

The complaint

Mr B complains that Revolut Ltd did not refund a payment he lost to a scam.

What happened

Mr B is represented by a claims management company on this complaint. For simplicity, I'll refer to any submissions made either by Mr B directly or the claims management company as having been made by Mr B.

The Revolut account is solely in the name of Mr B. However, the complaint is in joint names of Mr B and his wife, Ms W. This is because some of the funds lost to the scam came from an account in her name.

Mr B had an account with Revolut which he opened in November 2022.

Mr B found what he thought was a legitimate investment opportunity. He thought he was dealing with a legitimate registered financial business. But that business had been cloned, and it was the clone firm he was dealing with.

The person Mr B was in contact with induced him to make a number of payments which turned out to be part of a scam. Mr B said the scammer used a website which looked genuine, showing positive returns on previous payments from Mr B and his wife for supposed investments.

There were also payments made as a result of the scam from other accounts in Mr B's, and his wife's name. These payments are being considered by our service as part of separate complaints.

The payment made from Mr B's Revolut account was an £11,000 payment to a company I will refer to as N, on 5 December 2022. Mr B realised he'd been scammed when he was told that he'd have to make a further payment of £95,000 to make a withdrawal from his investment.

Mr B said he received a small return on the investment - €1,158. This payment was received before the payment Mr B made to N from his Revolut account. But it was after payments made to the same scam from another account Mr B had.

Revolut said they didn't receive a report from Mr B that he'd been the victim of a scam until he made a complaint. They said that when they asked Mr B on 29 December 2022, about a number of payments on his account, including the disputed one, he said the payment was to friends and family. They said when he set up the payment to N, to a new payee, he was warned about the risks. And they said he selected "something else" as the reason for the payment. He also had the option to select "investment", which was more appropriate for what he thought he was paying for that would've triggered a more tailored warning. So, it declined to refund Mr B the money he'd sent to N.

Revolut, in its submissions argued:

- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of *Philipp v Barclays Bank UK plc* [2023] UKSC 25.
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of APP fraud.

One of our investigators looked into Mr B's complaint and upheld it in part. They thought Revolut should have been concerned about the payment Mr B made to N on 5 December 2022, which they thought was high enough to warrant further investigation. They thought had Revolut appropriately intervened and asked Mr B more questions the scam could have been unravelled.

But our investigator also felt that Mr B had contributed to the loss. And on that basis, they felt that he should be equally responsible, by way of a 50% deduction for contributory negligence.

Mr B agreed. Revolut didn't. In summary Revolut said:

- The present scenario is evidently a Self-to-Self scenario in which Mr B owned and controlled the beneficiary accounts to which the reported payments were sent. Revolut merely served as an intermediary in the fraudulent transfer. Mr B was topping up their Revolut account with the funds from their main bank account, and then transferring those funds to another account under the Mr B's ownership. The scam therefore did not occur on Revolut's platform.
- It is also relevant to bear in mind that the type of account which the customer used is not a current account and Revolut is not a bank but an Electronic Money Institute (EMI). Typically, this type of account is opened and used to facilitate payments of a specific purpose and often not used as a main account (precisely the case here – Mr B was not a regular Revolut customer).
- In addition, it is unreasonable to expect that further intervention from their side would have changed the outcome, as M B had already been misleading and untruthful when enquired about the purpose of the payment in question.
- It would also be relevant to understand if there were indeed other interventions from other institutions, and to verify if such interventions actually impacted the course of Mr B's actions. Revolut think the service should make such enquiries, either with the customer or ideally with the relevant bank. It noted that the service is entitled to make such requests under DISP 3.5.11 which merit further consideration, especially in light of the sums involved. Depending on the outcome, it might also be appropriate for the service to exercise its powers under DISP 3.5.2 to recommend that Mr B make a complaint against another respondent if necessary.

The investigator responded to Revolut's submissions saying:

- The payment wasn't a self-to-self payment and went to N. And Mr B isn't involved in that company.
- Revolut is an EMI, not a bank. But Revolut is still subject to the principles of protecting consumers from harm, including helping them avoid falling victim to APP scams.

- Mr B selected “something else” as the payment purpose. If Revolut had asked Mr B for details of this, then it’s likely Revolut would’ve obtained more information from him about the payment which would’ve enabled Revolut to stop the payment being made.
- In terms of contacting other businesses, Mr B and Ms W made payments from other accounts as part of the same wider scam. They’ve complained to us about those account providers as well. In none of the cases were further interventions made, so our service has nothing to compare to in the way Revolut suggested.

As no agreement could be reached the matter has come to me to decide.

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 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 having 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 Mr B 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 Mr B 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 December 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 EMIs 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 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

¹ The Payment Services Regulation 2017 Reg. 86(1) 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/

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.

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).

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 December 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 additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does).

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

Mr B had recently opened his account with Revolut – in November 2022. Apart from two payments to Ms W for a total of £3,000, the first substantial payment he made was the £11,000 to N. When prompted, Mr B said he was making the payment for 'something else', which is a rather non-specific answer to the question. So, I don't see that the answer he gave has much bearing either way. But, I think the value of the payment alone, for an account that was newly opened and had had little activity beforehand should have alerted Revolut to the potential that Mr B was at risk of financial harm.

I have also considered whether this would be considered a Self-to-Self payment – as Revolut have suggested that Mr B was paying accounts he ultimately controlled, and any losses came further down the line. And I may expect there be less scrutiny on payments between an individual's personal accounts. But I'm not persuaded this is the case here.

The payments went to N directly, and I've seen no compelling evidence that Mr B held a genuine account with N. It was a scam. And I think that Ms W paid funds to the same account, which were recovered later, suggests this wasn't a situation where funds were kept in discrete client accounts. So, I'm not persuaded that this should be treated as a Self-to-Self transaction.

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

What did Revolut do to warn Mr B?

Based on the circumstances of the transaction (as I've explained above), I'm persuaded that Revolut ought to have identified that the Mr B was at risk of financial harm from fraud and provided a warning before it allowed the payment to debit his account.

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, as well as what I consider to have been good industry practice at the time this payment was made. I've also taken into account what fraud detection and prevention measures Revolut already had in place.

Having considered the scam risk that would have been apparent to Revolut at the time, I think an appropriate intervention from Revolut would have been a human intervention by a member of staff. And I think Revolut should have made further enquiries with Mr B about the purpose of the payment before allowing it to be made. Mr B was making a large payment to a new payee and selected "something else" as the purpose of the payment. Had Revolut carried out a human intervention they could've asked him for more detailed information about this. This would've included asking him for the specific reason for the payment, and details of his relationship with the payee.

Mr B has said that he was told by the scammers to select 'something else' when making the payment to N. With this in mind, I'm satisfied that it's more likely that not that Mr B would have honestly answered any questions that Revolut asked him about the payment he was making and that it would have quickly identified that he was the victim of a scam.

What kind of warning should Revolut have provided?

Revolut did provide a warning when Mr B was attempting to make the payment to N, that 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"

While this warning does contain some information relevant to Mr B's circumstances, the 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. I don't consider it to be a proportionate response to the risk that the payment to N presented.

While I accept that Revolut has attempted some steps to prevent harm from fraud, the warnings it provided were too generic to have the necessary impact, unless Mr B already had doubts about N. 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 Mr B's account. I think it should have done this by, for example, directing Mr B to its in-app chat to discuss the payment further.

If Revolut had attempted to establish the circumstances surrounding Payment, would the scam have come to light and Mr B's loss been prevented?

I think further enquiries from Revolut about the payments would have made a difference and prevented the scam because had Revolut asked these questions and received accurate responses, I think it would've become clear that this was most likely a scam and the payment wouldn't have been made. There's no compelling evidence that Mr B would've lied

to Revolut at the time of the payment if they'd spoken to him and asked him further questions about it.

Mr B said the reason he selected "something else" as he believed the payment was going to a crypto-currency platform, rather than directly to the investment. He also said that he was unaware of this type of scam existing. Had Revolut carried out a human intervention, they could've asked him what the payment was specifically for, including the ultimate use of the payment. This likely would've revealed that Mr B was intending to make the investment, and the details of it.

I think Revolut would've identified that the monthly returns promised (10% per month) were too good to be true and they would've known how to check the Financial Conduct Authority (FCA) register and see that there was a cloned firm warning for the company Mr B thought he was dealing with.

I also think that if Revolut had intervened and asked Mr B questions, Mr B would likely have been receptive to it. And, given the number of common hallmarks, the scam would have unravelled. Ultimately, as Revolut didn't question the payments Mr B made, it can provide no compelling evidence that he would have misled it about the purpose of the payment or the surrounding circumstances.

I'm satisfied that had Revolut established the circumstances surrounding the payment, as I think it ought to have done, and provided a clear warning, Mr B's loss would have been prevented.

Should Mr B 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. In order to reach a fair outcome on this case I've considered the actions of all parties involved. And in doing so, I've thought about whether Mr B's actions, or in-actions, mean he should share liability for his loss.

I recognise there were relatively sophisticated aspects to this scam. But I consider the profits Mr B was said to have made on such a small initial investment were simply too good to be true. I'd also add that there was a warning on the Financial Conduct Authority register for the company he thought he was investing with – suggesting he didn't carry out due diligence before making payments. Because of this, I consider that Mr B should bear some responsibility for the loss.

I also can't completely ignore that Mr B gave Revolut inaccurate information about the reason for the payment. He's said he thought he was making an investment. But when Revolut asked him for the reason for the payment, he said he was paying for "something else". He had the option of saying the payment was for an investment, which would've been more accurate given what he thought was happening despite where the payment was initially going. Had he chosen the correct option, he would've received further information from Revolut that would've been more appropriate to his situation. Balancing Mr B's role in this with the fact that Revolut failed to intervene, I think 50% is a fair deduction to the amount reimbursed

Recovery of funds

I've thought about whether Revolut did what it ought to have done, when trying to recover the funds for Mr B.

In this case, I don't think Revolut could've done anything to successfully recover Mr B's funds. This is because all the funds in the scammer's account had already been blocked by the receiving bank by the time Revolut became aware Mr B had been scammed. And the funds were used to partially refund Mr B's wife on one of the cases linked to this one, by the financial business that complaint is against. (Mr B and his wife have told us they were acting together in these investments, with payments being made to the same scammer from accounts in both their names.) As all remaining funds were already used to partially refund Mr B's wife, no further funds would've been available for Revolut to recover for Mr B.

Putting things right

Overall and for the reasons set out above I am satisfied that both Mr B and Revolut should share liability for Mr B's loss as a result of the £11,000 scam payment. The loss suffered by Mr B is £11,000, minus the €1,158 return Mr B received as previously outlined. To put things right I think Revolut should fairly and reasonably compensate Mr B by:

- Refunding 50% of the loss from the payment paid from Mr B's account as the result of this scam. The loss is the value of the payment he made, minus the return on investment received.
- Paying interest on the refund from the date of the payment, until the settlement is paid calculated at 8% simple interest per year.

If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. Revolut Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms W to accept or reject my decision before 17 April 2025.

Sharon Kerrison
Ombudsman