

The complaint

Miss R complains that Revolut Ltd won't refund several payments she says she made and lost to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. In summary, Miss R responded to an advert she saw on social media about an investment opportunity in cryptocurrency. As a result, Miss R was contacted by the scammers. Miss R said she completed an internet search on the investment company and believed the company was genuine.

Date	Payment Number	Payment Type	Amount
25 April 2023	1	Debit card payment	£5,000
25 April 2023	2	Debit card payment	£4,950

It's important to highlight that there was a payment of £230 made to the scam prior to the payments listed above. However, this was from an account Miss R held with a third party and is not subject to this complaint. I would also like to highlight that Miss R transferred money from an account she held with a third party, which I will refer to as 'A' to her Revolut account, prior to her sending it to her cryptocurrency account.

Miss R has stated that the scammers applied for a loan with a third-party bank in her name and she used some of this towards the scam. After Miss R sent the second payment she says the scammer cut contact with her and it was at this point she realised she had been scammed. As such she contacted Revolut to make it aware.

Revolut has said Miss R opened the account on 15 February 2023, roughly two months prior to the scam. When she opened the account, it said she selected multiple reasons as to why she was opening the account and one of the options she selected was crypto currency.

Revolut has said as both disputed payments were made to an account in Miss R's own name, it didn't trigger on its system, as such Revolut hasn't reimburse Miss R for her loss. Miss R referred her complaint to us. Our Investigator looked into the complaint and partially upheld the complaint. However, Revolut didn't agree, so as the matter couldn't be resolved informally, the case has been passed to me to consider.

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.

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 Miss 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*”.

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 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 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 April 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”*.
- 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 (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 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 as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

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

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

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

Revolut has said Miss R opened her account on 15 April 2023 which appears to reflect the account statements provided, this is roughly two months before the scam commenced. And while I have considered that there wasn't a large account history, I acknowledge that there was some account usage prior to the scam. I have also considered other factors which ought to have alerted Revolut that there was a risk of financial harm to Miss R.

I agree with the Investigator's findings that Revolut ought to have intervened when Miss R made the first transaction of £5,000 on 25 April 2023. I say this because, this transaction was the largest transaction Miss R had made and was out of character with Miss R's usual account activity and identifiably went to a cryptocurrency exchange which was a new payee. By April 2023 and considering what Revolut knew about the destination of the payment, I think that the circumstances should have led Revolut to consider that Miss R was at heightened risk of financial harm from fraud. I am satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

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 primary duty to make payments promptly.

Taking that into account, I think Revolut ought, when Miss R attempted to make payment one, on 25 April 2023, 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 scams, 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 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 Miss 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 warning of the type described, would that have prevented the losses Miss R suffered?

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 her that it was very similar to her circumstances. Such as seeing the advert on social media, a third party 'broker' acting on her behalf, remote access software and deposits in quick succession and borrowing

money to invest. Therefore, on balance I am persuaded, considering Miss R wasn't in a position to lose her money and had nothing to gain from continuing with the payments, would have stopped and the loss would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Miss R purchased cryptocurrency which credited an e-wallet held in her own name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her 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 Miss R might have been at risk of financial harm from fraud when she made Payment one, 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 Miss R 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 her own account does not alter that fact and I think Revolut can fairly be held responsible for Miss 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 Miss 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 Miss R could instead, or in addition, have sought to complain against those firms. It's important to note that Miss 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.

Revolut has highlighted that our service does have the power to ask for information from third parties. Having considered that Miss R had transferred funds from A to her 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 Miss 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 Miss R's loss from Payment one (subject to a deduction for Miss R's own contribution which I will consider below).

Should Miss R bear any responsibility for her losses?

I've considered whether Miss R 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 Miss R to share liability equally with Revolut. I'll explain why.

I appreciate Miss R says she had registered her interest on social media regarding the investment, so contact from the scammer wasn't unexpected. I also note she says the scammer came across as professional. However, having reviewed the scam chats and other information provided I don't agree. I will explain why.

Having seen a screen shot of the accumulated profit Miss R was told she had made after her first transaction of £230 (not considered under this complaint), it highlighted she had 'made' roughly 13,862.91 USD. Given the fact Miss R had only invested £230 at that point I think the balance in her trading account ought to have alerted her that the profits were too good to be true, accompanied by the fact she was unable to withdraw the funds before making two further (significantly larger) transactions, which again ought to have alerted Miss R that something wasn't right.

I have also considered that Miss R has said the scammer applied for a loan in her name. While I have seen evidence of a loan being paid back and discussion of the loan in the scam chats, I can't be certain who applied for the loan. But in any event, a genuine investment company wouldn't apply for a loan in the consumers name or in fact encourage a consumer to take out a loan in order to invest. So, again, I think this was a red flag Miss R ought to have picked upon.

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

I've concluded, on balance, that it would be fair to reduce the amount Revolut pays Miss R because of her 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 Miss R's money

It's important to note that Miss R didn't instruct Revolut to send the money directly to the scammers but instead to a crypto wallet in her name. And Revolut did as she requested. So, it was highly unlikely that Revolut would be able to facilitate the recovery of the payments after they were moved on from Miss R's account to the scammers. As such, I am satisfied Revolut couldn't do anything further.

Putting things right

For the reasons I have explained above, I feel Revolut ought to have recognised that Miss R might have been at risk of financial harm from fraud when she made Payment one, 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 Miss R:

- 50% of all payments from and including payment one.
- 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 Miss R in line with the redress I have highlighted above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 15 January 2025.

Jade Rowe
Ombudsman