

## The complaint

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

## What happened

Miss E found an investment opportunity online. She agreed to sign up, as she was told her capital would be protected under a 'stop loss' scheme, and began investing from an external, third-party account in her name. She then opened a Revolut account and began making payments from there. She made the following payments from her Revolut account:

Date	Amount	Payment type
26/10/2021	£1,000	Faster Payment
27/10/2021	£44,000	Faster Payment
20/01/2022	£737.55	Credit in from wallet
26/01/2022	£737	Faster Payment
10/02/2022	£40	Faster Payment
10/02/2022	£50	Faster Payment

Miss E says she was forced to take out a 'credit agreement' with the company, which set out a minimum amount she had to fund the investment with. When she ran out of funds to invest, she was told she could not withdraw any profits until she met the minimum deposit amount. Eventually, when the communication slowed down, Miss E realised she had been the victim of an investment scam. She says that the situation caused her distress, which meant it took some time to raise a scam claim with her account providers.

Revolut did not uphold the complaint so Miss E referred her complaint to our service. Our Investigator felt the payment of £44,000 was unusual due to its significant value and that it warranted intervention from Revolut prior to it being processed. They felt it was more likely the scam would have been revealed had a meaningful intervention occurred. But they thought Miss E should bear some responsibility for the loss, so recommended a reduction in the redress of 50%.

Miss E agreed to the outcome, but Revolut did not. In summary, they said they were merely an intermediary in the payment as Miss E controlled the beneficiary account. I reviewed the case and expanded on my reasoning for partially upholding the complaint. Because of this, I issued a provisional decision that read as follows:

*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 E 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 E 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 2021 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>*

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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).

- *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 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).*
- *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*

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

*(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 October 2021 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 Miss E was at risk of financial harm from fraud?*

*Based on what I've seen so far, I think the payment of £44,000 was sufficiently unusual to warrant additional checks from Revolut. This was only the second payment Miss E had made towards cryptocurrency and the value of the payments rose significantly in one day. While Miss E's account had only recently been opened, so there was not much genuine account activity for Revolute to compare the scam payments to, I think the sudden value increase in the payments was suspicious enough to expect Revolut to refer the payment for additional checks.*

*What did Revolut do to warn Miss E and what should they have done?*

*Revolut provided a generic warning to Miss E when she made the payment of £44,000 asking if she trusted the payee. While the warning did contain some information relevant to Mr B's circumstances, it wasn't particularly prominently displayed, required no interaction or real engagement from Miss E and, in my view, lacks sufficient context to have been impactful in the circumstances of this case. I don't consider it to be a proportionate response to the risk that the payment presented.*

*Having thought carefully about the risk the £44,000 payment presented, I think a proportionate response would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Miss E's account. I think it should have done this by, for example, directing Miss E to its in-app chat to discuss the payment further.*

*If Revolut had provided a warning of the type described, would that have prevented the losses Miss E suffered from the £44,000 payment?*

*The payment Miss E was attempting was of a significant value, £44,000. So, I think it presented a high risk to Revolut and therefore they should have asked probing questions*

*about the purpose of the payment and brought to life any scam warnings that were relevant.*

*From what I have seen of the communications between Miss E and the scammer she was not given a cover story or coached to lie to Revolut, so on balance I think it's more likely she would have been honest about the payment purpose. And I can see that when she spoke with a third-party bank about a payment going to the same scam, she told them that she was investing in cryptocurrency. So, I think this reinforces that she also would have been open with Revolut about the payment purpose.*

*I can see that with the third party bank, Miss E indicated she had found the investment via a friend who had been investing for some time, which was not the correct version of events. When we asked Miss E about this, she confirmed that she was embarrassed to admit that she found the investment on social media, but there was no intention to purposefully conceal information from her bank.*

*I've considered this carefully, and whether I think it was possible for Revolut to meaningfully reveal the scam to Miss E at the time. On balance, based on what I've seen so far, I think they could have done. As mentioned previously, I think it's more likely Miss E would have been honest about the purpose of the payment, that she was investing in cryptocurrency. And, as this was a newly opened account, making payments to cryptocurrency with one of the earliest payments being for a significant sum of £44,000, I think Revolut should reasonably have provided a detailed scam warning for crypto investment scams and their typical features. In doing so, I think it's more likely Miss E would have recognised the key features of the scam she had fallen victim to; communicating over messaging apps, significant sums invested with unrealistic returns, little to no withdrawals and them being advertised by celebrities on social media.*

*With this in mind, I think it's more likely Miss E would have recognised she was the victim of a scam and stopped any further payments from being made. So, I think Revolut missed an opportunity to meaningfully reveal the scam in the circumstances.*

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

*In reaching my decision about what is fair and reasonable, I have taken into account that Miss E 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.*

*But as I've set out above, I think that Revolut still should have recognised that Miss E might have been at risk of financial harm from fraud when she made the £44,000 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 Miss E 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 Miss E's own account does not alter that fact and I think Revolut can fairly be held responsible for her 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.*

*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 E's loss from the payment of £44,000 (subject to a deduction for Miss E's own contribution which I will consider below).*

*Should Miss E 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.*

*In doing so, I've considered that Miss E was promised significant returns and had been told that her capital would be protected due to a 'stop loss'. But I think Miss E should reasonably have seen this as a red flag that something was not right with the investment, as it is not usual to guarantee no losses on an investment. In addition, Miss E says she checked the investment company online, but it does not appear that any reviews were available when she began investing with third-party banks. Considering the significant sums involved, I would have expected Miss E to have some reassurance the company she was dealing with was legitimate.*

*Based on what I've seen so far, I think it would be reasonable to reduce the refund by 50%, to account for Miss E's contribution to the losses she incurred.*

Miss E responded to my provisional findings and accepted my findings. Revolut did not provide any additional evidence or comments for me to consider.

### **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.

As neither party has disagreed with my findings or provided any additional comments or evidence for me to consider, I see no reason to deviate from the findings set out in my provisional decision.

So, for the reasons outlined above, I uphold Miss E's complaint in part. Revolut should therefore reimburse Miss E from the payment of £44,000 onwards. It is able to deduct the credit of £737.55 from this total, and reduce the refund by 50% to account for Miss E's contribution to the loss. It should also add 8% simple interest from the date of the transactions to the date of settlement.

### **My final decision**

I uphold Miss E's 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 E to accept or reject my decision before 20 November 2024.

Rebecca Norris

**Ombudsman**