

The complaint

Mr P complains that Revolut Ltd won't refund money he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat it all again here.

In summary, Mr P complains that he made the following card payments as a result of a cryptocurrency investment scam.

	Date	Amount
Payment 1	10/02/2023	£20,000
Payment 2	10/02/2023	£8,000
Payment 3	20/02/2023	£12,000
	Total	£40,000

Mr P said he saw an advertisement online regarding a cryptocurrency investment. After agreeing to the investment scheme, he said he was guided to open an account on a cryptocurrency exchange website and to download screen sharing software. Mr P made several payments and said he realised he had been scammed when he couldn't make any withdrawals without making further payments to the investment. He contacted Revolut but it didn't refund his losses.

Mr P subsequently raised a complaint, but Revolut didn't uphold it. It said it wasn't the point of loss and the payments were made to an account in Mr P's name. It said Mr P did not do enough due diligence before taking the investment opportunity.

Mr P didn't agree and referred his complaint to our service. Our investigator thought the complaint should be upheld. They thought Revolut should have given a better quality warning for the initial payment, but didn't think a scam warning, however detailed would have stopped Mr P from making the first two payments. However, our investigator thought Revolut should have stopped the third payment, but Mr P should bear some responsibility for the loss too. As such our Investigator said Revolut should refund 50% of the £12,000 payment plus 8% simple interest.

Mr P didn't accept our investigator's view. He says the initial payment should have promoted detailed, open questioning and probing which he says he wouldn't have been able to answer. He thinks this would have exposed the scam. He also says his behaviour showed he was very worried and under pressure which is a common sign of a scam.

Revolut also disagreed with our investigator's view and as an agreement could not be reached, the complaint has been passed 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.

Firstly, I want to clarify that I've taken into account the detailed submissions from both parties in reaching my decision. However, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. Rather, I've focused on setting out what is key to my decision.

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 P 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 February 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 February 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

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.

Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code³, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So, it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in February 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 February 2023, Revolut should in any event have taken these steps.

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

By February 2023, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency (that is scams involving funds passing through more than one account controlled by the customer before being passed to a fraudster) for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions⁴. And by February 2023, when these payments took place, further restrictions were in place⁵. I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that the vast majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider.

So, taking into account all of the above, I am satisfied that, by the end of 2022, prior to the payments Mr P made in February 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name. In those circumstances, as a matter of what I consider to have been fair and reasonable and good practice, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments.

Taking the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact the payments in this case were going to an account held in Mr P's own name should have led Revolut to believe there wasn't a risk of fraud.

I accept that the account was newly opened therefore Revolut did not have information on Mr P's account activity that it could use to identify whether the payments were unusual for him. Nevertheless, Revolut did have information about the payments themselves which it ought to have taken into consideration.

I think Revolut should have recognised that the payments were to a cryptocurrency provider and were all of a significant value such that it ought to have been concerned that Mr P might be at a greater risk of fraud and for it to have intervened.

⁴ See for example, Santander's limit of £1,000 per transaction and £3,000 in any 30-day rolling period introduced in November 2022.

NatWest Group, Barclays, Lloyds Banking Group and Santander had all introduced some restrictions on specific cryptocurrency exchanges by August 2021.

⁵ In March 2023, Both Nationwide and HSBC introduced similar restrictions to those introduced by Santander in November 2022.

What did Revolut do to warn Mr P?

Revolut intervened and stopped the first payment of £20,000, and its agent questioned Mr P about its purpose. Considering the value of the payment, and that it was to a cryptocurrency provider, I find intervention by a member of staff appropriate in the circumstances.

When asked, Mr P stated the payment was to pay a personal bill. I appreciate that Mr P had not answered the questions honestly and he was adamant it was a personal bill, not an investment. Even so, I find the use of cryptocurrency to pay a personal bill unusual. I would expect the agent to have probed further and asked for more information regarding the payment. While the questions should not amount to interrogation, I think it would have been appropriate in the circumstances to ask what the bill was for at the very least.

That said, I must also consider whether further probing would have been effective in the circumstances. I am not persuaded it would. I say this because, Mr P wasn't honest when he answered Revolut's questions and there is no evidence he was coached by the scammer to answer in the way he did. I find Mr P was under the scammer's spell and determined to have the payment authorised. On balance, I think it more likely than not Mr P would have continued to answer the questions in the same manner. Ultimately, I'm not persuaded that further questioning would have uncovered the scam at this point.

Mr P made a further payment of £8,000 the same day, as Revolut had intervened in the initial payment and was satisfied with his initial answer, it follows that it did not intervene on payment 2. Even if it did, I'm not persuaded Mr P would have reacted positively to its intervention for the reasons I have given above.

Mr P used his debit card to make the payments, and the only means of recovery would be through a chargeback claim. As the payments were made to a legitimate crypto exchange site and to an account in Mr P's name, a claim was unlikely to succeed. This is because, Mr P received the service he paid the crypto exchange for.

Ultimately, I can't fairly or reasonably say Revolut should be held responsible for the loss Mr P incurred from Payments 1 and 2, and I don't find it needs to refund these payments to him.

However, prior to making Payment 3, the circumstances had evolved. Mr P had reported the scam to Revolut. He made it aware of the background to the scam and his concerns. He also made it aware that he had downloaded screen sharing software and had been asked to make a further payment before he could withdraw his funds. I find Revolut should have investigated the incident further at this point and I can't see that it did. I would add that he was transferred to a specialist regarding the scam claim, prior to the processing of the third payment. Despite the specialist reviewing the previous conversation they only gave details regarding a chargeback claim and did not comment further on the risk of the investment being a scam.

At the time of the third payment, I think Revolut had sufficient information that Mr P was at heightened risk of fraud for it to have been concerned. Considering what it knew about the payment, its value and the information it had about Mr P's circumstances, I find that a proportionate response to the risk was further intervention by a member of staff, as Revolut had done with payment 1.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr P suffered from payment 3?

At the point Mr P reported the scam he indicated he was concerned because he had been unable to withdraw his funds from the investment. Mr P had been honest about the circumstances, he provided the name of the scam company, and he mentions the use of a broker to make this investment. Mr P also informs the agent that he had been asked to make a further payment of £12,000. It is clear he had doubts that the investment and scammer

were genuine. As such, I think its more likely than not he would have answered honestly if Revolut had queried the purpose of payment 3.

It follows that Revolut would then have been able to provide Mr P a clear warning. On balance, I think its likely that had it done so, Mr P would have responded positively since he was already questioning the legitimacy of the investment.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr P made the payment to an account in his own name rather than directly to the fraudsters.

But as I've set out in some detail above, I think that Revolut should have recognised that Mr P might have been at risk of financial harm from fraud when he made payment 3, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Mr P 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 Mr P's own account does not alter that fact, and I think Revolut can fairly be held responsible for Mr P's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered that Mr P has only complained against Revolut. I accept that it's possible that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr P could instead, or in addition, have sought to complain against those firms. But Mr P 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 Mr P's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr P's loss from Payment 3 (subject to a deduction for Mr P's own contribution which I will consider below).

Should Mr P bear any responsibility for his losses?

Mr P became suspicious when he was asked to make a further payment before he could withdraw his funds. I note he was advised to report to the police by Revolut's advisors when he first reported the scam, but I can't see that he did at this time. I appreciate Mr P was still hopeful it was a genuine investment. But at the very least, I would expect him to have investigated further and I can't see that he did.

Mr P said he was promised a return of 50%, I think this ought to have also raised some questions that the returns might be too good to be true.

Mr P said he reviewed the scam website, but he doesn't appear to have done any further research into the firm. Considering the amount of money to be invested I would expect some further research beyond the scammer's website. When searching for the scam company using a common search engine, one of the first results to appear is a warning by the FCA which indicates that the firm is not registered in the UK. There are also other results which indicate that it is likely a scam. Although this on its own isn't a red flag, when considered along side the above circumstance, I think it should've caused Mr P some additional concern.

I understand that Mr P fell victim to a sophisticated scam, and while I sympathise with him and the situation he finds himself in, I don't think he acted reasonably for the reasons I've given. As such, I find Mr P ought to bear equal responsibility for the loss he incurred when he made the third payment.

My final decision

For the reasons mentioned, I uphold this complaint and require Revolut Ltd to:

- pay 50% of the payment made on 20 February 2023, that is £6,000,
- pay 8% simple interest per annum on this amount, from the date the payment was made to the date of settlement. *

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 February 2025.

Oluwatobi Balogun
Ombudsman