

Complaint

Mr B is unhappy that Revolut Ltd didn't refund his losses after he told it he'd fallen victim to an investment scam.

Background

In 2022, Mr B began exploring cryptocurrency investment opportunities and came across an online advertisement for a company, referred to here as M. The advertisement appeared to be endorsed by well-known public figures. Mr B visited M's website, where he left his name and contact details in an enquiry form. Mr B described the website as generally credible and professional in appearance.

Unfortunately, M was not a genuine investment company but a scam. Shortly after providing his details, Mr B was contacted by someone claiming to be a representative of M. They explained how the company would help manage Mr B's investment on his behalf. He was advised to make an initial payment of £250, which he did using an account with a different bank.

According to Mr M, the scammer appeared knowledgeable about finance and trading and provided reassurances about the investment process. They persuaded Mr B to download remote access software to guide him through the process of creating an e-wallet with a third party cryptocurrency platform. Subsequently, Mr B used his Revolut account to make the following payments:

1	18 November 2022	£2,163.10
2	18 November 2022	£2,801.88
3	7 December 2022	£2,677.74
4	7 December 2022	£2,183.39
5	7 December 2022	£2,281.23
6	7 December 2022	£2,785.88
7	8 December 2022	£3,192.69
8	8 December 2022	£2,785.88

The first two payments were faster payments to another account in Mr B's name. The remainder were card payments to a third-party cryptocurrency exchange. All of the funds he deposited were into accounts in his name. They were then converted into cryptocurrency and transferred to an e-wallet controlled by the fraudster. Mr B did this in the belief that the company would manage this asset and earn a return on his behalf.

After realising he had been scammed, Mr B contacted Revolut to report the fraud. Revolut

declined to refund him. It suggested that he should have conducted more thorough research before proceeding with the investment. Mr B wasn't happy with that and so he referred his complaint to this service.

An Investigator reviewed the case and partially upheld the complaint. They concluded that Revolut should have identified a potential scam by the time of the fifth payment and intervened. They were persuaded that, had Revolut acted at that stage, it would have prevented the subsequent payments from being made. However, the Investigator also considered it fair and reasonable to hold Mr B partially responsible for his own losses by way of contributory negligence.

Revolut disagreed with the Investigator's opinion, and the complaint has now been referred to me to make a final decision.

Findings

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 customer 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 customer's instructions where it reasonably believed the payment instruction was the result of authorised push payment (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 B 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."*

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 must also 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 undertaken 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 undertaken additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMIs 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:

- 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 *"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

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/

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.

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 customers' 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 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.

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 that 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 undertaken additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and

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

- 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 B was at risk of financial harm from fraud?

The Investigator concluded that Revolut should have had concerns by the time Mr B made payment 5, and I agree with that conclusion. While I acknowledge that Revolut faced challenges in identifying fraud risk in this case—since Mr B had opened a new account at the fraudsters' request, leaving no historic account data to provide a basis for comparison—the pattern of activity by the time of payment 5 should have been a cause for concern. Mr B had transferred over £7,000 within less than an hour.

I can see that Revolut did provide a warning when Mr B made the initial faster payments. Before setting up a new payee for these transactions, Mr B saw a warning on the Revolut platform stating:

"Do you know and trust this payee? If you're unsure, don't pay them as we may not be able to get your money back. Remember, fraudsters can impersonate others, and we will never ask you to make a payment."

He was then provided with general information about the prevalence of fraud and asked to specify the purpose of the payment. The following warning was then displayed:

"You're at risk of losing money. This payment is suspicious, only proceed if you're sure it isn't a scam."

The subsequent payments were made by card and, from the evidence that's been shared with me, no warnings were displayed. I don't think it should've processed payment 5 without taking steps to protect Mr B from the associated fraud risk.

What kind of warning should Revolut have provided?

I've considered what a proportionate response to that risk would've been. In doing so, I've taken into account that many payments that looked very similar to this one would have been 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.

Revolut should have provided a warning about the risks of cryptocurrency scams, especially since these scams became widespread by the end of 2022. I understand that it would be challenging to create a warning that covers every type of scam without losing its effectiveness. However, I believe the warning should have focused on the main risks and characteristics of the most common scams, particularly cryptocurrency investment scams. This warning should have clearly explained the typical signs of these scams, such as advertisements on social media featuring public figures, the presence of an 'account manager' or 'broker', the use of remote access software, and the promise of quick returns on a small initial deposit. While such a warning couldn't cover every possible scenario, it would

have been a reasonable step for Revolut to take in order to reduce the risk of financial loss for Mr B.

If Revolut had provided a warning of the type described, would that have prevented the losses consumer suffered from payment 5?

I have carefully considered whether a specific warning about the main features of cryptocurrency investment scams could have helped prevent further losses in this situation. I believe it likely would have. There were several signs of typical cryptocurrency scams in Mr B's case, such as discovering the investment through an advertisement featuring a well-known public figure, receiving help from a broker, and being asked to download remote access software to assist with the process of setting up an account.

If Revolut had given Mr B a strong warning detailing the most common features of cryptocurrency investment scams and how to protect himself from them, I think it would have made an impact. He might have paused to investigate the broker more thoroughly before moving forward and could have looked into cryptocurrency scams and whether the broker was regulated in the UK or elsewhere. On the balance of probabilities, I think it's more likely than not that a timely warning from Revolut would have likely led him to take those actions which would've uncovered the scam and prevented further losses.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr B's losses didn't take place on his Revolut account. His funds left Revolut and were transferred into a different account in his name. There were necessary steps that had to subsequently take place for the money to be directed into the hands of the fraudster.

But as I've set out in some detail above, I think that Revolut still should have recognised that he might have been at risk of financial harm from fraud when he made payment 5. In those circumstances, it should have provided him with an appropriate warning. If it had taken those steps, I am satisfied it would have prevented the losses consumer 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 B'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.

I've also considered that Mr B has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and he could instead, or in addition, have sought to complain against those firms. But he has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr B'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 Mr B's loss from payment 5 onwards (subject to a deduction for his own contribution which I will consider below).

Should Mr B bear any responsibility for his losses?

I've also considered whether Mr B should fairly and reasonably bear some responsibility for his own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances.

Having done so, I do think it's fair and reasonable for him to be considered partially responsible for his own losses here. Mr B has retained very little evidence of the communications that took place between him and the fraudster – so I don't know for sure what he was told about how the investment would work or what returns he could expect to enjoy. It's a commonly occurring feature of scams like this one that victims are promised unrealistically generous returns. I don't know for sure if that's what happened here.

However, I've looked at the data for his initial investment which appears to show that, at one point, he was earning returns of around 13% per day. I think it ought to have occurred to him that such returns might be too good to be true. In view of that, I think he should have proceeded only with great caution. If this had prompted him to carry out further checks, he might have found that there were multiple reviews of this broker online that suggested it was fraudulent. For those reasons, I think it's fair and reasonable for a 50% deduction to be made from the redress that is payable to Mr B.

Final decision

For the reasons I've set out above, I uphold this complaint in part.

If Mr B accepts my final decision, Revolut Ltd needs to refund 50% of the payments he made in connection with the scam from payment 5 onwards. It also needs to add 8% simple interest per annum to those sums calculated to run from the date they left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 January 2025.

James Kimmitt
Ombudsman