

The complaint

Mr H complains that Revolut Ltd ('Revolut') won't refund the money he lost when he fell victim to a scam.

What happened

Mr H says that in early May 2023 he saw an advert on social media about investing with a company I'll call O in this decision. The advert said that a known businessman and investor had created a new AI program that would choose the best investments. Mr H says that he was interested and did some research before completing an enquiry form. He then received a message from a representative of O who asked to speak to Mr H to discuss the investment.

Mr H was advised that O would be investing in cryptocurrency and that he needed a wallet to do so. Initially Mr H invested £200 from an account with another provider and was able to see on a trading platform he was given access to that the investment was doing well. As a result, Mr H decided to invest more. O's representative advised Mr H to open an account with Revolut because he said it would be easier to send funds. On 24 May 2023 Mr H invested £1,000 from his newly opened Revolut account.

Mr H suggested that he withdraw some funds to prove to his wife that O was legitimate, as she had expressed concerns. O's representative told Mr H that as he hadn't indicated that he had any financial difficulties he had put Mr H's funds into long-term investments. He suggested to Mr H that he withdraw a smaller amount like £100 but said it would have a big impact on profits. Mr H decided not to withdraw at that stage and later invested a further £3,000.

On 5 June O's representative advised Mr H that he had found a buyer for his coins and the following day said the deal had been completed. As part of the process to credit Mr H's wallet he was told to expect a call from 'Blockchain' to verify the transaction. When Mr H received the call, he was told that the transaction had been flagged for money laundering reasons and he needed to credit his cryptocurrency account with £6,000 to show proof of funds. Mr H said he didn't have this amount but sent £2,000 while he tried to find the rest.

From 9 June 2023 Mr H expressed further concerns in his messages with the scammer. He said something was telling him he was being scammed and was concerned about a wallet address O's representative sent him in a screenshot and the fact the 'Blockchain' agent had called him 25 times. Mr H asked the representative of O multiple questions and then requested that he send a selfie to Mr H. Soon after, Mr H told O's representative that a good friend had looked into O and said it was a scam. He didn't receive a reply.

I have set out in the table below the payments Mr H made from his Revolut account on the instructions of the scammer. All payments were to a cryptocurrency exchange.

Transaction	Date	Amount	Method
1	24/05/23	£1,000	Card
2	02/06/23	£3,000	Card

3	06/06/23	£2,000	Card
	Total	£6,000	

Mr H reported his loss to Revolut via its chat on 3 October 2023.

Revolut didn't agree to reimburse Mr H's loss. It said it had improved its security measures to prevent scams from taking place and provided customers with preventative information. Revolut also said that it wasn't directly involved in the fraud transactions to scammers as payments were made to a legitimate third party (the cryptocurrency exchange) so it has no responsibility for Mr H's loss. And as the card payments were authenticated via the 3DS process, there were no valid chargeback rights under the relevant scheme rules.

Our investigation so far

The investigator who considered this complaint recommended that Revolut reimburse 50% of the second and third payments. This was because when Mr H made the second payment Revolut should have recognised that payments for cryptocurrency carry an elevated risk of fraud and provided a written warning tailored to cryptocurrency investment scams. The investigator said that such a warning would have impacted Mr H's decision making and prevented the loss. But the investigator felt that Mr H should share responsibility for the loss. Finally, the investigator said a chargeback wouldn't be successful as Mr H paid a legitimate cryptocurrency provider.

Revolut didn't agree with the investigator's findings, so his complaint has been passed to me to decide. In summary, Revolut said:

- The fact payments were made to a legitimate cryptocurrency exchange wasn't a reason to trigger an intervention from Revolut.
- As the payments were self to self, there is no Authorised Push Payment (APP) fraud as defined in DISP rules. The transfers also don't meet the Contingent Reimbursement Model Code (CRM Code) definition of APP fraud or the definition in the PSR mandatory reimbursement scheme. So, for this service to effectively apply the reimbursement rules to such self to self transactions executed by Revolut is an error of law. Alternatively, this service has irrationally failed to consider that the transactions are self to self payments.
- Overall, it is irrational and illogical of this service to hold Revolut responsible in these circumstances when there are other financial institutions in the payment chain that have comparatively greater data on a customer than Revolut.

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 Mr H 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 late 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.

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/

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 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 issuers from declining particular payment instructions from a customer, based on a

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”

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 that when the payments were made 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 Mr H was at risk of financial harm from fraud?

It isn't in dispute that Mr H has fallen victim to a cruel scam here, nor that he authorised the payments he made to his cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

Whilst I have set out in this decision the circumstances which led Mr H to make the payments using his Revolut account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr H might be the victim of a scam.

I'm aware that cryptocurrency exchanges generally stipulate that the card used to purchase cryptocurrency at its exchange must be held in the name of the account holder, as must the account used to receive cash payments from the exchange. Revolut would likely have been aware of this fact too. So, it could have reasonably assumed that all payments would be credited to a cryptocurrency wallet held in Mr H's name.

By May/June 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. 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.

By the end of 2022, however, 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. And by May/June 2023, when these payments took place, further restrictions were in place. This left a smaller number of payment service providers, including

Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr H made in May/June 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

To be clear, I'm not suggesting as Revolut argues that, as a general principle, Revolut should have more concern about payments being made to a customer's own account than those which are being made to third party payees. As I've set out in some detail above, it is the specific risk associated with cryptocurrency in May/June 2023 that, in some circumstances, should have caused Revolut to consider transactions to cryptocurrency providers as carrying an increased risk of fraud and the associated harm.

In those circumstances, as a matter of what I consider to have been fair and reasonable, good practice and to comply with regulatory requirements, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments. And, as I have explained, Revolut was also required by the terms of its contract to refuse or delay payments where regulatory requirements meant it needed to carry out further checks.

I've gone onto consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr H might be at a heightened risk of fraud.

Mr H opened an account with Revolut on 24 May 2023, just before he started to make the scam payments. So I recognise that initially Revolut had no previous data to understand Mr H's normal account activity. Bearing this in mind, as well as the relatively low value of the first payment, I'm not persuaded that Revolut ought reasonably to have had any concerns about it. Many Revolut customers use their accounts to buy cryptocurrency legitimately and Revolut needs to strike a balance between protecting its customers and minimising disruption to legitimate payment journeys.

When Mr H made the second payment, I consider Revolut ought to have recognised that it carried a heightened risk and taken additional steps before processing it. This was because it was a higher value transaction to a cryptocurrency exchange from a recently opened account.

What did Revolut do to warn Mr H?

Revolut didn't provide any warnings or intervene when the payments were made.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be 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.

When Mr H attempted to make the second payment (£3,000), I think Revolut ought fairly and reasonably to have recognised there was a heightened possibility that the transaction was linked to a scam. In line with the good industry practice that I've set out above, I think a proportionate response to that risk would have been for Revolut to have provided a written warning tailored to cryptocurrency investment scams.

I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value.

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr H by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr H suffered from payment two on 2 June 2023?

In the particular circumstances of this case, I'm persuaded that it's more likely than not a written warning tailored to cryptocurrency scams would have prevented Mr H's further loss.

I've carefully considered the messages Mr H exchanged with the scammers. These show that Mr H (or his wife) had concerns about the investment. On 29 May 2023 Mr H said in a message to the scammer that he had put in a request to withdraw some funds as his wife wanted to see how the withdrawal process worked before investing more. Mr H also said he had friends who were considering investing, but they said the same thing as his wife about withdrawals. So I think a warning would have resonated with him and reinforced his developing concerns.

There were other red flags that I think would have made Mr H pause and take the steps he took later which led to him realising he was the victim of a scam. He had been asked to install a screen sharing app, was told he could double his money in a short timeframe, had been unable to withdraw any profits and found out about the opportunity through social media. So I think that if Revolut had provided a written warning which set out the essential features of a cryptocurrency investment scam, including some of the features I have set out, Mr H would have realised O wasn't offering a legitimate investment opportunity.

Ultimately, I don't consider Mr H would have gone ahead with the payments two and three if Revolut had provided a warning tailored to cryptocurrency investment scams.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut wasn't the original source of the funds for the money Mr H lost to the scam. Mr H had moved the money from other banks to his Revolut account, before sending the funds on to a cryptocurrency wallet.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr H 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 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 Mr H's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr 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.

I've also considered that Mr H 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 Mr H could instead, or in addition, have sought to complain against those firms. But Mr H has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

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

I'm also aware that the Payment Service Regulator's ("PSR") mandatory reimbursement scheme does not require Revolut to reimburse Mr H.

The PSR's mandatory reimbursement scheme is not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR has not made it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Revolut should not compensate Mr H in circumstances when it failed to act fairly and reasonably, as I have found was the case here. Indeed, the PSR has recently reminded firms that fraud victims have a right to make complaints and refer them to the Financial Ombudsman Service that exists separately from the reimbursement rights and that APP scam victims will still be able to bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules).

I do not consider it to be relevant that the circumstances here do not fall under the specific definition of an APP scam set out in the CRM Code and DISP rules. Those definitions define the scope of the CRM Code and eligibility of payers to complain about a payee's PSP respectively. They do not preclude me from considering whether Revolut failed to act fairly

and reasonably when it made payment two without asking Mr H questions to understand the reason for the payment or providing any warnings. So, I'm satisfied Revolut should fairly and reasonably have made further enquiries before processing any further payments. If it had, it is more likely than not that the scam would have been exposed and Mr H would not have lost any more money. In those circumstances I am satisfied it is fair to hold Revolut responsible for some of Mr H's loss.

Should Mr H bear any responsibility for his loss?

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.

I recognise that there were relatively sophisticated aspects to this scam, including a platform that Mr H had access to. But on balance, I consider that by the time Mr H made the second and third payments a 50% deduction is fair and reasonable in all the circumstances of this case.

Before he made the second payment Mr H asked the scammer how much he'd have in his account after a month, based on the "5.4k that's already in the account". The response was 25 to 30k. I'm uncertain what currency Mr H and the scammer were referring to, but the percentage rate of return was huge and not believable. Mr H says he looked at O's website and social media site, but he hasn't suggested that he checked reviews. There were negative reviews relating to O at the time Mr H invested.

And, as I have discussed above, Mr H had concerns before he made the second and third payments which he shared with the scammer. I'm not persuaded the responses Mr H received ought reasonably to have reassured him that the investment was legitimate. The scammer advised Mr H that the available margin to withdraw was \$100 but didn't explain why and said Mr H had made a long term investment, although he'd previously said Mr H could make profits in short timescales. He also said he was offended by Mr H's request to withdraw.

Overall, I consider it fair to reduce the amount Revolut pays Mr H to reflect the role he played in what happened.

My final decision

I uphold this complaint and require Revolut Ltd to:

- Pay Mr H £2,500
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 November 2024.

Jay Hadfield
Ombudsman