

## The complaint

Mrs U complains that Revolut Ltd (Revolut) is refusing to refund her the amount she lost as the result of a scam.

Mrs U is being represented by a third party. To keep things simple, I will refer to Mrs U throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs U found an advertisement for a cryptocurrency investment company on social media; I will call that company X. Interested in the potential investment opportunity Mrs U clicked on the link which sent her to a professional and legitimate looking website.

Mrs U then completed an online data capture form on X's website and received a call from X the following day. X explained that Mrs U would have to provide proof of her identity and prove she had sufficient funds available to trade with X. X pushed Mrs U towards getting a loan explaining it would be an easy process.

Believing she had found a genuine and lucrative investment opportunity Mrs U provided the information X had asked for and used loans to fund the investment.

As part of the investment process Mrs U was also required to download remote access software so that X could teach her how to invest and navigate its platform.

Mrs U has explained that having made multiple payments X started to give reasons why she would have to invest more and pushed her to make further payments. It was at this point that Mrs U realised she had fallen victim to a scam and refused to make any more payments.

Mrs U made the following payments in relation to the scam from her Revolut account:

Payment	Date	Payee	Payment Method	Amount
1	12 October 2022	Klon Odeme K/cgs-apps	Debit Card	£131.66
2	15 October 2022	Wallbitex Exchange	Debit Card	£999.26
3	20 October 2022	Binance	Debit Card	£5,000
4	20 October 2022	Binance	Debit Card	£5,000
5	20 October 2022	Binance	Debit Card	£5,000
6	20 October 2022	Binance	Debit Card	£5,000
7	20 October 2022	Binance	Debit Card	£450
8	21 October 2022	Binance	Debit Card	£5,000
9	21 October 2022	Binance	Debit Card	£5,000
10	21 October 2022	Binance	Debit Card	£250

Our Investigator considered Mrs U's complaint and thought it should be upheld in part. Revolut disagreed, in summary it said:

- "Self to self" transfers also do not meet the definition of APP fraud in the Code [DS1(2)] or the mandatory APP reimbursement scheme [PS23/3]. It is for this reason that neither the Code nor the mandatory reimbursement rules apply to "self-to-self" transactions [See the Code, DS1(2)(a); and DISP 2.7]. This is not accidental; the PSR has, under PS23/2, expressly identified and excluded "self to self" transfers from the mandatory APP reimbursement scheme to be implemented next year.
- For the FOS to effectively apply the reimbursement rules to self-to-self transactions executed by Revolut is an error of law.
- It is irrational (and illogical) to hold Revolut liable for customer losses in circumstances where Revolut is merely an intermediate link, and there are typically other authorised banks and other financial institutions in the payment chain that have comparatively greater data on the customer than Revolut, but which the FOS has not held responsible in the same way as Revolut.

As an informal resolution could not be reached, this complaint has been passed to me to decide.

### **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 Mrs U 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 regulators' 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 October 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;<sup>1</sup>
- 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)<sup>2</sup>.
- 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

---

<sup>1</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\\_further\\_reduction\\_in\\_card\\_fraud\\_and\\_had\\_offers\\_from\\_banks/](https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_further_reduction_in_card_fraud_and_had_offers_from_banks/)

<sup>2</sup> 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

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 customers’ 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 (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.

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 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;

---

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

- 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 October 2022, Revolut should in any event have taken these steps.

*Should Revolut have recognised that Mrs U was at risk of financial harm from fraud?*

It isn't in dispute that Mrs U has fallen victim to a cruel scam here, nor that she authorised the payments she made via her debit card to a cryptocurrency exchange (*from where that cryptocurrency was subsequently transferred to the scammer*).

Whilst I have set out in detail in this decision the circumstances which led Mrs U to make the payments using her 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 Mrs U might be the victim of a scam.

The first two payments Mrs U made in relation to the scam were not so significant in value that I would have expected then to have caused Revolut concern. Although Mrs U didn't frequently use her account several payments were made into her account before payment 3 was made for a much larger value of £5,000 to a known cryptocurrency exchange. I think Revolut should have had concerns when payment 3 was made and it should have intervened.

*What did Revolut do to warn Mrs U?*

Revolut has explained that all of the payments Mrs U made were authenticated via 3DS secure which shows it was Mrs U that made the payments, but no further interventions were provided.

*What kind of warning should Revolut have provided? And If Revolut had provided a warning of the type described, would that have prevented the losses Mrs U suffered from payment 3?*

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 primary duty to make payments promptly. Given the risk associated with payment 3 and the time at which the payment was made by Mrs U I think a proportionate warning would have been for Revolut to have provided a general warning that broadly covered general scam risks.

Given the scam Mrs U was falling victim to had aspects very common to many scams, such as the use of remote access software and advertisements on social media, I think it's most likely a warning such as the one outlined above would likely have raised red flags with Mrs U and I don't have enough to say Mrs U would not have taken notice of the warning and stopped making further payments.

So, had Revolut intervened in the way I said above that it should, I think it's likely it would have prevented Mrs U's loss from payment 3 onwards.

*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 Mrs U purchased cryptocurrency which credited an e-wallet held in her own name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.

I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mrs U might have been at risk of financial harm from fraud when she made payment 3, and in those circumstances it should have intervened.

If it had intervened, I am satisfied it would have prevented the losses Mrs U suffered. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred from Revolut does not alter that fact and I think Revolut can fairly be held responsible for Mrs U'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 Mrs U 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 Mrs U could instead, or in addition, have sought to complain against those firms. But Mrs U has not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs U's compensation in circumstances where she has only complained about one respondent from which she is entitled to recover her 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 Mrs U's loss from payment 3 (subject to a deduction for Mrs U's own contribution which I will consider below).

*Should Mrs U bear any responsibility for her losses?*

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mrs U should share blame for what happened. Mrs U had found an advertisement online via social media and started making large payments to that company without carrying out any research.

X also told Mrs U that she could only invest if she could show she had substantial funds available for which loans were taken out to fund.

I think the above should have caused Mrs U to have concerns and she should have taken more care. Had Mrs U taken more care she could have sought advice before making the payments and been able to have prevented her loss.

### **Putting things right**

To put things right Revolut Ltd should:

- Refund 50% of the payments Mrs U made in relation to the scam from payment 3 onwards.
- Pay 8% simple interest per year on the amount it pays Mrs U from the date of loss to the date the payment is made (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 7 February 2025.

Terry Woodham  
**Ombudsman**