

The complaint

Mr M complains that Revolut Ltd didn't do enough to protect him when he fell victim to an investment scam.

What happened

Mr M was cold called by an investment company who turned out to be a scam. He had to pay into the 'investment' through a cryptocurrency provider. He made an initial low value investment which he understood quickly grew in value, so he needed to pay in £9,995 as his profits were beyond the account level he held. Mr M paid in several large amounts to upgrade his account as he understood his profit continued to grow, but he realised he'd been scammed when he couldn't withdraw his funds.

Mr M complained to Revolut as it hadn't intervened on any of the payments he made. He said it should've warned him about these kind of scams and this would've prevented his losses. Revolut didn't uphold his complaint.

Mr M came to our service and our Investigator partially upheld his complaint. She thought Revolut ought to have intervened on the second payment Mr M made. But she also felt he should be held equally responsible for his losses. Mr M agreed with the outcome, but Revolut asked for an ombudsman to review the case.

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 consumer 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:

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/

- 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 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

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.

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

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;
- 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 M was at risk of financial harm from fraud?

As Revolut had identified, Mr M's account wasn't regularly used until the scam, with the first cryptocurrency merchant payment being the first card payment on the account. However, I don't think that Revolut would have had any reason to intervene on the first payment Mr M made. It was for £255, so while it identifiably went to a cryptocurrency merchant, I'm not satisfied this payment indicated a risk to Mr M from financial harm. But the next payment Mr M made was for £9,995 – a significant payment, especially considering the previously dormant nature of the account. And it went directly to the same cryptocurrency merchant.

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.

But by the end of 2022, 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.

So, taking into account all of the above, I am satisfied that by the end of 2022, when Mr M fell victim to this scam, Revolut ought fairly and reasonably to have recognised that there could be at an increased risk of fraud on this account. Mr M was using Revolut to purchase cryptocurrency and was sending a very large sum – considering he hadn't actively used this

account in some time. It should've considered there was a risk here, both whether it was genuinely Mr M sending this money and also a risk around the destination of the payment.

I recognise that Revolut needs to take an appropriate line between protecting against fraud and not unduly hindering legitimate transactions. But given what Revolut knew about the account usage and the destination of the second payment, I think that the circumstances should have led Revolut to consider that Mr M could be at heightened risk of financial harm from fraud. This was a much larger payment to a cryptocurrency merchant, following a recent smaller payment to the same merchant, on an account that had sat dormant for over two years.

What kind of warning should Revolut have provided? And if Revolut had provided this kind of warning, would that have prevented the losses Mr M suffered from the £9,995 payment?

In line with good industry practice and regulatory requirements, I consider that it is fair and reasonable to conclude that Revolut should have asked Mr M his purpose for making this payment and then provided a warning to him around this purpose. I accept that at the time Mr M made this payment, Revolut may not yet have had a cryptocurrency investment scam specific warning, but it ought to have had a warning on investment scams more generally as these were prevalent by this time.

I consider Mr M would've selected an option relating to investments if he was given one – either cryptocurrency investments if it was available, but if not, a general investment option. I haven't seen evidence he was coached by the scammer to mislead Revolut and when Mr M spoke to his bank about the money he was moving to Revolut he didn't mislead his bank, although I do note that he wasn't forthcoming with his bank. I say this because when questioned, he said the payment was for “*private purposes*”. But I think there's a difference between being forthcoming and being dishonest. And I've not seen anything to suggest he would've been dishonest. I'm not persuaded he would've selected the *wrong* option if asked his payment purpose by Revolut.

The scam Mr M fell victim to had all the common features of both a cryptocurrency and general investment scam at this time. He understood he was trading in stocks on the scam platform and he needed to move his money to a cryptocurrency provider to pay into the platform. He was cold-called by the broker; they used screen-sharing software; he'd been asked to pay in a small amount and then it had quickly grown; he was then being asked to pay in a much larger sum for what were incredibly high returns; and the broker was unregulated.

Had the warning Revolut provided Mr M covered some or all of the above common scam features, these would've resonated with Mr M and the situation he was in. Considering he was about to move a very large sum of money, I think Mr M would've taken note of the warning and done further research into the opportunity. Due to this and the content of the warning, I don't believe he would've reattempted the payment and I think the scam would've unravelled, preventing any further loss.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr M purchased cryptocurrency which credited his account with a cryptocurrency merchant, rather than making a payment directly to the fraudsters. So, he remained in control of the 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 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 payments were made to a cryptocurrency merchant and that the payments that funded the scam were made from another account at a regulated financial business. But as I've set out in some detail above, I think that Revolut still should have recognised that Mr M might have been at risk of financial harm from fraud when he made the second payment, 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 Mr M has suffered. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Mr M's 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.

Should Mr M bear any responsibility for his losses?

I've thought about whether Mr M should bear any responsibility for his loss in this scam. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint including what steps Mr M took before he invested as well as what he understood about the investment opportunity.

Mr M very quickly invested a large sum in this opportunity, going from sending £255 to begin investing to nearly £10,000 five days later. Considering he was cold-called and the amount he was investing, I would've expected Mr M to do some detailed research into the opportunity. Mr M says he couldn't have discovered the company wasn't genuine through reasonable due diligence. However, by completing an internet search for reviews – for example, he'd have found several concerning articles on the company he understood he was investing with. One in fact goes as far to say this is a scam.

As above, Mr M is questioned by his bank on one of the payments he moves to Revolut to fund this scam. Mr M isn't dishonest in the call, but he also isn't forthcoming. Mr M had the opportunity to discuss what he was doing with his bank, but he opted not to. Had he shared more details around why he was moving this money, and his intentions for it beyond his Revolut account, his bank would've had the opportunity to discuss the common scam tactics associated with cryptocurrency and investing.

I also consider the returns Mr M had been promised to be too good to be true. I think he should've had concerns about how much money it was suggested he was making in such a short space of time. And the package upgrades this then enabled him to buy. He understood he was both investing and upgrading his account with the funds sent, and so moving through higher and higher account levels due to his returns. He'd made more money than lower-level accounts could hold. But all this happened in under two weeks, and he upgraded his account two days in a row at one stage. Considering the situation Mr M has described here, it should've seemed unrealistic that someone could be that successful they would move through so many, if not all, the account levels in such a short space of time. Or that his investment was truly that profitable, that quickly.

So I've concluded, on balance, that it would be fair to reduce the amount Revolut pays Mr M because of his role in what happened. Weighing the fault that I've found on both sides, I think a fair deduction is 50%.

Putting things right

I direct Revolut Ltd to:

- Refund Mr M the payments he made due to this scam from the £9,995 payment on 5 December 2022 onwards, minus 50% for his contributory negligence
- Pay 8% simple interest per annum on the refunded amounts from the date of each payment until the date of settlement

My final decision

For the reasons set out above, I uphold in part this complaint and require Revolut Ltd to pay Mr M the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 February 2025.

Amy Osborne
Ombudsman