

The complaint

X is unhappy Revolut Ltd won't reimburse him for the money he lost when he fell victim to a scam.

What happened

X is represented in this complaint by a solicitor, for simplicity I will refer to X throughout this decision, even when referencing what his representatives have said on his behalf.

X came across an advert for a cryptocurrency investment platform, which I'll call "T", he says it appeared to be endorsed by well-known celebrities and had a professional looking website. X spoke to someone at T who told him they'd be able to give him some inside information and to help him make successful cryptocurrency trades. X was told to open an account with Revolut to send his money through, and to open accounts with cryptocurrency exchanges (which I'll call "M" and "B"). On 28 March 2022 he then made an investment of £1,500 from his Revolut account, these funds were moved from X's main bank account, to Revolut, and then on to his cryptocurrency account where the funds were passed to the trading platform X believed he was investing in.

X says he could see that this investment had made a small profit, and he was able to withdraw £260 from the trading platform in April 2022. On 8 June 2022 X received an email advising him that he would need to pay tax on the profits he was making, and it appears that round this time T also contacted him and said there was an opportunity to make more money if he could invest more funds. So, on 10 June 2022 X made a payment of £13,259 from his Revolut account to fund his further investment. Unfortunately, and unknown to X, the people he was dealing with were not legitimate, he was the victim of a scam.

X believed he had made a significant profit on this investment in a short period of time (around five days) and so wanted to withdraw his funds from the trading platform, but as well as the taxes he had already been aware he might need to pay, it seems X was also told he would need to pay withdrawal fees. X went on to make three more payments to the scam for these taxes and fees but, aside from one more small withdrawal, X was not able to retrieve his investment or any profits. In total, he made the following payments and withdrawals:

	Date	Amount	Payee
Payment 1	28/03/2022	£1,500	Transfer to cryptocurrency account with M
	04/04/2022	£260	Withdrawal from cryptocurrency platform
Payment 2	10/06/2022	£13,259	Transfer to cryptocurrency account with B
Payment 3	15/06/2022	£12,973	Transfer to cryptocurrency account with B
	20/06/2022	£248	Withdrawal from cryptocurrency platform
Payment 4	20/06/2022	£10,000	Transfer to cryptocurrency account with B
Payment 5	20/06/2022	£600	Transfer to cryptocurrency account with B

On speaking with friends, and when T continued to ask for more funds, X realised he had been scammed, and reported what had happened to Revolut. But ultimately Revolut said it did not think it should be held responsible for X's loss, it felt it had taken appropriate steps to protect X from financial harm.

X was unhappy with Revolut's response and so referred his complaint to our service.

One of our Investigators looked into what had happened, and they felt that Revolut should have stepped in to question X about the second payment made to the scam. However, they considered that X was likely to have continued with the payments even if Revolut had contacted him at that stage as they felt X was fully convinced by the legitimacy of the investment, given the returns he had received and what he had seen about the firm he believed he was investing with.

So, overall, the Investigator did not recommend that Revolut refund any of X's loss.

X did not accept the investigator's findings. He said that Revolut had failed to intervene and maintained that, had it done so, much of his loss could have been prevented.

As no agreement could be reached, the case was passed to me for a decision. I issued my provisional decision on this case on 22 August 2024, explaining why I considered that appropriate intervention from Revolut would have prevented some of X's loss.

Neither X nor Revolut has made any further comments in response to my provisional 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.

In my provisional decision I explained the following:

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

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 X modified the starting position described in *Philipp*, by 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 implied terms of its contract with X and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately¹. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in March and June 2022 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

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 do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- 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.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, 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

¹ The Payment Services Regulation 2017 Reg. 86 states that "the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service provider's account **by the end of the business day following the time of receipt of the payment order**" (emphasis added).

² 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/>

control its affairs responsibly and effectively, with adequate risk management systems” (FCA Principle for Businesses 3)³.

- 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 Code⁴, 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.

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 March and June 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

³ 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.

⁴ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

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.

What did Revolut do to protect X, and what should it have done?

The payments X made as a result of this scam were to two different new payees, M and B. And when setting up those payees Revolut says that X was shown its standard new payee warning. This warning said:

“Do you know and trust this payee?

If you’re unsure, don’t pay them, as we may not be able to help you get your money back. Remember that fraudsters can impersonate others, and we will never ask you to make a payment”

But this warning isn’t particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case.

Revolut then also provided an additional warning about the first payment X made, for £1,500 to M. This message stated that the payment might be a scam, and asked X to select a purpose for the payment. X chose ‘investment’, and he was then shown a warning which included some common features of scams to be aware of, including being contacted unexpectedly by HMRC or another tax authority, being asked to make an immediate payment, being threatened with fines or arrest, and being told to ignore warnings. But this warning does not seem to have been tailored to investment scams, so given that at this stage X was making his first payment and had not yet been asked to pay any taxes or fines, and that none of the other points detailed in the warning would have resonated with him, I can’t see that this warning would have been particularly impactful. In any case, bearing in mind the size of this initial payment, I don’t consider that Revolut needed to do more at this stage.

However, as noted above, the second payment X made was significantly higher, and given the increased risk associated with that payment, I think it would have been reasonable for Revolut to intervene directly in that payment, rather than relying on any written warnings. I say this because Payment 2 was for over £13,000, a significant amount even for an account like X’s which had only recently been opened and so had little account history against which to compare it. Payment 2 also represented a significant increase in value from the previous payment. Bearing this in mind, and given that it was to another new payee, I think Payment 2 represented an increased possibility of financial harm from fraud, compared to the previous payment on the account. Having thought carefully about the risk the payment presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit X’s account. I think it should have done this by, for example, directing X to its in-app chat to discuss the payment further.

And I think that kind of direct contact with X would likely have made the difference here. While there's obviously a balance to strike, I think, fairly and reasonably, that Revolut ought to have satisfied itself that X hadn't fallen victim to a scam, and I'm persuaded it could've done this by asking a few open-ended questions.

Our investigator felt that X was far enough under the scammers spell, and had seen enough to support that the investment was legitimate, that he would have nonetheless gone ahead with the payment even if Revolut had intervened. But I don't agree. I've not seen anything to suggest that X would not have been honest with Revolut about what he was doing. And I consider that there were several features of the scam which would have been easily brought to light by some direct questioning, and which would have rung significant alarm bells for Revolut.

For example, X had been asked to download remote access software by the scammers and had found the investment when he saw footage of celebrities endorsing it. Both of these are very common features of this kind of cryptocurrency investment scam, and Revolut would have been aware of such scams at the time of the payment. I think this would have been enough to put Revolut on notice that X could be at risk of falling victim to a scam, and a reasonable action at that stage would have been to provide a more detailed scam warning relevant to cryptocurrency investment. I appreciate that X had been able to make a small withdrawal from the scheme at that stage, but that is also a common feature of this type of scam, so I don't think this small withdrawal would have reassured Revolut. Another very common feature of such scams is that victims will be asked to pay taxes and fees regarding their profits, and given that X appears to have been contacted by someone asking him to pay taxes on his initial profits prior to the 10 June payment, I think that a proportionate warning about the common features of cryptocurrency scams would also have brought this to light. With all this in mind, I think that it would have been possible for Revolut to identify that X was the victim of a scam if it had properly questioned him about Payment 2.

I'm aware that X moved funds from accounts he held with other banks into his Revolut account to fund the scam. But those other banks did not intervene in the payments X was making, so by the time I think Revolut should have intervened, X had not seen (or ignored) any detailed warnings regarding what he was doing. With this in mind, I think it's fair to say that, had Revolut intervened appropriately, then it is likely that the spell of the scam would have been broken and that X wouldn't have proceeded with the payments. So, I think Revolut could have prevented the losses X incurred from Payment 2 onwards.

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

In reaching my decision about what is fair and reasonable, I have taken into account that X moved money to his Revolut account from his main bank account, and then purchased cryptocurrency which credited e-wallets held in his own name before passing that cryptocurrency to the scammers.

But as I've set out above, I think that Revolut still should have recognised that X might have been at risk of financial harm from fraud when he made the second payment to the scam, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses X 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 X's own cryptocurrency account does not alter that fact and I think Revolut can fairly be held responsible for X'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 X 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 X could instead, or in addition, have sought to complain against those firms. But X 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 X'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 X's loss from Payment 2 onwards.

Should X bear any responsibility for his losses?

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.

Having considered the matter carefully, I do think it would be fair to make a deduction to recognise X's responsibility for what happened here.

X has said he carried out searches for the investment company he believed he was dealing with, and found a professional looking website, along with some positive reviews and news articles about the company. He's also said he checked the FCA register and didn't find any indication that the company might be a scam. X also received professional looking email correspondence, which added to the impression of legitimacy. So, I do appreciate that there were elements of what was happening that would have been very convincing to X.

However, I do consider that there came a point where X should have done more to verify what he was being asked to do, or otherwise questioned the payments he was making. Specifically, by the time X made Payment 3, it appears that he believed he had made a very significant profit in a short period of time – he has said he thought he'd made around \$55,000 in profits. And I think this level of profit in such a short period really should have been seen as too good to be true by X. Given that he was then asked to make significant further payments to release his profits, with the first of these payments being only slightly lower than the amount he had invested, I think this might reasonably have been considered unusual by X. And so, I do think these circumstances should have raised a red flag for X that all might not be as it seemed, and that further investigation might be worthwhile. If he had investigated further the taxes and fees he was being asked to pay, it's likely he would have realised that he might be the victim of a scam.

Given this background, I do think it is fair to say X should bear some responsibility for his loss from Payment 3 onwards. Bearing in mind that, as set out above, I consider that Revolut should also bear some responsibility for X's loss, I think a deduction of 50% is reasonable in the circumstances of this complaint.

As neither party has made any comments in response to my provisional decision, I see no reason to depart from the findings I have set out above.

Putting things right

To resolve this complaint Revolut Ltd should:

- refund 100% of X's losses for Payment 2;
- refund 50% of X's losses from Payment 3 onwards; and
- pay 8% interest on these refunds from the date of each payment to the date of settlement.

My final decision

I uphold this complaint. Revolut Ltd should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 11 October 2024.

Sophie Mitchell
Ombudsman