

## The complaint

Mr C complains that Revolut Ltd did not refund a series of transactions he lost to a scam.

## What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here.

In summary, Mr C fell victim to an investment scam in which he was persuaded to invest in cryptocurrency linked to Yuan. He made the following transfers from his Revolut account to the investment:

Date	Amount	Transaction
09/10/2023	€10,000	<i>Declined faster payment</i>
09/10/2023	€10,000	<i>Declined faster payment</i>
09/10/2023	€10,000	Faster payment
23/10/2023	€12,000	Faster payment
26/10/2023	€27,500	Faster payment
01/11/2023	€28,700	Faster payment
03/11/2023	€17,200	Faster payment
		<b>€95,400</b>

Revolut intervened on a payment on 4 November 2023 and a few days after this, Mr C realised he had been the victim of a scam and raised a scam claim with Revolut. Revolut was unsuccessful in recovering funds from the beneficiary accounts, and they did not agree to reimburse Mr C with his lost funds.

The complaint was referred to our service and our investigator felt that the initial payment was unusual and that Revolut should have provided a tailored warning to Mr C, and if they had done, the scam would have been revealed at that time. As Revolut did not agree with this, the complaint was passed to me for a review.

I reviewed the case and agreed that Revolut should reimburse Mr C from the initial payments onwards, but based on what I saw I felt Mr C contributed to his loss from the payment of €27,500 onwards. And I felt a reduction in the redress of 50% from payment €27,500 onwards was fair to account for this. My provisional decision read as follows:

*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 Mr C 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 C 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 October 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>*

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<sup>1</sup> 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).

- *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)*
- *Over the years, the FCA, and its predecessor the FSA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by firms to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.*
- *Regulated firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship). I do not suggest that Revolut ought to have had concerns about money laundering or financing terrorism here, but I nevertheless consider these requirements to be relevant to the consideration of Revolut’s obligation to monitor its customer’s accounts and scrutinise transactions.*
- *The October 2017, BSI Code<sup>3</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).*
- *Since 31 July 2023, under the FCA’s Consumer Duty<sup>4</sup>, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid*

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<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/>

<sup>3</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

<sup>4</sup> Prior to the Consumer Duty, FCA regulated firms were required to “pay due regard to the interests of its customers and treat them fairly.” (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

*causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was “consumers becoming victims to scams relating to their financial products for example, due to a firm’s inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers”<sup>5</sup>.*

*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 October 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;*
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;*
- 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 C was at risk of financial harm from fraud?*

*I’ve looked over Mr C’s statements and compared the scam payments to his genuine account activity. The Investigator felt that the initial successful payment to the scam that was not returned should have been flagged by Revolut as suspicious. This was the €10,000 payment on 9 October 2023. I agree that this payment was unusual when compared to his genuine account activity, it was of a higher value than most of the other payments from his account, particularly the payments made in Euro. It was to a new payee and there had been two declined transactions of the same amount to the same payee in the minutes beforehand so I think there were enough factors that should reasonably have been concerning to Revolut that Mr C may be at risk of financial harm.*

*It should be noted that Mr C made an earlier payment towards the scam on 22 September 2023. This followed two failed attempted transactions of £20,000 to a cryptocurrency exchange on the same day. Mr C made a payment of €22,845 to a known cryptocurrency exchange just a few hours after the failed attempts. However, the exchange he sent the funds to closed down his account and returned the equivalent funds, after exchanging it back to Euro. This was another high value payment to a cryptocurrency exchange, that I think also should have been noted by Revolut as a concerning payment, especially considering the prevalence of scams associated with cryptocurrency exchanges which Revolut should reasonably have been aware of and on the lookout for at the time of the payment. On balance, I think Revolut should have realised at that point Mr C could be the victim of financial harm. In any event, Mr C did receive a reimbursement from the cryptocurrency exchange, so I have focused on the €10,000 payment on 9 October 2023.*

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<sup>5</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

What did Revolut do to warn Mr C and what should it have done?

Revolut provided a generic warning to Mr C when he made the €10,000 payment and the €27,500 asking if he trusted the payee. While the warning did contain some information relevant to Mr C's circumstances, it wasn't particularly prominently displayed, required no interaction or real engagement from him 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 payments presented.

Revolut did flag a number of the payments for additional checks, these were the €10,000, €27,500 and €28,700 payments. It asked Mr C to answer some set questions about them, including what the transfers were for. Following the answers, Mr C was able to continue with the payment, cancel it or ask for a chat with an advisor. Mr C gave the correct payment purpose of investing in cryptocurrency for the €10,000 payment, but said he was paying for 'goods and services' for the later two payments. He has said he was on the phone with the scammer at the time of the latter two payments and was guided by them on what answers to give to ensure the payments were processed. Each time, he selected to carry on with the transactions following the questions.

On 4 November, the account prompted a security check from Revolut, and they discussed some of the earlier payments. They asked Mr C about the investment he was making and set out some of the key features of an investment scam. This included high rates of returns with little to no risk, being contacted out of the blue, being asked to open cryptocurrency wallets, not being able to make movements of funds on the platform, being asked to install screen sharing software and being asked to provide sensitive and personal information among other things. Revolut asked Mr C to provide documents from the source of funds and the beneficiary account, however two days after this conversation Mr C got back in touch with Revolut and said he felt he had been the victim of a scam.

On balance, I think a proportionate response would have been for Revolut to attempt to establish the circumstances surrounding the €10,000 payment before allowing it to debit Mr C's account. I say this because considering the high value, the earlier failed payments and the earlier high value payment to cryptocurrency that was returned, I think Revolut should have had concerns about this payments and recognised Mr C may be at risk of financial harm. I think it should have done this by, for example, directing Mr C to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr C suffered from the payment of €10,000?

I've considered whether an in-app chat would have revealed the scam and prevented Mr C from making further payments to it. In doing so, I have considered that Mr C was not truthful when he was asked questions about the €27,500 and €28,700 payment. Mr C has shown that when he made these payments, he was on the phone with the scammer and they were guiding him on how to answer the questions provided to him by Revolut to ensure they went through. However, this was not the case for the €10,000 payment and this can be seen by the fact he was honest about the payment purpose when Revolut asked him about this. Just as he was in the final chat on 4 November when Revolut reviewed the account.

I've reviewed the in-app chat on 4 November in which the representative from Revolut provided a tailored cryptocurrency scam warning that included the common features of these kind of scams. As a result of this, Mr C considered his circumstances and came back to Revolut two days later to report the scam.

On balance, I think it's more likely a similar warning in an in-app chat on 9 October would

have had the same affect and made Mr C consider his circumstances and realise there were similarities between the common features of a cryptocurrency scam and his situation, which is what happened on 4 November. While I accept that by that point, Mr C had been asked to provide selfies with identification documents in them, which Revolut mentioned as a feature of a scam, I don't think this alone is what convinced him he was the victim of a scam. And I can see there were negative reviews online for the crypto trading company he was involved with that he could have found if he went away and looked into them in more detail. I therefore think Revolut missed an opportunity to meaningfully reveal the scam at that time and should reimburse Mr C for all of the payments involved in it.

I note that Revolut has said that when they spoke with Mr C on 5 October he felt he was being scammed, so they did not think a later warning would have made a difference and stopped him from making payments. But I do not agree with this. Firstly, the conversation on 5 October was around Mr C waiting for the cryptocurrency exchange to return the €22,845 to his Revolut account which had taken some time and it made Mr C nervous about using cryptocurrency. In this, Mr C said: 'I am intending to get into trading, but this experience has left me very nervous about doing so! I feel that I could lose money very easily by getting it into the wrong hands!' I think he was expressing concern about using cryptocurrency in general but I don't think this means a later warning would not have been effective. I think it's more likely this supports that a clear warning at that time could have revealed the scam, as he was already unsure about being involved in cryptocurrency as a product.

#### Should Mr C bear any responsibility for his losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint. Having done so, I agree that a reduction in the redress is reasonable. I'll explain why in more detail.

Firstly, Mr C had not invested before, so he was trying out trading for the first time. And to start with he was asked to invest just a small amount which he did so from a third-party account. And the platform appeared to show he had made returns, some of which was deposited into his third-party account. So, I can understand why he was initially convinced that the scam was genuine.

The payments of €10,000 and €12,000 were to top up his investment account as he was told this would result in higher returns, but it doesn't appear he was promised set returns at that point. While I can see there was information available online about the investment company Mr C was dealing with, and this was largely negative, I don't think this alone means Mr C contributed to the losses he incurred to the point that a reduction in the redress is necessary.

However, some of the returns promised were too good to be true, with returns of \$335,533 promised on an initial investment of \$55,000 in e-yuan and I think Mr C should reasonably have had concerns about this. The payments of €27,500 and €28,700 were in relation to this investment in e-yuan and the high returns were promised before he made these payments, so I think he should have made further enquiries about these payments and had he done so, I think he would likely have discovered that the scheme was not genuine. I say this because I think he likely would have come across the negative reviews and scam warnings about the investment company he was dealing with.

Following this, Mr C was convinced that he had to pay a further £47,000 in taxes and fees to be able to withdraws his funds. This is a significant amount and I think Mr C could have seen it was unusual to be asked to pay such a high amount just to access funds that were supposedly his. I therefore think there were enough red flags available that Mr C should have had concerns about the investment from the payment of €27,500 onwards. And I think

*a reduction in the redress of 50% from payment €27,500 onwards is fair to account for this.*

Revolut did not respond to my findings with any comments or evidence for me to consider.

Mr C responded and said that had Revolut advised him when he made the first significant payment that he may be getting involved in a scam, he would have looked into the companies in more detail and would not have lost his funds.

### **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 have considered Mr C's additional comments and I thank him for taking the time to respond to my initial findings. I want to assure him that I have carefully looked at everything available to me, and in my provisional decision I accepted that Revolut should have intervened in the initial payment. And I agreed that had Revolut intervened at that time, it's more likely Mr C would have realised he was being scammed. So, I agreed Mr C should be reimbursed from the initial payment onwards.

However, I think there should be a reduction in the reimbursement from the payment of €27,500 onwards, as I think there were a number of red flags at that point that Mr C could have taken heed of to protect himself against the scam. For example, the returns promised were high, he was told he had to pay a significant amount of taxes and fees to withdraw his funds, and information was available online about the companies not being genuine. So, I think it is reasonable for Revolut to reduce the level of redress by 50% to account for Mr C's contribution to the loss.

I therefore see no reason to depart from the findings set out in my provisional decision, and I uphold Mr C's complaint in part.

### **Putting things right**

Revolut should reimburse Mr C with all of the losses incurred from his Revolut account, but can reduce this by 50% from the payment of €27,500 onwards to account for his contribution to the loss. It should add 8% simple interest to the amount from the date of the transactions to the date of settlement.

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

### **My final decision**

I uphold Mr C's complaint in part. Revolut Ltd should now pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 February 2025.

Rebecca Norris

**Ombudsman**