

The complaint

Mrs R complains that Revolut Ltd won't refund the money she lost when she was the victim of a scam.

What happened

In April 2023, Mrs R saw an advert on an online social media platform for an investment company. And as she'd been looking for ways to make some additional money to help pay off existing finance, she clicked on a link in the advert and filled in her details on an enquiry form the link took her to.

Mrs R was then contacted by someone from the investment company, who explained the process and what she would be investing in. She was told to download remote access software and open an account with a cryptocurrency exchange, and guided through opening an account on the investment company's trading platform. And Mrs R then made a number of payments from her Revolut account to purchase cryptocurrency, which she then sent on to wallet details she was given for the company.

I've set out the payments Mrs R made from her Revolut account below:

Date	Amount
18 April 2023	€1,000
18 April 2023	€3,500
17 May 2023	€750
19 May 2023	€750

Unfortunately, we now know the investment company was a scam. The scam was uncovered after Mrs R tried to withdraw the profit the platform showed she had made, but was told she had to pay a number of fees and taxes before she could. Mrs R then realised she had been the victim of a scam and reported the payments to Revolut.

Revolut investigated but didn't agree to refund the payments Mrs R had made. Mrs R wasn't satisfied with Revolut's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Revolut should have been concerned when Mrs R made the second payment here, and so intervened and shown her a warning about potential scams. And they thought this would likely have stopped Mrs R making any further payments. Our investigator also thought it would be fair for Mrs R to bear some responsibility for the loss, so recommended Revolut refund 50% of the money she had lost from the second payment onward. Revolut disagreed with our investigator, so the complaint has been passed to me.

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 R 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 from April 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 fraud¹;
- 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)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.

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 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.

- The October 2017, BSI Code³, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a 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.

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 from April 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

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

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

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

I'm satisfied Revolut ought to have recognised that Mrs R was at heightened risk of financial harm from fraud when she tried to make the second payment here, for €3,500 on 18 April 2023.

This payment was for a significant amount, and for an amount significantly larger than any other payment made out of Mrs R's account previously. It was also identifiably related to cryptocurrency which, around this time, I think Revolut should have recognised meant it carried an elevated risk of being related to a fraud or scam.

At this point, Mrs R had also tried to make two payments to the cryptocurrency exchange in just over two minutes, with the second payment being significantly larger than the first. The payments had also been funded by a credit into Mrs R's account for a similar amount just a few hours earlier. And this matches a pattern of payments often seen when customers are falling victim to a scam.

And so I think Revolut should have recognised that Mrs R was at risk of financial harm from fraud here.

To be clear, I do not suggest that from April 2023 every payment used to purchase cryptocurrency presented such a heightened risk of fraud that Revolut should have warned its customer before processing them. Instead, as I've explained, I think it was a combination of the characteristics of this payment and the circumstances in which the payment was made to a payment service provider that, at the relevant time, was acting as a payment processor for a cryptocurrency provider, that ought to have given Revolut sufficient cause for concern that Mrs R could be at risk of suffering financial harm from fraud when she attempted to make the payment on 18 April 2023. In those circumstances, it should fairly and reasonably have taken additional, proportionate, steps before completing the payment.

What did Revolut do to warn Mrs R?

Revolut hasn't suggested that it showed Mrs R any kind of warning, or took any other steps to make her aware of the risks of scams, at the time she made these payments.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, when Mrs R attempted to make this payment on 18 April 2023, knowing 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.

In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

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

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mrs R 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 cryptocurrency investment scam warning, would that have prevented the losses Mrs R incurred after that point?

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.

There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mrs R's payments, such as finding the investment through an advert on social media, being assisted by a broker, being asked to download remote access software and being told they had made significant profit following a small initial deposit. So I think it's likely a warning highlighting these features would have resonated with her.

I've also seen no indication that Mrs R expressed mistrust of Revolut or financial firms in general. And I've not seen any evidence that the scammer told her to mislead any bank that contacted her about the payments, to conceal the true purpose of the payments or to ignore any warnings she was given. And as neither Revolut nor any other bank involved in the journey of the funds showed her a written warning about cryptocurrency scams or explained the common features of such scams to her, I've not seen anything to suggest Mrs R would have ignored or moved past any warning she was given.

Therefore, on the balance of probabilities, had Revolut provided Mrs R with an impactful warning that gave details about cryptocurrency investment scams and how she could protect herself from the risk of fraud, I believe it would have resonated with her. She could have paused and looked more closely into the investment company before proceeding, made further enquiries into cryptocurrency scams and whether or not the broker she was speaking to was regulated in the UK or abroad, and discussed what was happening with family and friends – which is what ultimately appears to have uncovered the scam. I'm satisfied that a timely warning to Mrs R from Revolut would very likely have caused her to take similar steps – revealing the scam and preventing her further losses.

Is it fair and reasonable for Revolut to be held responsible for some of Mrs R's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs R paid money using her Revolut account to another account in her own name with a cryptocurrency exchange, rather than directly to the fraudster. So she remained in control of her money after she made the payments, and there were further steps before the money was lost to the scammer.

But as I've set out in detail above, I think that Revolut still should have recognised that Mrs R might have been at risk of financial harm from fraud when she made the payment on 18 April 2023, and in those circumstances it should have provided her with a warning about the risk of cryptocurrency scams. If it had taken those steps, I am satisfied it would have prevented the losses Mrs R 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 Mrs R's own account does not alter that fact and I think Revolut can fairly be held responsible for Mrs R'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 R 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 R could instead, or in addition, have sought to complain against those firms. But Mrs R 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 a consumer'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 Mrs R's loss from the payment of 18 April 2023 onwards (subject to a deduction for Mrs R's own contribution which I will consider below).

Should Mrs R bear any responsibility for her losses?

Revolut has argued that Mrs R should have done more to protect herself here by doing a greater level of due diligence on the investment company before making the payments. And I've considered whether it would be fair for Mrs R to bear some responsibility for her loss.

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I appreciate that this was a sophisticated scam, where Mrs R was given access to a platform where she could see trades and the profit it said she was making. But I also think there were a number of things about what was happening and what she was told that should have caused her significant concern.

Most of the communication Mrs R had with the investment company appears to have been via an instant messaging app. She also doesn't appear to have been sent any documentation or paperwork relating to the investment she was making. And I wouldn't necessarily expect a legitimate investment company to communicate in this way, and without proving at least some more formal record of her investment.

Mrs R doesn't appear to have been given a particularly clear explanation, or have had a particularly clear understanding, of what she was investing in or how the investment worked. She's told us she understood she was investing in gold and oil, but I wouldn't expect a genuine investment company to require investments in these commodities to be funded by payments in cryptocurrency. And I don't think it's unreasonable to expect Mrs R to have made sure she had a clearer understanding of this before making the payments she did.

The investment company also asked Mrs R to download remote access software, so that it could access and control the device she was using. But I wouldn't expect a legitimate company to require this kind of access, and I think being asked to provide this access should have caused Mrs R some concern.

Mrs R also appears to have been told she had made a significant profit from her initial investment, and that she could make significant further profit if she invested further. From what she's said, she was told she had tripled the money she had invested in less than three months. But I think being told she could or had made such significant amount in such a short period of time should have caused her significant concern that what she was being told was too good to be true.

Mrs R has also said she didn't do any checks into who the investment company was before making the payments. And while I appreciate she was not an experienced investor and may not have known what checks she could do, I don't think it's unreasonable to have expected her to try to carry out some checks into who she was sending the money to – particularly given the significant amount of money she was sending.

I sympathise with the position Mrs R has found herself in and recognise that she has been the victim of a cruel scam. But I think there were a number of things here which should have caused her significant concern, particularly when taken all together. And I don't think she did enough to satisfy those concerns or that the seemingly genuine parts of the scam should have been enough to overcome them.

So I think it would be fair and reasonable for her to bear some responsibility for the loss she suffered.

Summary

For the reasons set out above, I think Revolut should have identified that Mrs R was at risk of financial harm from fraud as a result of some of the payments she made here. And I think the warning I would have expected it to show in response to this risk would have prevented Mrs R making the payments, and so losing the money she did from that point on. I also think it would be fair for Mrs R to bear some responsibility for the money she lost.

So I think Revolut should now refund 50% of the money Mrs R lost as a result of this scam, from the second payment of €3,500 on 18 April 2023 onwards.

My final decision

I uphold this complaint and require Revolut Ltd to:

- Refund Mrs R 50% the moneys he lost as a result of this scam, from the second payment of €3,500 on 18 April 2023 onwards – for a total of €2,500
- Pay Mrs R 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 23 April 2025.

Alan Millward
Ombudsman