

The complaint

Mr H complains that Revolut Ltd ('Revolut') hasn't reimbursed the funds he lost when he fell victim to a scam.

What happened

Mr H says that after replying to a social media advert, he received a welcome email from an online trading platform and was assigned an account manager. This account manager put him in touch with a fund supervisor from a company I'll refer to as G. After speaking to the fund supervisor Mr H says he made an initial deposit to G's platform via a credit card issued by another financial business and received help to trade using a screen sharing application.

The fund supervisor suggested to Mr H that he made some bigger trades, so Mr H made a payment of £1 and then £1,300. After this the account manager raised an opportunity that required a £30,000 minimum investment. Initially Mr H was keen and made payments totalling £20,000 from his Revolut account.

Before making each transaction Mr H credited his Revolut account from various other accounts. He then transferred funds to a cryptocurrency account in his own name (I'll refer to the cryptocurrency provider as C). Once the cryptocurrency had credited his account at C, Mr H sent it to cryptocurrency wallet addresses provided by G's fund supervisor.

I have set out in the table below all the payments Mr H made to C from his Revolut account.

Date	Amount
04/11/22	£1
04/11/22	£1,300
11/11/22	£10,000
11/11/22	£10,000
Total	£21,301

After discussions with his partner, Mr H decided he was investing too much too soon and didn't make the final £10,000 payment. He also completed some research which indicated he might be involved in a scam. Mr H asked for his money back. He received a call from G's legal department and was told that he had entered into a contract to invest £30,000 which he needed to fulfil before he could get his money back. Mr H was told that if he didn't deposit the funds by a set date, daily interest would be charged until no funds remained. Mr H noted that he didn't have a contract and was asked to pay more for other reasons, at which point he realised he'd fallen victim to a scam.

Mr H contacted Revolut to report what had happened on 28 November 2022.

Revolut didn't agree to reimburse Mr H. It said the payments were authorised and that when Mr H added the cryptocurrency exchange as a new beneficiary, he was warned that he could

be falling victim to a scam and could be deprived of his funds. So Revolut said it wasn't at fault in processing the transfers.

Mr H was unhappy with Revolut's response and brought a complaint to this service. He said he'd asked Revolut to demonstrate that it warned him about the beneficiary, but it failed to do so. But when he tried to return £10,000 that he transferred to his Revolut account back to a personal bank account he received scam warnings.

Revolut told this service that funds went from an external account of Mr H's to Revolut and then on to a cryptocurrency exchange before reaching the fraudster. In these circumstances, Revolut said that it didn't understand why it should be held liable. It referred to the fact that Mr H's external bank would have a better idea of overall spending patterns. Revolut also said that liability should sit with the cryptocurrency exchange as the scam funds left this account. Finally, Revolut said that as Mr H's account was virtually dormant before the scam transactions the payments weren't out of character.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He noted that the account was relatively new with little activity on it. The investigator went on to say that when Mr H made the first payment of £10,000, Revolut ought to have established the reason for the payment and provided a tailored warning. In the opinion of the investigator, had Revolut done so, Mr H would have questioned the legitimacy of the investment and not proceeded with it.

But the investigator felt that Mr H should share responsibility for his loss with Revolut. This was because he hadn't completed enough checks to ensure the investment was legitimate before parting with a substantial sum of money.

Revolut didn't agree with the investigator's assessment. In summary it said:

- 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 authorised push payment ("APP") fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law.
- Our service appears to be treating Revolut as if it were a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).
- The Payment Service Regulator's ("PSR") mandatory reimbursement scheme will not require it to refund payments where the victim has ignored warnings with gross negligence. The assessment of negligence should take account of the nature of the warning, the complexity of the scam, the claims history of the customer and whether a firm could reasonably be expected to pause or otherwise prevent the payment from being made. Mr H was careless and should not be reimbursed.
- The fraudulent activity did not take place on the Revolut platform, it was just an intermediary link, and other banks and institutions in the payment chain have more data on the customer than Revolut. The payments from Mr H's Revolut account don't fit either the definition of an APP scam in the Dispute Resolution Rules ("DISP") or under the Lending Standards Board Contingent Reimbursement Model ("CRM Code") – which it is not a signatory of.
- C only allows funds to be credited from accounts whose details match the beneficiary account. Revolut referred to C's terms and conditions in respect of registering an

account and loading the account and said liability for the scam should rest with C and not Revolut.

- Mr H acted with gross negligence by investing through a platform he found on social media and failing to complete research until he had already invested.

As no agreement could be reached, the case was passed to me for a decision. I was minded to reach a different outcome to the investigator so issued a provisional decision on 16 September 2024. I explained why I was minded to award £20,000 plus interest and £150 compensation. In the "What I've provisionally decided – and why" section of my provisional decision I said:

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 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 H 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 H 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 November 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 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;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 business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship). I do not suggest that Revolut ought to

¹ The Payment Services Regulation 2017 Reg. 86 states that “the payer’s payment service provider must ensure that the amount of the payment transaction is credited to the payee’s payment service provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

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.

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 November 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).

By November 2022, firms like Revolut had been aware of the risk of multistage 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.

Taking that 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 H's own name should have led Revolut to believe there wasn't a risk of fraud.

So I've gone onto consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr H might be at a heightened risk of fraud.

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

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

It isn't in dispute that Mr H has fallen victim to a cruel scam here, nor that he authorised the disputed payments he made to his cryptocurrency wallet (C), from where his funds were subsequently transferred to the scammer.

Mr H's account with Revolut was opened on 7 September 2022. After that, there were some very low value transactions (under £100) before a card payment of £184.82 which appears to be for cryptocurrency on 3 November 2022. Mr H then started to make the scam transactions (and to top up his Revolut account to enable him to do so).

The first two scam transactions (£1 and £1,300) were low in value, and I don't consider there was a pattern of payments that was concerning enough to warrant further intervention. Many Revolut customers use their accounts to buy cryptocurrency legitimately and Revolut needs to strike a balance between protecting its customers and minimising disruption to legitimate payment journeys.

But by the time Mr H sought to make the third payment (the first £10,000 payment) I consider that Revolut ought reasonably to have had concerns that Mr H was at significant risk of financial harm. The value of the transaction was much greater than for any previous transaction on the account and a concerning pattern of increasing payments had emerged.

Overall, I'm satisfied that Revolut should have identified that the first payment of £10,000 carried a heightened risk of financial harm and should have taken additional steps before allowing it to debit Mr H's account.

What did Revolut do to warn Mr H?

Revolut has explained that when C was set up as a new payee it provided Mr H with a warning that 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, fraudsters can impersonate others and we will never ask you to make a payment."

Revolut didn't provide any other warnings to Mr H.

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 duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

When Mr H attempted to make the first £10,000 transaction on 11 November 2022, I think Revolut ought fairly and reasonably to have recognised there was a heightened possibility that the transaction was linked to a scam. In line with the good industry practice that I've set out above, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit

Mr H's account. I think it should have done this by, for example, directing Mr H to its in-app chat to discuss the payment further or by discussing it with him.

I consider that Revolut should have had asked questions about the reason for the payment to satisfy itself Mr H wasn't at risk of financial harm. It could have asked questions like how Mr H found out about the investment opportunity, what he was investing in, the expected rate of return, whether G was FCA registered and whether someone was advising him. Revolut should also have provided a warning covering the common features of cryptocurrency investment scams and how Mr H could have protected himself from the risk of fraud.

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

I'm satisfied that if Revolut had asked the kind of questions I consider it should have the scam would have come to light and Mr H's further loss prevented. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr H's payments, such as finding the investment through social media, being assisted by a broker, and being asked to download remote access software. Legitimate investments aren't usually found through social media and genuine traders don't request remote access.

I'm also mindful of the fact that after discussing the investment with his partner Mr H completed some research and established that he was likely falling victim to a scam. So I consider that if Revolut had raised concerns and provided appropriate warnings it would have resonated with Mr H and led him to look into things more closely before proceeding (as he later did of his own accord).

Ultimately, as Revolut didn't question the payment Mr H made, it can provide no compelling evidence that he would have misled it about the purpose of the payments or the surrounding circumstances if it had effectively intervened when I think it should have.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr H paid money using his Revolut account to another account in his own name, rather than directly to the fraudster, so he remained in control of his money after he made the payments, and there were further steps before the money was lost to the scammer.

However, for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr H's losses from the first payment of £10,000. Revolut still should have recognised that Mr H might have been at risk of financial harm from fraud when he made the first £10,000 payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Mr H 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 H's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr H'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 H 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 H could instead, or in addition, have sought to complain against those firms. But Mr H 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 H'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 H's loss from the first payment of £10,000.

Revolut has argued in submissions to our service that we are applying the provisions of the CRM Code to complaints against it, despite it not being a signatory and in circumstances where the CRM Code would not, in any case, apply. It also argues that the Payment Service Regulator's ("PSR") proposed mandatory reimbursement scheme will not require Revolut to reimburse Mr H.

I do not seek to treat Revolut as if it were a signatory to the CRM Code. I've explained in some detail the basis on which I think, fairly and reasonably, Revolut ought to have identified that Mr H was at risk of financial harm from fraud and taken further steps before the first payment of £10,000 debited his account.

I'm also aware that the Payment Service Regulator's ("PSR") proposed mandatory reimbursement scheme would not require Revolut to reimburse Mr H.

The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR does not propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Revolut should not compensate Mr H in circumstances when it failed to act fairly and reasonably, as I have found was the case here. Indeed, the PSR has recently reminded firms that fraud victims have a right to make complaints and refer them to the Financial Ombudsman Service that exists separately from the intended reimbursement rights and that APP scam victims will still be able to bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules).

I do not consider it to be relevant that the circumstances here do not fall under the specific definition of an APP scam set out in the CRM Code and DISP rules. Those definitions define the scope of the CRM Code and eligibility of payers to complain about a payee's PSP respectively. They do not preclude me from considering whether Revolut failed to act fairly and reasonably when it made the first £10,000 payment without asking Mr H questions to understand the reason for the payment or providing any warnings. So, I'm satisfied Revolut should fairly and reasonably have made further enquiries before processing any further payments. If it had, it is more likely than not that the scam would have been exposed and Mr

H would not have lost any more money. In those circumstances I am satisfied it is fair to hold Revolut responsible for some of Mr H's loss.

Should Mr H 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.

On balance, I'm not satisfied that a deduction should be made in this case.

Before Mr H decided to invest, he received an email from his fund supervisor with links to articles about G, company information, reviews, and information about the supervisor's qualifications. One of the review sites Mr H was sent a link to was a commonly used site. Reviews on the same site which were posted after Mr H made his payments say that the previous good reviews were fake – but Mr H had no reason to suspect this at the time.

There were other persuasive features, such as the fact that a trading account was opened in Mr H's name where he could see how his investment was doing and the regular contact from an account supervisor.

I note that Mr H started cautiously by investing small sums and was able to see some profit. But he also saw losses, which he pointed out in messages with his fund supervisor before making the two £10,000 transactions. Mr H has explained that he was aware that profits aren't guaranteed, and the value of his investment could go down as well as up. The fact Mr H wasn't led to believe he'd made unrealistic returns will have added to his belief the investment was legitimate.

After Mr H had made the two £10,000 payments, he discussed the investment with his partner who expressed concern about the use of funds planned for other purposes. Mr H also did further research and felt he might have fallen victim to a scam. He didn't know this though until later when G didn't return his funds after telling him he needed to make further payments.

In the circumstances, I don't consider it would be fair to make a deduction from the amount I am asking Revolut to pay.

Service provided by Revolut

Finally, I have considered the service Revolut provided to Mr H. I can see from Revolut's chat that after it told Mr H it had protections in place to warn him of the risk of issuing funds to the beneficiary, he asked for proof of this. He asked for this same information on eight separate occasions. Revolut failed to respond to Mr H's requests appropriately. Over a number of messages spanning 14 to 19 December 2022, Revolut responded to Mr H's requests by saying there were no further steps it could take/ no funds remained/ data protection law didn't allow Revolut to provide a response/ it had protection in place when the payments were made/ it had already provided the information (which was incorrect).

Mr H was simply asking for details of the warning Revolut repeatedly told him it gave to him. I consider Revolut's customer service fell short and resulted in Mr H suffering additional stress and inconvenience at an already difficult time for him. In the circumstances, I require Revolut to pay him £150 compensation.

I'm provisionally minded to require Revolut to resolve this complaint by making the payments I have set out below.

Responses to my provisional decision

Mr H let me know that he accepts my provisional findings. Revolut didn't respond.

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.

As neither party has raised any new points for me to consider my final decision is the same as my provisional decision (which I have set out above).

My final decision

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

- Pay Mr H £20,000; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement; and
- Pay Mr H £150 compensation.

If Revolut Ltd is legally required to deduct tax from the interest it should send Mr H a tax deduction certificate so he can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 November 2024.

Jay Hadfield
Ombudsman