

The complaint

Mr C has complained that Revolut Ltd hasn't refunded the funds he says he lost to an investment scam

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr C has said his wife's friend had told him that he had been investing in a company that crowdfunded movies and had been earning a steady profit from it. Mr C was interested in the opportunity and asked his friend to pass on his details. On 17 January 2023 Mr C was contacted by the scammer who explained that once the crowd funding event had ended, and depending on how much Mr C had deposited, he would receive profits, rewards and his initial investment back.

The scammer told him that he would need to open an account with a cryptocurrency platform, who I will refer to as 'B', as this is how he would receive his earnings. He was also told the company he was investing in paid its employees via cryptocurrency as it was a global company. As such he was told that he would need to open an account with Revolut as high street banks didn't like dealing with cryptocurrency.

Mr C made six card payments to cryptocurrency platforms (accounts in his own name) between 17 January and 2 April 2023 totalling £9,180. On 3 April Mr C realised he had been scammed when he tried to access the scam platform and he couldn't gain access to his online account. He also found the group chat he was a member of had been deleted. The transactions appeared on Mr C's statement as follows:

Date	Payment Type	Amount
17/01/2023	Card Payment to B	£100
25/01/2023	Card Payment to B	£2,200
05/03/2023	Card Payment to B	£1,100
28/03/2023	Card Payment to B	£2,230
01/04/2023	Card Payment to B	£3,500
02/04/2023	Card Payment to B	£50
20/06/2023	Refund	£100
	Total Loss	£9,080

Mr C didn't report the scam to Revolut but he did report it to his representative. On 3 May 2023 Mr C filed a chargeback claim with Revolut. It says it processed all chargebacks requests and Mr C was informed of the outcome. Chargeback requests for payment two to five were unsuccessful and Revolut explained why. However, payment one was successful and Mr C was refunded £100.

Mr C remained unhappy so referred his complaint about Revolut to us. Our Investigator recommended Revolut refund Mr C 50% of the disputed transactions from payment five

made on 1 April 2023 to the final payment of £50 made on 2 April 2023. Mr C accepted the Investigator's opinion, but Revolut disagreed. 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 agree with the Investigator's findings for broadly the same reasons, I will 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 Mr C 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"*

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

I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with "due skill, care and diligence" (FCA Principle for Businesses 2), "integrity" (FCA Principle for Businesses 1) and a firm "must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems" (FCA Principle for Businesses 3)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"*.

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.

- 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 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 January 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

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

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 that were in place in January 2023, Revolut should in any event have taken these steps.

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

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

Mr C opened his account with Revolut on 16 January 2023. As such, it could be argued that this would have made it difficult to detect uncharacteristic payments (given the lack of account history). However, I don't agree that this prevents Revolut from appropriately identifying suspicious activity. I also have to take into consideration other factors.

Mr C made the first payment to B of £100 the day after he opened the account with Revolut. He then made a second payment of £2,200 eight days later. Over a month later Mr C made payment three. And payment four roughly 23 days after payment three. So, I'm satisfied it wouldn't be reasonable to have expected Revolut's systems to have been triggered by the above payments. I say this because the payments were all relatively low in value and the volume of payments were not made in quick succession. As such it didn't appear the payments were being made under pressure and Mr C had sufficient time to reflect and carry out any research he wished to do between each payment. While I accept that the amount of money Mr C sent is clearly significant to him, this doesn't in itself suggest a heightened risk of fraud. On balance, taking into account that Revolut needs to take an appropriate line between protecting against fraud and not unduly hindering legitimate transactions, and also considering the value and pattern of these payments, I don't think Revolut ought to have been sufficiently concerned about this payment. Therefore, it would not be fair and reasonable to expect it to have provided warnings to Mr C at this point.

However, on 1 April Mr C made a payment for £3,500 (payment five) that was identifiably going to a cryptocurrency provider. It was also larger than any other payment that had debited Mr C's account and was four days after his last transaction. As the previous transactions on Mr C's Revolut account were all to cryptocurrency exchanges, I accept the subsequent cryptocurrency purchase would not have been entirely out of character.

However, in comparison with these subsequent purchases, payment five was of an increased value, with escalating payments of an increased value being a potential indicator of fraud. Therefore, in my view, there was enough about the characteristics of this transaction and the activity on Mr C's account that ought to have been concerning; such that Revolut should have intervened at that time. I say this because by January 2023 the expectation was that Revolut ought to have recognised the elevated risk associated with

cryptocurrency. I am satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

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

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 Mr C attempted to make the fifth payment knowing (or strongly suspecting) that the payment was going to a cryptocurrency provider, to have provided a warning 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 use of social media/social messaging apps, account manager or broker acting on their behalf, and small initial deposit increasing in value. I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr C by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

If Revolut had provided a warning of the type described, would that have prevented the losses consumer suffered from Mr C payment?

I have considered what I think is likely to have happened if Revolut had issued a warning like I have described above. On balance I am satisfied if it had done so, some of the key features of common cryptocurrency investment scams would have alerted Mr C that it was very similar to his circumstances. Such as a third party 'broker', moving funds onto a third party 'platform' the use of a social messaging app and a small initial deposit increasing in value. Therefore, on balance I am persuaded, considering Mr C wasn't in a position to lose his money and had nothing to gain from continuing with the payments, he would have stopped or in the very least paused and completed a simple search and found the scam, so I am satisfied the loss would have been prevented.

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

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr C might have been at risk of financial harm from fraud when he made Payment five, and in those circumstances it should have issued a warning as highlighted above.

If it had taken those steps, I am satisfied it would have prevented the losses Mr C suffered. The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to his own account does not alter that fact and I think Revolut can fairly be held responsible for Mr C'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 C 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 C could instead, or in addition, have sought to complain against those firms. It's important to note that Mr C has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

Revolut has highlighted that our service does have the power to ask for information from third parties. Having considered that Mr C had transferred funds from A to his Revolut account we asked A to provide further information. Having done so it clarified no intervention or warning had been provided.

I'm not persuaded it would be fair to reduce Mr R'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 C's loss from Payment five (subject to a deduction for Miss R's own contribution which I will consider below).

Should consumer bear any responsibility for their losses?

I've considered whether Mr C should share any liability for the 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. Overall, I do think it's fair to expect Mr C to share liability equally with Revolut. I'll explain why.

I appreciate Mr C has said he asked his wife's friend to pass his details on to the scammer, so contact from the scammer wasn't unexpected. I also note he says the scammer came across as professional. However, having Mr C told his representative (who in turn told our service) that the scammer told him that the high street banks don't like dealing with cryptocurrency and B paid its employees using cryptocurrency. This accompanied by the fact the scam company was not registered with the FCA, ought to have alerted Mr C that something wasn't right.

There is no evidence to suggest Mr C completed any due diligence prior to investing. Upon completing a simple Google search I can see articles from the time Mr C invested highlighting it was a scam and that many people had lost their funds.

For the avoidance of doubt, it is not my finding that Mr C knew that he was likely falling victim to a scam and went ahead anyway. But I do think based on some of the information available to him that there was a possibility that the investment company wasn't genuine, or that he might not recover his money. In those circumstances it would not be fair to require Revolut to compensate him for the full amount of his losses.

I've concluded, on balance, that it would be fair to reduce the amount Revolut pays Mr C because of his role in what happened. Weighing the fault that I've found on both sides, I think a fair deduction is 50%.

Could Revolut have done anything to recover Mr C's money

As the payments were made by card the chargeback process is relevant here. However, Mr C transferred the money to a legitimate cryptocurrency exchange (to an account in his own name). As such, he would have converted the money into crypto prior to sending the money onto the scammer. Therefore, Mr C received a 'service' from the crypto exchange.

Revolut could only pursue a chargeback claim against the recipient of the money Mr C transferred, which in this case would have been the crypto exchange (not the scammer). And as the crypto exchange did provide the service, Revolut has provided evidence to so payments two to five were not recoverable. However, I do not that Mr C received a refund for payments one. So, I can't reasonably say Revolut hindered the recovery of the payments after they were made.

Putting things right

For the reasons I have explained above, I feel Revolut ought to have recognised that Mr C might have been at risk of financial harm from fraud when he made Payment five, and in those circumstances, it should have declined the payment and made further enquiries. So, it follows that I think its reasonable Revolut should pay Mr C:

- 50% of all payments from payment five.
- 8% interest on that amount from the date the payment was paid to the date of settlement less any tax lawfully deductible.

My final decision

My final decision is that I uphold in part this complaint and require Revolut Ltd to pay Mr C in line with the redress I have highlighted above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 February 2025.

Jade Rowe
Ombudsman