

## The complaint

Mr V complains that Revolut Ltd (Revolut) is refusing to refund him the amount he lost as the result of a scam.

Mr V is being represented by a third party. To keep things simple, I will refer to Mr V 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, Mr V received a message via a well-known messaging application that appeared to be from a recruiter. I will call this company "X". Mr V says he searched the company online and it appeared to be legitimate.

Mr V expressed his interest in the role and after it being explained to him in more detailed his details was passed to another company I will call "Y".

Y again appeared to be legitimate when Mr V carried out an online search. Y gave Mr V further details of the role and provided a link to its website that looked professional.

As everything appeared to be legitimate Mr V decided to take the role. Mr V's account was credited with \$50 and he had to complete 40 tasks which should have cost \$100 to access, meaning he had to top up an additional \$50. Having completed the tasks he received what appeared to be a Commission payment. Mr V was able to make a small withdrawal that gave him confidence Y was legitimate.

Mr V continue to make payments as instructed by Y and happy with the profit he had made decided to make a withdrawal. Y gave Mr V multiple reasons why a withdrawal could not be made and Mr V realised he had fallen victim to a scam.

Mr V made the following payments in relation to the scam from his Revolut account:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	19 December 2022	Binance	Debit Card	£5,000.00
2	19 December 2022	Binance	Debit Card	£5,000.00
3	19 December 2022	Binance	Debit Card	£5,000.00
4	20 December 2022	Binance	Debit Card	£5,000.00
5	20 December 2022	Binance	Debit Card	£5,000.00
6	20 December 2022	Binance	Debit Card	£5,000.00
	1 January 2023	Skrill	Credit	£809.31cr

Our Investigator considered Mr V's complaint and thought it should be upheld in part. Revolut didn't agree in summary it said:

- Departures from the law must be acknowledged and explained.

- Revolut does not owe a duty to prevent fraud or scams.
- The reimbursement code (CRM) does not generally apply.
- The FOS appears to have decided as a matter of policy, that Revolut should be left “holding the baby” because, subsequent to the self-to-self transfer involving a Revolut account, customers have transferred funds to their own account with a third party.
- There is no rational explanation to hold Revolut responsible for Mr V’s loss.
- Mr V was grossly negligent having not gone through a standard recruitment process or acknowledged a scam warning on the official recruiter’s website.

As an outcome could not be agreed 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 Mr V 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 December 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 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

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<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.

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 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 December 2022 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or 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

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

that were in place in December 2022, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr V has fallen victim to a cruel scam here, nor that he authorised the payments he made in relation to the scam.

Whilst I have set out in detail in this decision the circumstances which led Mr V 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 V might be the victim of a scam.

Mr V was making large payments to a well-known cryptocurrency exchange. This type of payment came with increased risks, and it wasn't usual for Mr V to make multiple large payments like these on the same day. So, I think it could be argued that Revolut should have intervened when Mr V was making payments 1 and 2.

By the time Mr V made payment 3 he was making the third payment the same day of £5,000 to the same payee, bringing the total amount to £15,000 in a single day. I think this should have caused Revolut to have further concerns and it should have intervened further.

*What did Revolut do to warn Mr V?*

Mr V made the disputed payments via his debit card. Revolut has explained that other than Mr V having to confirm he was making the payments himself via 3DS secure no intervention took place when the payments were made.

*What kind of warning should Revolut have provided?*

When payments 1 and 2 were made I think an appropriate intervention would have been for Revolut to have provided a warning that covered general scam risks. But given Mr V was experiencing a job scam I wouldn't expect this to have been covered in the warning as this type of scam was not as common at the time.

When Mr V made payment 3 I think a proportionate intervention would have been for it to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr V's account. I think it should have done this by, for example, directing Mr V to its in-app chat to discuss the payment further.

*If Revolut had attempted to establish the circumstances surrounding payment 3, would the scam have come to light and Mr V's loss been prevented?*

Had Mr V told Revolut that he was making payments in relation to a job role via a cryptocurrency exchange, it would have immediately recognised that he was falling victim to a scam. It would have been able to provide a very clear warning and, given

that Mr V had no desire to lose his money, it's very likely that he would have stopped, not followed the fraudster's instructions and his loss would have been prevented.

So, I've considered whether Mr V would have revealed the true background to the payments he was making. I've not seen any evidence that Mr V was given a cover story to tell Revolut, but I also accept that because there was no real scrutiny of the transactions by Revolut, this may not have been required.

Ultimately, as Revolut didn't question the payments Mr V made, it can provide no compelling evidence that he would have misled it about the purpose of the payments or the surrounding circumstances.

So, Revolut should, once it had established why Mr V was making the payments, provided a very clear warning that explained, as a minimum, that it was very unlikely that a genuine employer would ask Mr V to make payments via a cryptocurrency exchange.

I think, on the balance of probabilities, that's likely to have caused Mr V to stop. He didn't want to lose his money, and I can see no reason for him to have continued to make the payment if he was presented with a warning of this nature.

I'm satisfied that had Revolut established the circumstances surrounding payment 3, as I think it ought to have done, and provided a clear warning, Mr V's loss from and including payment 3 would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr V purchased cryptocurrency, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his 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.

In reaching my decision, I have taken into account that the payments were made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from other accounts at regulated financial businesses.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr V might have been at risk of financial harm from fraud when he made payment 3, 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 V 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 V's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr V'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 V 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 V could instead, or in addition, have sought to complain against those firms. But Mr V has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr V'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 V's loss from payment 3 (subject to a deduction for Mr V's own contribution which I will consider below).

#### *Should Mr V bear any responsibility for his 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).

I've thought about whether Mr V should bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint including taking into account Mr V's own actions and responsibility for the losses he has suffered.

I recognise that there were relatively sophisticated aspects to this scam, not least an apparently credible and professional looking platform and what appeared to be legitimate looking tasks associated with a job role.

But in the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mr V should share blame for what happened. I say this because while Mr V tells us he carried out an online search on X and Y before committing to the large payments he was directed to a different website to the genuine one that existed for Y. Had Mr V investigated this in more detail and considered the genuine business website, it is likely he would have uncovered the scam himself.

Mr V also received a credit from his apparent new employer before carrying out any work and had to make substantial payments before being able to withdraw substantial amounts. This is not common of any genuine employer.

So, I think there were clear red flags that should have caused Mr V to have concerns, and he should have taken more care, for example by searching for this type of employment online or taking independent advice, and he would likely have also prevented his loss.

#### *Recovering the payments Mr V made*

Mr V made the disputed payments via debit card, but he didn't make the payments directly to the scammer. Instead he paid a legitimate cryptocurrency exchange and received cryptocurrency in exchange for the payments he made.

As there is no dispute the cryptocurrency was provided to Mr V in exchange of the payments, and it took further steps for the funds to end up in the hands of the scammer a chargeback request would have no chance of success.

With this in mind, I don't think Revolut had any reasonable options available to it to recover the payments Mr V has disputed.

#### **Putting things right**

To put things right I require Revolut Ltd to:

- Calculate the amount Mr V lost from and including payment 3 onwards, deduct any

- credits, and then refund 50% of this figure to allow for contributory negligence.
- Pay 8% simple interest on the amount it pays Mr V 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 Mr V to accept or reject my decision before 1 July 2025.

Terry Woodham  
**Ombudsman**