

The complaint

Ms H complains that Revolut Ltd did not refund a series of payments she lost to a scam.

What happened

Ms H found an investment opportunity through social media. An individual contacted her and said they could help her invest in cryptocurrency. She spoke with the individual for many months and built up a rapport with them, and she joined a number of online webinars about the investment platform. After some time, she signed up to an investment platform I'll call 'N' for the purposes of this decision. She was told that N kept her capital safe, and she could double her money in as little as six months. She made the following payments from her Revolut account to a cryptocurrency wallet in her name before passing it onto the investment:

Date	Amount
02/09/2022	£10,000
02/09/2022	£15,000
04/09/2022	£10,000
09/09/2022	£20,000
23/09/2022	£22,000
30/09/2022	£17,000

Ms H says the funds came from the sale of her house, and she was trying to recoup earlier losses made when she had fallen victim to two previous scams as well as earn money while travelling. She could see that she was making returns on her platform with N but in early January 2023 she saw comments online of issues with investors being unable to withdraw their funds. She was told there had been an error with the withdrawal process but this would be fixed in February. However, after this time Ms H was still unable to withdraw her profits of over 100,00USDT. Eventually, she realised she had been the victim of a scam.

Ms H raised a scam claim with Revolut in September 2023 who issued a final response letter. In this, they felt that they had acted reasonably as there were no grounds to believe the transactions were suspicious compared to Ms H's genuine account activity. The complaint was referred to our service.

Our Investigator looked into it and felt the initial payment of £10,000 on 2 September 2022 should have triggered an intervention from Revolut due to its value in comparison to her previous account activity. And they felt that if Revolut had intervened, there were enough hallmarks of a scam that they could have revealed the scam and prevented further payments from being made. But they felt the redress should be reduced to 33% to account for Ms H's contribution to the loss as well as a third-party banks' liability.

Ms H accepted the outcome, but Revolut disagreed and did not agree the payments appeared unusual and instead felt they mirrored a genuine investment.

As an informal agreement could not be reached, the complaint has been passed to me for 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 Ms H 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 H 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 immediately¹. 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.

¹ 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).

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 September 2022 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;²
- 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)
- 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

² 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/>

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

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 September 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.

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

I've looked over Ms H's account statements and I've considered that she had made earlier payments to the same payee, a cryptocurrency wallet, however the majority of these were related to two earlier scams Ms H was the victim of. These appear to be separate scams, unrelated to this one.

Revolut has said the payments therefore looked like a genuine investment which Ms H was increasing her risk level on. However, I don't agree with this assessment. Ms H had made some payments to the payee in the six months prior to the scam, but these were lower value payments, the majority of which were below £1,000. There was also a gap of almost three months prior to the transactions complained about which was then followed by a significant jump in value with the initial payment of £10,000. I think the significant value of the payment, which was preceded by two large credits into the account, was suspicious enough to warrant

an intervention from Revolut. I think it posed a scam risk and that Revolut should reasonably have recognised Ms H was at risk of financial harm.

What did Revolut do to warn Ms H?

For the initial payment to the cryptocurrency wallet in November 2021, Revolut provided Ms H with a new payee warning that said:

“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 that fraudsters can impersonate others, and we will never ask you to make a payment”

While this warning does contain some information relevant to Ms H's circumstances, the warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case. No additional warning was provided for the later payments.

What kind of warning should Revolut have provided?

Due to the increasing value and frequency of payments, I think Revolut should have intervened prior to the payment of £10,000 being processed on 2 September 2022. And I think Revolut needed to establish the circumstances surrounding the payment before allowing it to debit the account. I therefore think it should have referred Ms H to the in-app chat for additional questions about the payment.

If Revolut had provided a warning of the type described, would that have prevented the losses Ms H suffered from the first payment?

I've considered whether a conversation with Ms H at that time about the payment would reasonably have uncovered the scam. I think it would have been reasonable for Revolut to have asked what the payment was for, how she came across the investment and if she was being guided or helped by someone else and what her expected returns were.

I think it's more likely Ms H would have explained she was making investments and she was being helped by an individual on social media who had introduced her to the platform. And I think she would have explained that she was trading in cryptocurrency but her capital was safe and she was expecting to double her capital in six months. On balance, I think this would have been enough of an indication of a scam that Revolut could have provided a tailored investment scam warning and uncovered the scam.

I can see that the third-party bank Ms H used to fund the Revolut account did contact Ms H about one of the transfers into her Revolut account for £500. Following an intervention, they had no cause for concern when she confirmed the payment was going to an account in her name. As they did not provide any warnings or carry out a more detailed intervention, I don't think the scam would have been revealed to Ms H at that time.

I've looked over the chat between Ms H and the individual who introduced her to the investment. This was an individual Ms H found on social media who was actively looking to introduce individuals to the investment and who earned commission doing so. They helped her with the investment platform and told her they had earned significant amounts of money themselves using the same platform, so I can think they added an air of legitimacy to the investment for Ms H. From what I have seen, they did not instruct Ms H to mislead Revolut about the investment.

There were some aspects of the scam that made it relatively sophisticated, for example Ms H was invited to a number of webinars about the platform and there appeared to be a number of other individuals on social media who were investing in the same platform. However, I think there were enough aspects of the scam that were typical features of an investment scam that Revolut could reasonably have uncovered if they'd had a conversation with Ms H.

Having reviewed the conversation between Ms H and the introducer, I can see she was told the investment was secure from hackers, that only 20 to 30% of the pool would be traded at a time so the worst-case scenario is she would not get returns for one week but her capital would be safe. She was told it was not possible to get negative returns, that her funds would never be tied up and that the introducer had made money every week for four years. On balance, I think the promise of never making a loss and of returns being possible every single week was unrealistic and that a clear warning from Revolut could have revealed this to Ms H.

With all of this in mind, I think an intervention from Revolut on the £10,000 payment would likely have uncovered the scam at that point and prevented further payments from being made.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Ms H purchased cryptocurrency which credited an e-wallet held in her own name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her 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 another account at regulated financial businesses.

But as I've set out above, I think that Revolut still should have recognised that Ms H might have been at risk of financial harm from fraud when she made the £10,000 payment, 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 Ms H 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 Ms H's own account does not alter that fact and I think Revolut can fairly be held responsible for Ms H'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.

Revolut has addressed an Administrative Court judgment, which was referred to in a decision on a separate complaint. As I have not referred to or relied on that judgment in reaching my conclusion in relation to the losses for which I consider it fair and reasonable to hold Revolut responsible, I do not intend to comment on it.

I note that Revolut says that it has not asked me to analyse how damages would be

apportioned in a hypothetical civil action but, rather, it is asking me to consider all of the facts of the case before me when considering what is fair and reasonable, including the role of all the other financial institutions involved. I have done so in this case, and found the third-party bank intervened when Ms H made a transfer of £500 but had no cause for concern when she confirmed the payment was going to an account in her name. As they did not provide any warnings or carry out a more detailed intervention, I don't think the scam would have been revealed to Ms H at that time.

A complaint was also raised against the third-party bank, and it was decided that they should have done more to intervene on these payments and if they had done, the scam would most likely have been revealed. I have taken this into account when considered the appropriate redress in this case.

Should Ms H 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.

Having done so, I agree a reduction in the reimbursement is fair in the circumstances of this case. On one hand, I can see Ms H had been speaking with the introducer for many months and had built up a rapport with them, and it appeared there was a community of individuals all investing in the same platform, so I can understand why this was convincing scam. However, Ms H says she was told her returns would double in six months, that her funds would not be tied up so she could withdraw them at any time and that she would not lose the initial capital she invested, and I think these points should have been seen as too good to be true.

While Ms H had been the victim of two separate scams in the year prior to this scam, I don't think this meant she was more susceptible to scams in general. The initial scam was an investment scam, but this was centred around bots and algorithms trading on her behalf, whereas this time there were supposedly actual traders trading on her behalf. And the second scam was a job scam, which has very different characteristics. And from looking at the chat with the introducer, it does appear she was attempting to be more cautious this time and asked if her capital would be safe. However, I still think there were enough red flags that could have indicated the opportunity was too good to be true.

I therefore think a reduction in the redress is reasonable to account for Ms H's contribution to the loss incurred. As the third-party bank who Ms H used to credit her Revolut account for this scam has also been found liable, all three parties will therefore share liability for the loss, with Revolut applying a reduction of 33% accounting for Ms H's contribution to the loss.

Putting things right

Revolut should therefore reimburse Ms H with 33% of the loss incurred from the payment of £10,000 on 2 September onwards.

It should add 8% simple interest to this from the date of the transactions to the date of reimbursement.

If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms H how much it's taken off. It should also give Ms H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Ms H's complaint in part. Revolut Ltd should now pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 14 February 2025.

Rebecca Norris
Ombudsman