

The complaint

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

Mr B is being represented by a third party. To keep things simple, I will refer to Mr B 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 B was looking for an investment opportunity and while browsing social media found an advert promoting such an opportunity with a company, I will call X. Interested in the potential opportunity Mr B left his contact information via an online data capture form.

X then called Mr B and explained the investment opportunity in more detail. X appeared very knowledgeable and professional which Mr B tells us made him feel he could trust that X was an expert.

Mr B tells us he then looked up X online and was able to find a website that appeared genuine and professional with features Mr B had come to expect from other genuine sites.

Mr B started to invest under the guidance of X from an account he held elsewhere and appeared to have made a reasonable return. But X then explained to Mr B that a new cryptocurrency was launching and if he bought in early, he would be able to make even more profit.

Mr B again made a payment under X's guidance from another account he held elsewhere and appeared to double his investment amount in just a few days.

X then encouraged Mr B to invest more, and that he could capitalise on the opportunity. X persuaded Mr B to take out a loan and make payments from his Revolut account.

Mr B made the following payments from his Revolut account in relation to the scam:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	8 December 2022	Binance	Debit Card	£1,274
2	28 December 2022	Binance	Debit Card	£19,000

Mr B said he realised he had been scammed when he attempted to make a withdrawal from the investment and was unable to.

Our Investigator considered Mr B's complaint and thought it should be upheld in part. Mr B agreed but Revolut didn't. In summary Revolut said:

- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment (“APP”) fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law.
- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- Mr B was grossly negligent by having full trust in X despite being promised unrealistic returns. No investment is guaranteed. The PSR’s mandatory reimbursement scheme allow it to decline claims where a consumer has been grossly negligent, taking into account any warnings a firm has provided.

As an informal resolution could not be agreed this complaint has now 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 B 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 December 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 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.

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_further_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.

- 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 December 2022 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 December 2022, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr B has fallen victim to a cruel scam here, nor that he authorised the payments he made from his Revolut account.

Whilst I have set out in detail in this decision the circumstances which led Mr B 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 B might be the victim of a scam.

The first payment Mr B made from his Revolut account was not of such a high value that I think it should have caused Revolut to have concerns. But the second payment Mr B made in relation to the scam was for the much higher value of £19,000 and was being made to a well-known cryptocurrency exchange. Considering Revolut's knowledge of the increased risks associated with this type of payment at the time I think it should have had concerns that Mr B could have been at risk of financial harm when this payment was made, and it should have intervened.

What did Revolut do to warn Mr B?

Revolut has explained that as Mr B made payment 2 using his debit card, he was required to confirm it was him making the payment via 3DS secure. Essentially confirming he wanted to proceed with the payment using his device.

Other than this no intervention or warning took place.

What kind of warning should Revolut have provided?

Overall, as explained above, I'm satisfied that Revolut should have identified payment 2 as carrying a heightened risk of financial harm and should have taken additional steps before allowing it to debit Mr B's account.

Having thought carefully about the risk payment 2 presented, 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 Mr B's account. I think it should have done this by, for example, directing Mr B to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding payment 2, would the scam have come to light and Mr B's loss been prevented?

Had Mr B told Revolut that he was investing with X via a cryptocurrency exchange and had been promised too good to be true returns on that investment I think it would have immediately recognised that he was falling victim to a scam. It would have been able to provide a very clear warning and, given that Mr B had no desire to lose his money it's very likely that he would have stopped, not followed the fraudster's instructions and his loss would have been prevented.

So, I've considered whether Mr B would have revealed the truth behind the payment. Mr B says that he wasn't given a cover story and from the information available I can't see any evidence that he was. But I also accept that because there was no real scrutiny of the transactions by Revolut, this may not have been required.

I don't think I have enough to say that Mr B would not have been honest had Revolut questioned him about the payment he was making, or that he would have ignored a warning from Revolut that he could have been falling victim to a scam.

Ultimately, as Revolut didn't question the payments Mr B made, it can provide no compelling evidence that he would have misled it about the purpose of the payments or the surrounding circumstances.

So, Revolut should, once it had established why Mr B was making the payments, provided a very clear warning that explained Mr B was likely falling victim to a scam.

I think, on the balance of probabilities, that's likely to have caused Mr B to stop. He didn't want to lose his funds and I can see no reason for him to have continued to make the payment if he was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding payment 2, as I think it ought to have done, and provided a clear warning, Mr B's loss from payment 2 could have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr B purchased cryptocurrency from a cryptocurrency exchange 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 B might have been at risk of financial harm from fraud when he made payment 2, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses 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 B's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr B'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 B has not complained about all the financial businesses involved in the scam. 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 B could instead, or in addition, have sought to complain against those firms. But Mr B 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 B's compensation in circumstances where: he has not complained about all respondents from which he is entitled to recover his losses in full; has not complained against the other firms (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 B's loss from payment 2 (subject to a deduction for Mr B's own contribution which I will consider below).

Should Mr B bear any responsibility for his losses?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mr B should share blame for what happened.

Mr B started making payments to X having been promised unrealistic too good to be true returns and funded the investment having secured a loan from another provider giving a dishonest reason for the loan purpose. Mr B says he gave an incorrect reason for taking the loan to make sure it was granted.

Had Mr B been honest about the loan reason it is unlikely it would have been granted to him, and therefore would not have been lost to the scam. In addition to this if Mr B had taken more care as I think he should have when he was promised such high returns and sought advice or carried out further research, he could also have prevented his loss.

Could Revolut have done anything to recover Mr B's money?

The payments were made by debit card to a cryptocurrency provider in exchange for cryptocurrency. Mr B 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 there's no dispute that the cryptocurrency was provided to Mr B which was subsequently sent to the fraudsters.

Putting things right

To put things right I require Revolut Ltd to:

- Refund 50% of payment 2 that was made in relation to the scam.
- Add 8% simple interest to the amount it pays Mr B from the date of loss to the date the refund is paid (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 B to accept or reject my decision before 27 March 2025.

Terry Woodham
Ombudsman