's failed attempt to dissuade her shows how difficult it would have been for them to prevent her losses too.

Revolut did eventually offer to refund 50% of the money Ms E lost, but it didn't agree with the Investigator's recommendation that it refund her in full. As a result, the complaint has been passed to me to consider and come to a final decision.

## Findings

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 customer'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 Ms E modified the starting position described in *Philipp*, by expressly requiring Revolut to refuse or delay a payment "*if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks*".

So Revolut was required by the implied terms of its contract with Ms E and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately<sup>1</sup>. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in July 2021 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

In reaching the view that Revolut should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMIs like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>2</sup>
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments;
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with "*due skill, care and diligence*" (FCA Principle for Businesses 2), "*integrity*" (FCA Principle for Businesses 1) and a firm "*must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems*" (FCA Principle for Businesses 3)<sup>3</sup>.

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<sup>1</sup> The Payment Services Regulation 2017 Reg. 86 states that "the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account **by the end of the business day following the time of receipt of the payment order**" (emphasis added).

<sup>2</sup> For example, Revolut's website explains it launched an automated anti-fraud system in August 2018: [https://www.revolut.com/news/revolut\\_unveils\\_new\\_fleet\\_of\\_machine\\_learning\\_technology\\_that\\_has\\_seen\\_a\\_fourfold\\_reduction\\_in\\_card\\_fraud\\_and\\_had\\_offers\\_from\\_banks/](https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/)

<sup>3</sup> Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

- 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 document “*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 customers’ accounts and scrutinise transactions.
- The October 2017, BSI Code<sup>4</sup>, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer’s control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer’s own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in July 2021 that Revolut should:

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

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

consumers, when deciding whether to intervene.

Should Revolut have recognised that Ms E was at risk of financial harm from fraud?

I think Revolut ought to have been concerned by the risk posed by the first payment. Typically, it would be expected to consider the risk posed by individual payments by comparing them with the typical ones made from that customer's account. In this instance, Ms E's account was brand new – there was, therefore, no historical data available to serve as a basis of comparison.

Nonetheless, Revolut knew Ms E was making payments to two cryptocurrency exchanges. It's noteworthy that the reason Ms E gave for opening her Revolut account didn't suggest that she was using it to invest. Those factors, combined with the relatively high value of the payment, should have prompted Revolut to take some action in response.

What did Revolut do to warn Ms E?

I can see that Revolut did display two warnings to Ms E during the authorisation process for the first payment. When setting up a new payee, Revolut says Ms E would've seen the following warning:

*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'll never ask you to make a payment.*

It then blocked the attempted payment and displayed the following warning:

*Our systems have identified your transaction as highly suspicious. We declined it to protect you.*

*If you decide to make the payment again anyway, you can, and we won't decline it. As we have warned you this payment is highly suspicious and to not make the payment, if the person you pay turns out to be a fraudster, you may lose all of your money and never get it back.*

Unfortunately, I don't think either of these warnings was particularly helpful in the circumstances. They're written in general terms and neither explains what steps Ms E ought to take to protect herself. Any steps taken by Revolut needed to be proportionate to the risk presented by the payment and, given the risk factors outlined above, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Ms E's account. I think it should have done this by, for example, directing Ms N to its in-app chat to discuss the payment further.

If Revolut had done so, would that have prevented the losses suffered by Ms E?

I think it's more likely than not that Ms E would've responded to any queries posed by a Revolut employee openly and honestly. Revolut disagrees with that. It has said that she was given a cover story by the fraudsters and so, even if it had queried the payment with her, it's likely she'd have given misleading answers to its questions.

It's said this based on the information she shared when she reported the scam. However, I think Revolut has misinterpreted what she said. I've pasted an excerpt from those messages below:

*"[The fraudster] said I would be able to withdraw my profits – but on Monday 2<sup>nd</sup> August she said the market is unstable and I need to give more money otherwise I would lose the £55k I had invested .... She said to go to the bank again and she said they would ask questions and I must say I am thinking of investing it and not to mention her or their company or I would lose all my money."*

This only shows that she was told to withhold information from N when making the third payment. She's told us that she wasn't told to do this earlier and the other evidence supports that. For example, she's said that, when visiting the N branch, that she was asked whether she trusted who she was sending the funds to and what the purpose of the transfer was. I understand they also asked her whether she'd received any returns. She says she told them she had invested with this company before and was happy to proceed. This is supported by the messages she sent to the fraudster. She sent a text message to the fraudster saying that *"I need to withdraw a small amount and make sure it hits my account before I commit to a larger amount."* I think it's likely that the advice she was given in branch informed this message – i.e., it was suggested to her that, if she can withdraw money from her investment, it's more likely to be legitimate.

The evidence suggests that she spoke with staff at N when making payment 2 and was happy to tell them that she believed she was investing her money with a third-party business. This suggests that, if Revolut had queried payment 1 with her, she'd have responded to its questions openly and honestly.

Revolut has also said that N clearly had concerns about the payment and that was why she needed to visit branch. It has suggested that the fact that N was unable to dissuade her from making the payments or breaking the spell she was under means it's unlikely Revolut would've been able to succeed. In reality, Ms E visited the branch because she wanted to transfer a payment over £10,000 – this was her daily limit for transfers made online. She had initially asked N to make payments on consecutive days until she reached £55,000 – but then asked whether it would be possible to make one large payment. An employee of N told her the only way to do so would be to visit the branch.

From what she's told us, the interaction she had with N's staff was primarily administrative – she was asked some questions about the payee, but N's intervention appears to have been rather light touch. In other words, I'm not persuaded that the fact that N failed to prevent the payments from being made supports Revolut's argument that it would've been bound to fail if it had attempted to do so.

Revolut should, once it established why Ms E was making the payments, provided her with a very clear warning that explained that the features of her investment were consistent with a commonly occurring scam type – in particular, the request that she purchase cryptocurrency and transfer it into the control of the fraudsters and the presence of a trader or investment manager who would manage her funds and attempt to earn returns for her.

I think, on the balance of probabilities, that's likely to have caused Ms E to stop. The money she lost here represented her entire savings. I can see no reason why she would've continued to make the payment if she was presented with a warning of that nature. I'm satisfied that, had Revolut established the circumstances surrounding the first payment, as I think it ought to have done, and provided a clear warning, Ms N's loss from and including the first payment would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Ms E didn't actually experience any losses from her Revolut account. These payments were made to third-party businesses at which she held accounts in her name (although not entirely under her control).

But as I've set out above, I think that Revolut still should have recognised that Ms E might have been at risk of financial harm from fraud when she made the first payment and, in those circumstances, Revolut should have made further enquiries about that payment before processing it. If it had done that, I am satisfied it would have prevented the losses she suffered. The fact that the money used to fund the scam wasn't lost at the point it was transferred to her own account does not alter that fact and I think Revolut can fairly be held responsible for her 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 Ms E 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 she could instead, or in addition, have sought to complain against those firms. But she's not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Ms E'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 Ms E's loss from the first payment.

I've also considered whether it would be fair and reasonable for Ms E to bear some responsibility for her own losses. In assessing this point, I have considered both the law regarding contributory negligence and what would be fair and reasonable in the context of this specific complaint.

Legally, Ms E may be held partially responsible for her losses if she failed to take reasonable steps to protect herself, as judged by an objective standard – that of a reasonable person in her situation. Having said that, I'm still able to take into account her knowledge and experience. Furthermore, the law requires me to make a decision based on what is fair and reasonable in all the circumstances, which means I must consider the broader context surrounding her actions.

I do not find that Ms E was extremely careless. Based on her account, she was promised generous returns, but these were not so excessive that they would have immediately appeared too good to be true. It is also clear that she made considerable efforts to verify the legitimacy of the investment, though her lack of experience in this area limited her ability to perform more in-depth checks.

Additionally, I have taken into account Ms E's medical history, which Revolut is aware of. I will not detail this fully here, but I note that she has a long and complex history of mental health difficulties. According to her doctor, her anxiety can lead to her "*burying her head in the sand*", which has caused her challenges in other areas, such as managing unpaid parking fines.

At the time of making these payments, Ms E did appear to have contemplated the possibility that the arrangement may not have been legitimate. However, I believe her mental health difficulties significantly impaired her ability to properly evaluate the risks and respond appropriately. In light of these circumstances, it would not be fair or reasonable to hold Ms E partially responsible for the losses she suffered.

### **Final decision**

For the reasons I've set out above, I uphold this complaint.

If Ms E accepts my final decision, Revolut Ltd should refund the payments she made in connection with the scam. It should also add 8% simple interest per annum to those payments calculated to run from the date they left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 15 November 2024.

James Kimmitt  
**Ombudsman**