

## **The complaint**

Mr A complains that Revolut Ltd hasn't refunded him after he fell victim to a scam.

## **What happened**

The background to this complaint is well known to all parties, so I'll only provide a summary of events here.

Mr A was contacted on WhatsApp by someone offering an employment opportunity. Mr A was interested and so responded. What he didn't realise at the time is that he'd been contacted by a scammer.

Mr A was told he could earn money by carrying out review tasks online. He was shown how the set up would work and how he'd earn money, receiving payment in cryptocurrency. He decided to take up the opportunity and set up an account on the scammer's website.

Mr A started completing the tasks he was given and could see his scam account was accumulating commission. He was then told his account had fallen into a 'premium balance' and that, to keep receiving tasks, payment of this fee would be necessary. It was also explained that he'd earn more commission per task. Mr A went on to pay £500 at the scammer's instruction, from an account held outside of Revolut. This was on 8 October 2023.

This 'premium balance' scenario occurred twice more. And both times Mr A agreed to pay the required sum to continue. He made another payment from one of his other accounts for £1,500. The payment that followed was sent from his Revolut account on 10 October 2023 and was for £3,445.46. Mr A had become panicked at this point as he was running out of money.

The payment from Mr A's Revolut account was what's known as a push-to-card payment, where funds are transferred directly from a customer's account into another person's using their card details. The transaction effected a peer-to-peer cryptocurrency purchase that did successfully complete.

When Mr A tried to make this payment Revolut presented a warning which identified it as bearing a scam risk. Revolut asked Mr A to confirm the purpose of the payment and he selected cryptocurrency. He was then able to complete the payment.

Mr A was told again that his scam account had fallen into a 'premium balance', this time with a requirement to pay £5,000. It was at this point Mr A realised he'd fallen victim to a scam, and he contacted Revolut to report what had happened.

Revolut attempted to recover the money but was unsuccessful in doing so. It went on to say it wouldn't reimburse Mr A's loss as he'd authorised the transaction and it had given warnings about scams at the time.

Mr A brought his complaint to our service as he was unhappy with Revolut's response. One of our investigator's considered the complaint and recommended it be upheld. In summary, she said:

- Revolut ought to have recognised there was an identifiable scam risk and provided a better warning than it did, particularly as it knew the payment purpose was cryptocurrency;
- A targeted and specific warning about job scams would have resonated with Mr A and he would more likely than not have stopped what he was doing, with the scam having been revealed;
- As Revolut had failed to protect Mr A from financial harm through fraud it ought to reimburse his loss;
- Mr A ought to bear some responsibility given he didn't act reasonably throughout. She said the supposed job opportunity didn't seem plausible and it appeared little was done to check the legitimacy of what was being offered. With that in mind she recommended Mr A be responsible for 50% of his loss.

Mr A accepted the investigator's recommendations. Revolut hasn't responded, despite having had two and a half months to do so. And so the complaint has been passed to me to issue 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 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 A 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 Mr A 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 October 2023 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 EMI's 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

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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/>

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 Code<sup>3</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).
- Since 31 July 2023, under the FCA’s Consumer Duty<sup>4</sup>, 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”*<sup>5</sup>.

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 October 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,

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

<sup>4</sup> 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.

<sup>5</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

which firms are generally more familiar with than the average customer;

- 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).

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

Revolut has presented no counter argument to that made by our investigator. And so I see no reason to depart from her findings.

It's evident that Revolut did identify the payment as a risk and asked Mr A for further information about it, by requiring him to select a payment purpose. Mr A went on to select cryptocurrency.

I've mentioned already about the increasing prevalence of scams involving cryptocurrency over recent years. And so I'm satisfied that once Revolut had this information it ought to have been more concerned about the payment being made and the risk of Mr A suffering financial harm through fraud..

*What did Revolut do to warn Mr A?*

Revolut did give a scam warning, though it was limited. It identified that the payment *might* be being made toward a scam and gave some general background to scams. It was after this that Revolut requested the payment purpose, and cryptocurrency was selected.

The warnings that followed were all related to cryptocurrency investment scams, warned about finding such opportunities on social media, and said not to give remote access to anyone.

*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.

Taking that into account, I think Revolut ought, in line with what I consider to have been good industry practice at the time, as well as what I consider to be fair and reasonable, when Mr A attempted to make the payment, to have gone beyond only asking about the purpose of the payment and to have pressed further as to the nature of the cryptocurrency purchase. That ought then to have led to the provision of a warning which covered the key scam features of the payment purpose selected.

In October 2023, I think that one of the payment purposes that Mr A could have selected should have covered the key features of job/task-based scams, given how common they were at the time.

The warning Revolut ought to have provided should have highlighted, in clear and understandable terms, the key features of job scams, for example referring to: contact out of the blue from an unknown party, the completion of tasks for money, a need to pay to receive

earnings, an escalation of fees due, payment in cryptocurrency, and a lack of employment contracts.

I recognise that a warning of that kind could not have covered off all the features of a job scam. But I think a warning covering the key features of scams affecting many customers, but not imposing a level of friction disproportionate to the risk the payment presented, would have been a proportionate and reasonable way for Revolut to have acted in October 2023 to minimise the risk of financial harm to Mr A.

*If Revolut had provided a warning of the type described, would that have prevented the losses Mr A suffered?*

I've seen nothing to indicate that Mr A wouldn't have responded accordingly to a tailored job scam warning. In saying that, I've taken account of the fact that Mr A did ask the scammer about the warning he *did* receive, and the scammer told him it was because the account and payee were new, and that such a statement was always made in similar circumstances. Whilst this demonstrates an element of coaching by the scammer, it's important to recognise that the key features of a job scam hadn't been explained to Mr A. It would have been for more challenging for those key features to be explained by the scammer. And I consider it unlikely Mr A would have even given them the opportunity, given the features would have matched his circumstances almost exactly.

It's also evident from Mr A's chat with the scammer that he'd become quite distressed by the point he was told he needed to pay the £3,445.56. He was running out of money and didn't really want to make the payment. He felt pressured to regain access to his supposed earnings.

I'm persuaded that Mr A would have recognised the common scam features that ought to have been explained to him. They would have resonated with him and, given he didn't really want to make the payment, wouldn't have proceeded. His loss would then have been prevented.

*Should Mr A bear any responsibility for their losses?*

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.

Our investigator found that Mr A ought to bear some responsibility for his loss. Mr A accepted that and I'm in agreement. Revolut hasn't responded to the investigator's findings, but it did of course believe Mr A ought to be responsible for his loss when it responded to his claim.

I'm satisfied then that there are no further points to make here, and Mr A will bear equal responsibility for his loss as Revolut.

*Recovery of funds*

I don't believe there was anything Revolut could have done to recover Mr A's funds. Whilst it is important that a firm like Revolut attempts to do so, it's the case here that Mr A had completed a successful peer-to-peer cryptocurrency purchase through making the payment. And he knew that was what he was doing. And so there would be no means of recovering that money.

**Putting things right**

On Mr A's acceptance, Revolut should:

- reimburse 50% of Mr A's loss (£1,722.73); *and*
- pay interest on that amount at 8% simple per year, calculated from the date of loss to the date of settlement.

**My final decision**

I uphold this complaint against Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 October 2024.

Ben Murray  
**Ombudsman**