

## Complaint

Mr F is unhappy that Revolut Ltd didn't reimburse him after he told it he'd fallen victim to a scam.

## Background

In October 2023, Mr F was contacted on social media by someone offering him an investment opportunity. The individual had many mutual contacts on the platform, which persuaded Mr F that the opportunity might be genuine. After expressing interest, he was told he'd be contacted by a specialist investment adviser.

A few days later, Mr F received a call from someone who explained how he could generate significant returns. He felt that individual came across as professional, and he decided to proceed. He was told that the investment would be in a range of asset classes, but that his trading account needed to be funded with cryptocurrency.

Unfortunately, the person who had contacted him wasn't representing a legitimate investment firm. They were a fraudster. He used his Revolut account to make the following payments:

1	25 October 2023	€1,000
2	17 November 2023	€3,940
3	18 December 2023	£3,019.75
4	25 December 2023	£3,490
5	25 December 2023	£190
6	29 December 2023	£449
7	29 December 2023	£4,648

Once Mr F realised he'd been scammed, he contacted Revolut to ask for his money back. Revolut declined to reimburse him. Mr F wasn't happy with this response and so he referred his complaint to this service. It was looked at by an Investigator who upheld the complaint in part. Mr F accepted that outcome, but Revolut disagreed. As no agreement could be reached, the case has been passed to me to make a final decision.

## Findings

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 F 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*”.

In this respect, section 20 of the terms and conditions said:

***“20. When we will refuse or delay a payment***

***We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:***

- *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 F and the Payment Services Regulations to carry out his instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority’s “Consumer Duty”, which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in November 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.

So, Revolut’s standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the

payment. I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers. Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But 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 November 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 EMIs like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>1</sup>
- 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 from October 2023, Revolut operated a process whereby, if it identified a scam risk associated with a card payment through its automated systems, it might initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat). If Revolut was satisfied with the response to

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<sup>1</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/](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/)

those questions and/or it provided a relevant warning, the consumer could use the card again to instruct the same payment and Revolut would then make the payment.

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 “*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>2</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>3</sup>, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid 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>4</sup>.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency<sup>5</sup> 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 –

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<sup>2</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

<sup>3</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.

<sup>4</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

<sup>5</sup> Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

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 November 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); 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.

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

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

Payments 2 to 7 in the table above were made to at third-party cryptocurrency exchange. I'm aware that cryptocurrency exchanges generally stipulate that the card used to purchase cryptocurrency at its exchange must be held in the name of the account holder, as must the account used to receive cash payments from the exchange. Revolut would likely have been aware of this fact too. It could, therefore, have reasonably assumed that payments 2 to 7 would be credited to an e-wallet held in Mr F's name. By November 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency 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 scams 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 transactions. And by November 2023, when these payments took place, further restrictions were in place.

This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry. 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 a significant 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 to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

Taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr F made in November 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. To be clear, I'm not suggesting that, as a general principle (under the Consumer Duty or otherwise), Revolut should have more concern about payments being made to a customer's own account than those which are being made to third party payees. As I've set out in some detail above, it is the specific risk associated with cryptocurrency in November 2023 that, in some circumstances, should have caused Revolut to consider transactions to cryptocurrency providers as carrying an increased risk of fraud and the associated harm.

In those circumstances, as a matter of what I consider to have been fair and reasonable, good practice and to comply with regulatory requirements (including the Consumer Duty), Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments. And as I have explained Revolut was also required by the terms of its contract to refuse or delay payments where regulatory requirements meant it needed to carry out further checks. Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact most of the payments in this case were going to an account held in Mrs F's own name should have led Revolut to believe there wasn't a risk of fraud.

I think it ought to have been concerned by payment 2 in the table above. It was of a significant value and it was out of keeping with the typical spending behaviour on the account. I've looked at the statements and I can only see one payment that is similar in size to payment 2 – a payment for over £4,000 several months prior to the scam made to an established payee. Most of the payments from this account are for values of under £500. As a result, the value of payment 2 should've stood out. In addition to that, it was being made to a new payee and Revolut would've been aware that payee was connected with cryptocurrency.

I've taken into account that, when Mr F opened up his account with Revolut, he was asked to provide a reason for wanting the account. One of the reasons he gave was "crypto." However, it was one of 8 reasons he gave and, despite opening the account in April, he hadn't made any payments relating to cryptocurrency until payment 2 in the table above.

I therefore don't think Revolut could reasonably look to the fact that Mr F had given this as one of his reasons for opening the account to justify not regarding payment 2 as having any meaningful fraud risk attached to it.

*What kind of warning should Revolut have provided?*

Revolut had a duty to take appropriate steps to protect Mr F from the risk of financial harm. This includes providing effective warnings where payments carried a known risk of fraud. In these circumstances, I think Revolut ought to have collected information from Mr F as to the purpose of the payment and used that information to provide a targeted warning. From the evidence I've seen, Mr F wasn't directed to mislead Revolut if it questioned payment activity on his account, so I think it's more likely than not that he would've answered its questions openly and honestly.

Revolut should then have provided a warning that clearly explained the nature and features of common cryptocurrency investment scams. It should have highlighted key red flags, such as an unsolicited approach on social media, the promise of unrealistic returns and being assigned an "account manager" or "broker." While it wouldn't have been possible to cover every scenario, a warning along these lines would have been proportionate. The key red flags are also sufficiently closely aligned with what was happening to Mr F that I think it's more likely than not that such a warning would've resonated with him and cause him to think twice before going ahead.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr F was paying an account in his own name. As a result, at the point the funds left the Revolut platform, he hadn't actually experienced any financial loss.

However, as I've set out in some detail above, I think that Revolut still should have recognised that he might have been at risk of financial harm from fraud when he made payment 2. 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 he suffered. The fact that the money wasn't lost at the point it was transferred to Mr F's own account does not alter that fact and I think Revolut can fairly be held responsible for his 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 F 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 he could instead, or in addition, have sought to complain against those firms. But he 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 F'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 F's loss from payment 2 onwards (subject to a deduction for his own contribution which I will consider below).

*Should Mr F bear any responsibility for his losses?*

I've also considered whether Mr F should bear some responsibility for the loss. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I find to be fair and reasonable in all the circumstances.

Having done so, I've found that Mr F should bear partial responsibility for his own losses here. He received unsolicited contact from a stranger on a social media platform and, while they had mutual friends on that platform, I think he ought to have taken some steps to verify his contact's identity – for example, by communicating with one of those mutual friends.

I don't know exactly what Mr F was promised in respect of a return on his investment. It's common in scams like this one for people to be lured by the promise of returns that are greatly in excess of those generally available to a would-be retail investor. I've seen an undated screenshot of the trading platform that appears to show an account balance of over €46,000. That would be an extraordinary return for someone to earn after investing for only a few months. That's consistent with scammers' typical means of operating and so it seems probable that he was promised unrealistic returns and so should've considered the possibility that what was being offered to him was too good to be true.

Overall, I think there were several red flags here that ought to have given Mr F pause for thought. In my view, he should only have proceeded with great caution and so I find it fair and reasonable for Revolut to make a 50% deduction from the redress payable.

**Final decision**

For the reasons I've explained above, I uphold this complaint in part.

If Mr F accepts my final decision, Revolut Ltd need to:

- refund 50% of payments 2, 3, 4, 5, 6 and 7.
- Add 8% simple interest to those payments calculated to run from the date they left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 April 2025.

James Kimmitt  
**Ombudsman**