

## **The complaint**

Ms G is unhappy that Revolut Ltd haven't refunded money he lost as a result of a scam.

Ms G is being represented by a claims management company but for ease of reading I'll only refer to Ms G in my decision.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In late April 2023 Ms G was interested in starting to invest. She saw an advert online that was celebrity endorsed. She was contacted by a merchant – I'll refer to here as 'E'. She was provided with a trading platform and was asked to download screensharing software to help set up her accounts. In early May 2023 she started making payments via another bank she held and account with - who I'll refer here to as 'F'. Later that month Ms G started to make payments from F to her account with Revolut at the request of E.

Ms G then sent a faster payment of £24,001 on 19 May 2023 to a genuine crypto currency exchange from her Revolut account at E's request.

Ms G realised she had been scammed when E told her that her profits had been lost and that if she took out a loan from a bank they would get her money back for her. So, she made a claim to both F and Revolut.

Revolut said it didn't do anything wrong, so it didn't offer Ms G a refund. So, she brought her complaint to this service.

Our investigator felt the complaint should be upheld. He said that when the £24,001 payment was made from Ms G's Revolut account, Revolut should've been suspicious and stopped the payment so that it could ask Ms G further questions about why she was making it. He said that if it had done so the scam would've more likely than not been uncovered and prevented. The investigator didn't think Ms G should share any liability for her loss here because she had provided evidence of her vulnerabilities that made her more susceptible to fall for such a convincing scam. The investigator added that liability for the total loss should be shared between Revolut and 'F'.

Revolut disagreed. In summary it said that Ms G didn't answer some of its questions surrounding the payment truthfully which meant it couldn't provide accurate warnings. It said Ms G said the reason for the payment was for 'something else' instead of 'investment' and she didn't share that a screensharing software had been used as well. Revolut felt the payment wasn't suspicious for its average customer because the account had been topped up recently and then made a transfer online with the declared purpose of the account – 'transfers'.

Revolut added that it is bound by the contract (terms and conditions), regulations and common law to execute valid payment instructions. It also referred to the Supreme Court's

judgment in *Philipp v Barclays Bank UK plc* which found that Barclays' duty was to execute the payment instruction. So, Revolut said that the investigator has decided the complaint as if Revolut were under a legal obligation to refund Ms G in line with the Contingent Reimbursement Model (CRM code) which Revolut is not a signatory to. And therefore, the investigator's opinion is irrational.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons.

Ms G has another complaint with this service against F who she held an account with. But that complaint is being considered under a separate complaint reference number.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

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 Ms G 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 Ms G 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 immediately<sup>1</sup>. 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 May 2023 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;<sup>2</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.

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 control its affairs responsibly and effectively, with adequate risk management systems” (FCA Principle for Businesses 3)<sup>3</sup>.
- Over the years, the FCA, and its predecessor the FSA, have published a series of

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<sup>1</sup> 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).

<sup>2</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\\_fourfold\\_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_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/)

<sup>3</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.

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 Code<sup>4</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.

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 May 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to

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

consumers, when deciding whether to intervene.

*Should Revolut have recognised that Ms G was at risk of financial harm from fraud and what did it do to warn her?*

Revolut has said that because this was a newly opened account and Ms G made a transfer which is in line with the account opening reason the activity wasn't suspicious for its average customer. But it did stop the payment and intervened during the payment process, so this suggests that it did consider the payment suspicious. Ms G was asked if she knew the payee followed by the payment purpose (something else) before giving a number of warnings based around that purpose. Revolut then initiated the in-app chat to ask Ms G some further questions – which in the circumstances was a proportionate response to the size of the payment in my opinion.

The investigator felt Revolut then didn't go far enough with its questions and investigation into the payment destination. Revolut said Ms G wasn't honest about the use of screen sharing software so would unlikely have been honest in relation to further questions. I note that Ms G said she said no to the screensharing software question because she thought it was in relation to the payment she was making that day – instead of using that software to set up her investment.

Overall – having considered the in-app chat conversation - I'm in agreement with the investigator that if Revolut had asked Ms G some probing questions in relation to who had asked Ms G to send the payment and why then the scam would've quickly been uncovered. Firstly, the payment was going to a known crypto exchange so although it was a 'transfer' I think Revolut should've been suspicious of the payment reason that was given of 'something else' here. And if more questions had been asked about the payment destination and why Ms G was sending it there, I'm satisfied – on balance – that Ms G would've provided the name of the 'broker' who had instructed her to make the payment if she had been asked. And once Ms G had done that it wouldn't have taken Revolut very long to look up the name of the scammers company and found that it was listed on the International Organisation of Securities Commissions (IOSCO) website as a scam company in relation to investments. At the time of the payment there were three entries on the website that would've reasonably alerted Revolut to what was actually happening here.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Ms G sent funds to her Revolut account from F before sending those funds onto the crypto exchange.

I've 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 Payment was made to another financial business (a cryptocurrency exchange based in another country) and that the payments that funded the scam were made from F.

But as I've set out above, I think that Revolut still should have recognised that Ms G might have been at risk of financial harm from fraud when they made the 19 May payment, 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 Ms G 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 Ms G's own account does not alter that fact that I think

Revolut can fairly be held responsible for her 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.

Ms G has also brought a complaint to this service against her bank – F. So, I think the fairest thing to do here would be to split the liability of the loss between Revolut and F. F has already agreed to the split liability suggested by the investigator. And I'm satisfied that a split liability is the fairest way to resolve this complaint.

I can see that F has agreed to the investigator's opinion that its liability should be £9,288 which is 50% of the amount that F was found liable for not stopping when Ms G was moving funds to Revolut. So, that amount can be removed from the total amount that Ms G sent from Revolut to the crypto exchange on 19 May 2023.

### *Should Ms G bear any responsibility for their 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. After considering the circumstances of this scam and also thinking carefully about Ms G's personal and medical circumstances at the time, I don't think it would be fair for her to bear any responsibility here.

Ms G was taken in by a sophisticated scam. She was encouraged by the fact she thought it was celebrity endorsed and subsequently more likely to be genuine. She started off by making smaller payments via F and was slowly encouraged to increase the amounts. She was also persuaded by the friendly nature of the scammer and the reassurance he provided to her. And because of her medical and personal circumstances in relation to her housing situation, she thought this would be the best way to remove herself and her family from that issue.

I understand that Revolut wasn't aware of these circumstances at the time of the payment, but I'm still satisfied that there were genuine reasons for Ms G to fall victim to this scam more easily than someone who doesn't have the same circumstances as her.

As a result of the above I'm not going to make a deduction to Ms G's aware here.

### *Recovery*

Here Ms G made the payment to a crypto exchange whose role it was to forward the money directly to the scammers. So, it's extremely unlikely given that the scam wasn't raised with Revolut until August 2023, and that E told Ms G the funds have been received, that there was no money to be recovered by Revolut by the time the scam had been raised. Subsequently, Ms G wasn't treated unfairly by Revolut not attempting to recover her money here.

### **Putting things right**

So, having considered all of the above, I'm satisfied that Revolut should refund Ms G £14,713 (£24,001 minus £9,288). It should also add 8% simple interest per year to this amount from the date of the payment to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint. Revolut Ltd should refund Ms G the following;

- £14,713 and;
- Add 8% simple interest per year to that amount from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 December 2024.

Mark Dobson  
**Ombudsman**