

The complaint

Mr P complains that Revolut Ltd did not refund a series of transactions he lost to a scam.

What happened

Mr P found an advert for an investment opportunity online. He checked the website and it looked professional, there was a forum with articles and discussions about how to invest. Mr P signed up and made an initial investment of just £500 with a separate bank account he held. When this did well, he signed an agreement with the company to invest £5,000 on 12 September 2023 and went on to invest a further £5,00 on 18 September.

Following this, he got busy with work and went on holiday, but eventually he looked to withdraw his returns. Upon requesting this, he was told he had to pay a fee of £6,578.40, which he did. When he still did not receive his returns, he realised he had been the victim of a scam. He made the following card payments from his Revolut account:

- 12.09.2023 - 2,500.00 GBP
- 12.09.2023 - 2,500.00 GBP
- 18.09.2023 - 2,500.00 GBP
- 18.09.2023 - 2,500.00 GBP
- 06.11.2023 - 2,500.00 GBP
- 06.11.2023 - 2,500.00 GBP
- 06.11.2023 - 1 578.40 GBP

Mr P raised a scam claim with Revolut who explained they had no grounds to raise a chargeback claim against the merchants as the funds were genuinely used to purchase cryptocurrency, meaning the merchants provide the goods or service requested. And Mr P authorised the payments himself, so there was no ground for a fraud chargeback claim. In addition, Revolut did not agree they had acted unfairly in the circumstances when they processed the payments.

Mr P referred the complaint to our service and our Investigator looked into it. They felt the second payment warranted intervention as it was the second payment to a known crypto exchange in quick succession, so a crypto investment scam warning should have been provided. On balance they thought this would have revealed the scam to Mr P and prevented further payments from being made. But they felt Mr P should share liability for the loss so recommended a 50% reimbursement from payment 2 onwards, plus 8% simple interest.

Mr P agreed with the reimbursement, but Revolut did not. They highlighted they were only an intermediary in the payment journey, and they think it went onto another account in Mr P's control, so they did not think they should be liable for the loss.

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 the consumer 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*".

In this respect, section 20 of the terms and conditions said:

"20. When we will refuse or delay a payment

We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

- *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 the consumer and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory

requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in September 2023 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But 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 September 2023 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 do 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.

For example, it is my understanding that in September 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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 Code², 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).

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

- Since 31 July 2023, under the FCA's Consumer Duty³, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *"consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers"*⁴.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ 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. So it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

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 August 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;

³ Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

- 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.

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 September 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Mr P was at risk of financial harm from fraud?

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

I'm aware that cryptocurrency exchanges like the ones Mr P paid 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 the payments in question would be credited to a cryptocurrency wallet held in Mr P's name.

By September 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 September 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 P made in September 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 (under the Consumer Duty or otherwise), 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 September 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 (including the Consumer Duty), 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.

Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact most of the payments in this case were going to an account held in Mr P's own name should have led Revolut to believe there wasn't a risk of fraud.

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

Mr P opened the Revolut account in mid-August, around one month prior to the transactions. So, there was not much genuine account activity for Revolut to compare the scam payments to. I think the first payment, whilst identifiably going to a known crypto exchange, was not such a high value that I think it warranted intervention from Revolut. However, I can see Mr P then made a second payment, to another crypto exchange, just a few minutes after the first that was also for £2,500. This brought the total sent to crypto exchanges in just a few minutes to £5,000. And I think Revolut could have seen this as unusual. The overall value, pattern and pace of the payments should have led Revolut to consider that Mr P was at heightened risk of financial harm from fraud.

In line with good industry practice and regulatory requirements (in particular the Consumer Duty), I am satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

To be clear, I do not suggest that Revolut should provide a warning for every payment made to cryptocurrency. Instead, as I've explained, I think it was a combination of the characteristics of this payment (combined with those which came before it, and the fact the payment went to a cryptocurrency provider) which ought to have prompted a warning.

Revolut argues that it is unlike high street banks in that it provides cryptocurrency services in addition to its electronic money services. It says that asking it to 'throttle' or apply significant friction to cryptocurrency transactions made through third-party cryptocurrency platforms might amount to anti-competitive behaviour by restricting the choice of its customers to use competitors. As I have explained, I do not suggest that Revolut should apply significant friction to every payment its customers make to cryptocurrency providers.

However, for the reasons I've set out above I'm satisfied that by September 2023 Revolut should have recognised at a general level that its customers could be at increased risk of fraud when using its services to purchase cryptocurrency and, therefore, it should have taken appropriate measures to counter that risk to help protect its customers from financial harm from fraud.

Such proportionate measures would not ultimately prevent consumers from making payments for legitimate purposes.

What did Revolut do to warn Mr P and what kind of warning should they have provided?

Revolut did not provide any specific warnings for any of the payments involved in the scam and they've said this is because they did not treat them as potentially fraudulent or out of character.

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.

Taking that into account, I think Revolut ought, when Mr P attempted to make second Payment, knowing (or strongly suspecting) that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022.

I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. I think it 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 online portals 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 P 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 P suffered from the second payment?

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. Mr P found the investment opportunity online, used an online portal to trade and was told to download Anydesk to facilitate the opening of accounts. I therefore think there were enough hallmarks of common cryptocurrency scams that the warning would have resonated with Mr P.

Mr P has said he was not given a cover story by the scammers if he was questioned about the payments, but he was told Revolut would not ask about the payments. I can see that the third-party bank that he sent the payments to Revolut from did stop two payments to ask some further questions about them. When asked what the payments were for, Mr P said he was just moving his money to a different account for a possible purchase in the future. So, I

think it could be argued he withheld information from the third-party bank about the payment. But I don't think this therefore means a tailored cryptocurrency investment scam warning would not have broken the spell of the scam.

On balance, I think a tailored warning would have made Mr P pause and consider the payments further, and carry out more research about the company he was investing in. I can see there was a number of negative reviews at the time from individuals who had lost money to the company. And I think a stark warning about the use of Anydesk in these kinds of scams would have strongly resonated with Mr P in the circumstances and would most likely have revealed the scam and prevented further losses.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr P purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of her money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr P might have been at risk of financial harm from fraud when they 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 P 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 P'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 P 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 P could instead, or in addition, have sought to complain against those firms. But Mr P 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 P'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 consumer's loss from the second Payment (subject to a deduction for Mr P's own contribution which I will consider below).

Should Mr P bear any responsibility for his losses?

Mr P has already accepted that there should be a deduction to account for his contribution to the loss he incurred. On balance, I agree that a reduction in the redress of 50% would be fair in the circumstances. I say this because there were negative reviews available online about the company Mr P signed up to invest with, so there was information available to him that he could have accessed to protect himself against this scam.

In addition, the agreement Mr P signed with the company said his investment would be insured by them, which is not a typical feature of investments. And I note Mr P thought he had almost tripled his investment within two months. While I accept this was after the second payment, I think this indicates the level of returns he was expecting to make, which appear to be unrealistic.

Having considered all of this carefully, I agree that a reduction of the redress of 50% would be fair in the circumstances.

Putting things right

Revolut should reimburse Mr P from the second payment onwards, and can reduce this redress by 50%. I calculate this to be £7,039.20.

Revolut should also add 8% simple interest from the date of the transactions to the date of settlement.

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

My final decision

I uphold Mr P's complaint in part. Revolut Ltd should put things right by paying the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 November 2024.

Rebecca Norris
Ombudsman