

## The complaint

Miss C complains that Revolut Ltd won't refund money she lost when she fell victim to a scam.

## What happened

Miss C fell victim to an investment scam, after being told about the opportunity by someone she met on an online dating platform. This person built up a relationship with Miss C over a few weeks, and then suggested he help her invest in foreign exchange. Miss C made some initial payments to invest, sending funds from her main bank account, to Revolut, and then on to buy cryptocurrency which she invested in the forex platform he had recommended. She thought she had made some profit, but was told she needed to pay taxes and fees to withdraw that profit. Unfortunately, and unknown to Miss C, the man she was dealing with was a scammer, there was no legitimate investment.

Miss C made the payments set out below. She has not claimed for payments 1, 2 and 3, but these payments do also appear to be part of this scam:

	Date	Amount
Payment 1	14/11/2023	£102.99
Payment 2	21/11/2023	£247.18
Payment 3	24/11/2023	£1,246.18
Payment 4	28/11/2023	£499.54
<i>Declined payment</i>	29/11/2023	£6,209.03
<i>Declined payment</i>	29/11/2023	£6,209.03
<i>Reverted payment</i>	29/11/2023	£6,208.11
<i>Reverted payment</i>	29/11/2023	£2,506.98
Payment 5	29/11/2023	£1,671.19
Payment 6	29/11/2023	£1,670.86
Payment 7	29/11/2023	£1,670.65
Payment 8	29/11/2023	£1,169.74
Payment 9	29/11/2023	£1,688.23
Payment 10	29/11/2023	£1,561.62

When Miss C realised she had been scammed she told Revolut what had happened, but it didn't consider it had any responsibility for her loss. Miss C was unhappy with Revolut's response, so she referred her complaint to our service.

Our Investigator upheld the complaint in part. They thought that Revolut ought to have questioned Miss C in more detail about the payment for £1,671.19 on 29 November 2023 (Payment 5 as defined in the table above), as the pattern of payments and attempted payments should have given Revolut cause for concern. The investigator thought that, had Revolut questioned her appropriately at that time, Miss C would have been honest about what the payments were for, and the scam would likely have been stopped if appropriate warnings had then been provided. So, the investigator said that Revolut should refund the

money Miss C had lost from this payment onwards, less a deduction of 50% in recognition of Miss C's own contributory negligence.

Revolut disagreed, it said it did not have a duty to prevent scams and that the payments had been to an account in Miss C's own name, so the loss did not sit with Revolut.

As no agreement could be reached, the matter has been escalated to me to determine.

### **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 Miss C 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 Miss C 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 November 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 control its affairs responsibly and effectively, with adequate risk management systems” (FCA Principle for Businesses 3)<sup>3</sup>.
- 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

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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/>

<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).

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>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).
- Since 31 July 2023, under the FCA's Consumer Duty<sup>5</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>6</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 November 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;
- 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.

#### What did Revolut do to protect Miss C, and what should it have done?

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

<sup>5</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>6</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

Miss C's Revolut account had been open for several years at the time of the scam, but had not been used for an extended period of time. So, there was a limited recent account history against which Revolut could compare new transactions. I therefore don't consider that the first few payments to the scam would have been of any particular concern to Revolut, they were for relatively small amounts and were spread out over a few days.

But by the time of Payment 5, I agree with our investigator that some intervention was warranted. This payment had been preceded by large, attempted payments, to the same payee associated with cryptocurrency, and some of those failed payments had been declined as being a high scam risk. On one of the declined payments Miss C was asked what she was making payments for, and she indicated it was for an investment, she was then shown some screens with information about investment scams.

While I think it was right for Revolut to have stepped in at this point, given the points set out above, to try to establish the circumstances surrounding this payment, I don't consider that it went far enough to uncover what Miss C was actually doing when Miss C then continued to make another payment to the same payee.

Given the pattern of payments, that they were going to a payee associated with cryptocurrency, and that Miss C had indicated the payments were for an investment, I don't consider that a written warning was proportional intervention at that stage, particularly given the limited information the warning Miss C received included.

What Revolut failed to do at the time of Payment 5, and what I think it should have done, is ask Miss C direct and open questions about what the payment was for and who she was paying.

Had Revolut done so, I am satisfied that Miss C would have been open and honest about what she was doing. I say this because I'm aware that Miss C spoke with another bank, about a payment she was making to Revolut, the same day as Payment 5, and she was completely open and honest in that call. She told her bank that she was making payments for taxes on earnings from investments. She took no steps during this call to conceal what she was doing, and I think it is likely she would have been similarly honest if Revolut had asked similar questions. And I think what Miss C would have likely told Revolut would have been a clear red flag that Miss C was at risk of financial harm. Specifically, she would have said she was trying to pay taxes to enable a withdrawal of profits from a cryptocurrency related investment, and that she had heard about this investment from her partner. With its awareness of both investment scams and romance scams, I think it would have been reasonable to expect Revolut to see serious red flags here, and for it to therefore question Miss C more deeply about the investment and her partner, it would then have been able to explain this risk to Miss C.

In deciding this I've also thought about whether any other financial business involved in the payments Miss C made might have provided warnings that she should have taken notice of. But I've listened to the call Miss C had with her other bank, and no clear warnings were given.

Overall, I think that a detailed, relevant, warning provided by Revolut would have given the perspective Miss C needed, and she would more likely than not have concluded that the scheme (and the man she was speaking to) was not genuine. In those circumstances I think she's likely to have decided not to go ahead with Payment 5.

So, in summary, I consider that if Revolut had intervened more appropriately at the time of Payment 5 then it could have prevented Miss C's loss from that point onwards.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Miss C transferred her funds to Revolut from her main bank account provider, before using the funds to buy cryptocurrency which was passed on to the scammer.

But as I've set out above, I think that Revolut still should have recognised that Miss C might have been at risk of financial harm from fraud when she made Payment 5, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Miss C suffered from that point onwards. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred out of Miss C's Revolut account does not alter that fact and I think Revolut can fairly be held responsible for Miss C'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 Miss C has only complained against Revolut. I accept that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Miss C could instead, or in addition, have sought to complain against those firms. But Miss C has 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 Miss C'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 Miss C's loss from Payment 5 onwards (subject to a deduction for Miss C's own contribution which I will consider below).

*Should Miss C bear any responsibility for her 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.

And, having thought carefully about this, I do think Miss C could have done more to protect herself from this scam. I think she ought reasonably to have had concerns about the legitimacy of the investment offered given that she had been corresponding with the individual who told her about it for only a short time and had never met him face-to-face. I also think the amounts she was being asked to pay in taxes, given her relatively small initial investment, and the purported very large profits she was told she had made, should have given Miss C pause for thought and so led to her looking more deeply into this investment. Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Revolut could have done anything to recover the payments Miss C made to the scam. But given that the payments were to buy cryptocurrency I don't consider that Revolut could have done anything to recover those funds once it had been advised of the scam.

### **Putting things right**

To resolve this complaint Revolut should:

- Refund to Miss C 50% of her loss from Payment 5 onwards (inclusive).
- Pay 8% interest on this refund from the date of each payment to the date of settlement.

### **My final decision**

I uphold this complaint in part. Revolut Ltd should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 May 2025.

Sophie Mitchell  
**Ombudsman**