

The complaint

Ms S complains that Revolut Ltd hasn't protected her from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Ms S has explained that from November 2022 to March 2023 she made numerous payments totalling over £48,000 from her Revolut account for cryptocurrency to fund what she thought was a legitimate investment.

Ms S subsequently realised she'd been scammed and got in touch with Revolut. Ultimately, Revolut didn't reimburse Ms S's lost funds, and Ms S referred her complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a 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.

Having done so, I've reached materially the same conclusions as our Investigator did – I've decided to uphold Ms S's complaint in part. I'll explain why.

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 Ms S 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.

In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 November 2022 to March 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 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.

For example, it is my understanding that in November 2022 to March 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated

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/

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)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

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”

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 November 2022 to March 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;
- 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 Ms S was at risk of financial harm from fraud, and if so what kind of warning should Revolut have provided?

I agree with what our Investigator concluded about this. Ms S opened her Revolut account in November 2022, and I don't think any of her payments in November and December 2022 – for the amounts they were for, to whom they were destined, and how they were spaced – were sufficiently suspicious such that I'd reasonably expect Revolut to have intervened in them before they were sent (and bearing in mind, on opening her account with Revolut, Ms S stated one of the purposes of the account was crypto).

However, I understand Ms S then on 19 January 2023 instructed a payment of £13,500, at which point Revolut appears to have rightly recognised Ms S was at heightened risk of financial harm from fraud. I say this because Revolut intervened at this stage. Before allowing this payment to be sent, Revolut asked Ms S for the purpose of the payment. Revolut has provided information showing Ms S answered this question by choosing the option "Transfer to a 'Safe Account'". I understand Revolut would then, consequently, have shown Ms S, in-app, a more granular set of warnings focused on safe account scams. Ms S was then able to continue with the payment.

I've thought carefully and I don't think Revolut's intervention went far enough at this stage. This payment instruction on 19 January 2023 was for a substantial amount. The payment went through, then was returned back, and Ms S then instructed essentially the same payment (again for £13,500). These two payments and Ms S payments in general weren't

made as a result of a safe account scam (but instead a cryptocurrency investment scam) but Revolut didn't know this at the time. And I'm satisfied that to properly protect Ms S from the risk of financial harm from fraud, a proportionate response from Revolut at this point – given the size of the payment and the risk it presented – would have been to direct Ms S to its in-app chat to discuss the payment further, to ascertain appropriate context and provide more impactful warnings appropriate to how Ms S responded.

If Revolut had intervened appropriately as I've described, would this most likely have prevented the losses Ms S suffered from this point onwards?

As I've said, I think an appropriate intervention would have been for Revolut to have directed Ms S to its in-app chat, where I would reasonably expect it to have appropriately questioned Ms S about the payment she was making, who and what it was for, including the full reasons and context behind it.

I've thought about how Ms S most likely would have responded to such an appropriate intervention from Revolut. And I note, as already stated, that in response to Revolut's automated question about the purpose of her payment Ms S selected "Transfer to 'Safe Account'". It seems there would have been a more appropriate option of "cryptocurrency" available for Ms S to answer with. But I think it's unlikely Ms S chose "Transfer to 'Safe Account'" in an attempt to mislead Revolut. I think Ms S most likely just answered the automated question in a way that made sense to her at the time, as she was transferring money to her own crypto account, which she thought at the time was "safe". So I don't think this means Ms S wouldn't have been open and upfront with Revolut in an appropriately conducted in-app chat. And Ms S prior answer of "Transfer to 'Safe Account'" already ought to have put Revolut on high alert.

I've read the messages exchanged between Ms S and the fraudsters. I'm not persuaded from these messages that Ms S would, at this point where I think Revolut should have intervened like this, have been so under the spell of the scam or the scammers that she wouldn't have been upfront with Revolut or open to taking on board warnings about the likelihood she was being scammed. I also cannot see any evidence Ms S was provided with warnings by any other payment institution from which the funds used for the scam appear to have originated.

So, in this case, I think Ms S most likely would have been open and upfront with Revolut. Such that Revolut probably would have learnt that Ms S was making her payments for cryptocurrency for an 'investment opportunity'. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Ms S's payments – such as finding the investment through an advertisement seemingly being promoted by a well known public figure, being assisted by a 'broker', being asked to download remote access software so they could help with the 'investments', potential good returns from a small initial deposit; "fees" becoming payable (or so the scammers say) before withdrawals could be received, and withdrawals then not materialising or being for smaller amounts than really wanted. So I think not only would Revolut's appropriate warnings have resonated with Ms S, but Revolut ought then to have realised the chances that Ms S was being scammed were very high indeed, such that it's warnings ought to have been robust.

In circumstances like this, I need to make up my mind on a balance of probabilities, and I think it's fair to say that had this happened as I think it should have, it's most likely that such an impactful warning about cryptocurrency investment scams and information about how she could protect herself from the risk of fraud, would have resonated with Ms S. She could have paused and looked more closely into the 'broker' or 'platform' before proceeding further, spoken to family and friends in more depth about things, as well as making further enquiries into cryptocurrency scams and whether or not the broker was regulated in the UK or abroad.

And I'm satisfied that a timely and appropriately impactful warning to Ms S from Revolut would most likely have caused her to take steps that would then have prevented her further losses to this scam.

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

In reaching my decision about what is fair and reasonable, I have taken into account that the funds that Ms S lost from her Revolut account originated from her account with a third-party bank "Bank N".

But as I've set out in some detail above, I think that Revolut still should have recognised that Ms S might have been at risk of financial harm from fraud when she made the payment of £13,500 on 19 January 2023, 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 Ms S suffered from that point onwards. The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Ms S own crypto account does not alter that fact and I think Revolut can fairly be held responsible for Ms S'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 Ms S 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 Ms S could instead, or in addition, have sought to complain against those firms. But Ms S 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 Ms S'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 Ms S's loss incurred from 19 January 2023 onwards (subject to a deduction for Ms S's own contribution which I will consider below).

Should Ms S bear any responsibility for her losses?

I've thought about whether Ms S should bear any responsibility for her losses, which from the period from 19 January 2023 onwards, amount to £41,676. In doing so, I've considered what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I agree with our Investigator's conclusions about this. Scams like this can be very convincing where the victim isn't familiar with their common features and red flags and how they can then seem legitimate even when they're not. And I haven't seen anything that makes me think, at least at the start of the scam up until 6 March 2023, that Ms S was so careless that it would be fair to say compensation for that period should be reduced due to contributory negligence. Instead, it appears Ms S was tricked by clever and resourceful scammers which most likely wouldn't have happened from 19 January 2023 onwards had Revolut intervened

appropriately as I think it should have. So I think Ms S's compensation for that period should not be reduced and Revolut should pay Ms S an amount of £29,086 to cover the full extent of the payments she lost from then up until 5 March 2023.

However, I also agree with our Investigator, and for the same reasons, that it seems Ms S was starting to have doubts such that I can't fairly say she was as careful with her payments from 6 March 2023 onwards as she reasonably ought to have been. I agree with our Investigator's recommendation that it's fair Ms S therefore shares equal responsibility with Revolut for the loss of her payments from 6 March 2023 onwards. The payments Ms S lost from 6 March 2023 onwards amount to £12,590, so Revolut should pay Ms S compensation for this period of 6 March 2023 onwards of £6,295 (which is 50% of £12,590). This means I'm satisfied Revolut should therefore pay Ms S a total of £35,381 (£29,086 plus £6,295) to reflect the loss of payments to a scam that I think Revolut reasonably ought to have prevented if it had acted fairly and reasonably.

Recovery of funds

For completeness I've considered whether Revolut unreasonably failed to recover Ms S's payments after they were made. But in circumstances where the payments were made to a crypto account in Ms S's own name, and then sent onto the scammers from there, before Ms S notified Revolut that she'd been scammed, I can't say Revolut unreasonably missed an opportunity to recover the funds.

Interest

I consider 8% simple interest per year fairly reflects the fact Ms S has been deprived of this money. So Revolut should also pay Ms S interest on the £35,381 from the date of the loss to the date of settlement calculated at this rate.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Revolut Ltd to pay Ms S £35,381 plus interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement. If Revolut deducts tax from this interest, it should provide Ms S with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 9 June 2025.

Neil Bridge
Ombudsman