

## **The complaint**

Ms B is complaining that Revolut Ltd won't reimburse her with the money she lost to a scam.

The complaint is brought on Ms B's behalf by a professional representative.

## **What happened**

In 2019 Ms B fell victim to a cryptocurrency investment scam.

In July 2022 Ms B was called by someone who told her he was working for a company who could help her recover the funds from the scam. He said that Ms B's funds were frozen in a blockchain, and showed her fabricated evidence of this. He said Ms B could recover her funds by sending more cryptocurrency to the blockchain to reactivate it.

Ms B's representative said that she checked online for the name of the company and found nothing untoward. She continued her conversation with the scammers via calls and through a messaging app. They encouraged her to open an account with Revolut and spoke to her about reinvesting her recovered funds to maintain an income.

On 20 July 2022 Ms B opened an account with Revolut which she said was to be used for daily spending. On the same day she transferred £1.01 to a cryptocurrency exchange, which prompted Revolut to show her a warning about making payments to a new payee. On 28 July 2022 Ms B transferred £10,000 from her bank account into her Revolut account, and another £2,000 on 29 July 2022. Shortly afterwards, she transferred £12,000 to the cryptocurrency exchange to buy cryptocurrency, and then sent it on to the scammer.

The scammer then told Ms B that the funds she'd sent were for insurance and she needed to send a further £12,000 to release them. But Ms B didn't have a further £12,000 to send. She became suspicious, and her representative says she checked online again and found a warning suggesting the company she was dealing with could be impersonating a genuine company.

Ms B initially contacted Revolut to report the scam on the evening of 29 July 2022 via its in-app chat. Revolut asked for some details of what had happened so it could investigate, and Ms B responded on the morning of 30 July 2022 with the information Revolut had asked for.

Revolut told her it would look into what had happened, and a few hours later it replied to say it wouldn't be reimbursing Ms B as it gave her adequate warnings about making the payment. It said it would attempt to recover the funds, but on 3 August 2022 it told Ms B there were no funds remaining.

Ms B complained to Revolut through her representative and Revolut sent its final response on 21 April 2023. It reiterated that it didn't consider it was liable for the funds being lost to the scam, and wouldn't be reimbursing Ms B.

Ms B brought her complaint to our service.

Our investigator upheld Ms B's complaint, in part. She said, in summary, that she thought Revolut should have discussed the £12,000 payment with Ms B before allowing it to be made, by contacting her through the in-app chat. She thought that if Revolut had done this, Ms B would have explained the circumstances of the scam and it would have been uncovered. But she thought Ms B should share liability for her loss because she should have been more cautious about making the payment, taking into account all the circumstances. So, she asked Revolut to pay Ms B 50% of the payment of £12,000, with simple interest at 8% per year from the date the payment was made.

Ms B accepted the investigator's view of the complaint. But Revolut didn't agree. In summary, it replied as follows.

- 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.
- It would not be required to reimburse 'self-to-self' transactions even if it were a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). Our service appears to be treating Revolut as if it were a signatory to the CRM Code.
- The Payment Service Regulator's ("PSR") mandatory reimbursement scheme will not require it to refund payments made in these circumstances either.
- 'Self-to-self' payments don't meet either the Dispute Resolution Rules ("DISP Rules") or CRM Code definition of an APP scam.
- Ms B was grossly negligent by ignoring the warnings it gave. The PSR's mandatory reimbursement scheme will allow it to decline claims where a consumer has been grossly negligent, taking into account any warnings a firm has provided.
- Ms B's loss did not take place from her Revolut account as she made payments to her own account at another regulated EMI before converting her money into cryptocurrency and transferring that cryptocurrency to the fraudster. It's unfair and irrational to hold Revolut responsible for any of the loss where it is only an intermediate link in a chain of transactions. Other firms will have a better understanding of the destination of the funds and/or Ms B's finances and account activity.

#### My provisional decision

I issued my provisional decision on 23 September 2024. This is what 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 Ms B modified the starting position described in *Philipp*, by expressly requiring Revolut to refuse or delay a payment "if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks".*

*So Revolut was required by the implied terms of its contract with Ms B and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.*

*Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments 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 July 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*

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<sup>1</sup> 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).

*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>*
- 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)<sup>3</sup>.*
- 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>4</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*

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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> 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.

<sup>4</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

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.*

*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 July 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); 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.*

#### *Should Revolut have recognised that Ms B was at risk of financial harm from fraud?*

*Ms B had opened her account only nine days before sending the payment of £12,000 to the cryptocurrency exchange. She'd given the reason for opening the account as daily spending. I'm bearing this in mind when deciding at what point I think Revolut should have been alerted that there was a risk of financial harm to Ms B.*

*I agree with the investigator that Revolut should have made further enquiries when Ms B made the payment of £12,000 on 29 July 2022. The significant value of this payment on a newly-opened account which was to be used for daily spending should have raised some red flags with Revolut, as the amount of this transfer to cryptocurrency wasn't in line with the reason for opening the account. I think the value of the payment combined with the fact the payment had been made to a cryptocurrency exchange, should have alerted Revolut that Ms B may have fallen victim to a scam.*

#### *What did Revolut do to warn Ms B?*

*Revolut have told us it did provide a warning when Ms B made the first payment of £1.01 to the cryptocurrency exchange on 20 July 2022, when it was set up as a new payee. But from what Revolut have said, it didn't provide any warning or intervene in any other way when Ms B sent the payment of £12,000.*

*The 'new payee' warning said:*

*"Do you know and trust this payee? If you're unsure, don't pay them, as we may not be able to help you get your money back. Remember, fraudsters can impersonate others, and we will never ask you to make a payment."*

*The next screen gave the following advice:*

*"Do you trust [the cryptocurrency exchange]?"*

*Please beware if you've been:*

- *Instructed by someone you don't know or have recently met to move money from your account*
- *Told your account is at risk, to move funds to a safe account or to take out a loan*
- *Threatened with additional fines or being arrested*
- *Given an offer that seems too good to be true"*

*I've taken into account that this warning had already been shown to Ms B before she made the payment of £12,000 (albeit not at the time she made that payment). But I don't consider the provision of this warning in relation to the earlier, significantly lower, payment to the cryptocurrency exchange, to be a proportionate response to the risk the payment of £12,000 to the same cryptocurrency exchange presented. While I understand this is intended to be a warning that covers a broad range of scenarios, it didn't, as I think a proportionate warning needed to, address the specific risk the payment presented.*

*What should Revolut have done to intervene?*

*I can't agree that the warning that was provided was a proportionate response to the risk that the payment of £12,000 presented. While I accept that Revolut has attempted some steps to prevent harm from fraud, the warning it provided when the cryptocurrency exchange was set up as a new payee was too generic to have the necessary impact. And Revolut didn't provide Ms B with any other warning when she made the payment of £12,000.*

*Having thought carefully about the risk the £12,000 payment presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Ms B's account. I think it should have done this by, for example, directing Ms B to its in-app chat to discuss the payment further.*

*If Revolut had provided an in-app intervention of the type described, would that have prevented the loss Ms B suffered?*

*If Revolut had contacted Ms B directly to find out more about the circumstances of this payment, I think it would have realised she was falling victim to a scam. Revolut would have been familiar with the circumstances of similar 'recovery' type investment scams and ought to have known that anyone asking Ms B to pay upfront to recover earlier scam losses was very unlikely to be genuine. I think it would have been able to identify the scam by having a direct conversation with Ms B.*

*And from what I've seen so far, I have no reason to think Ms B wouldn't have been honest about the circumstances of the payment. The chat she was having with the scammer doesn't lead me to believe she had been coached about what to say to Revolut if an in-app chat had taken place. A few days before the £12,000 payment she'd asked the scammer some questions about how he came to work for the company and his background which led to a call between them – which makes me think Ms B did have some suspicions before she made the payment. She realised she'd been the victim of a scam soon after making the payment, which also leads me to think she may have already had some suspicions all was not as it should be.*

*Overall, I think that an in-app chat with Revolut would likely have identified the scam and ultimately the payment wouldn't have gone ahead.*

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

*In reaching my decision about what is fair and reasonable, I have taken into account that Ms B's payment credited an account held in her own name, rather than her making a payment directly to the fraudsters. So, she remained in control of her money after she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.*

*I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.*

*In reaching my decision, I have taken into account that the payment was made to another financial business and that the payments that funded the scam were made from an account at another regulated financial business.*

*But as I've set out above, I think that Revolut still should have recognised that Ms B might have been at risk of financial harm from fraud when she made the 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 Ms B suffered. The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to Ms B's own account does not alter that fact and I think Revolut can fairly be held responsible for Ms B'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.*

*Ms B has complained against Revolut and also against the business Ms B held the account with that was the source of the money which was transferred to Revolut and subsequently lost to the scam. We've carried out an investigation into Ms B's complaint about this business. But our investigation didn't find that the other business missed the opportunity to intervene or failed to act fairly or reasonably in some other way. Ms B did not ask an*

ombudsman to consider this complaint and I cannot compel her to. So, in these circumstances, I can only make an award against Revolut.

*I'm also not persuaded it would be fair to reduce Ms B's compensation in circumstances 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 complaints that have 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 Ms B's loss (subject to a deduction for Ms B's own contribution which I will consider below).*

#### Recovery of funds

*Revolut says it attempted to recover the funds, albeit not until the morning after Ms B reported the scam. However, I don't think there was ever a realistic prospect of a successful recovery because Ms B paid an account in her own name and moved the funds onwards from there.*

#### Should Ms B bear any responsibility for her loss?

*I've considered whether Ms B should share any liability for the preventable loss under the principle of contributory negligence, because her actions fell short of the standard of care that would be expected of a reasonable person in these circumstances. 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.*

*Overall, I do think it's fair to expect Ms B to share liability equally with Revolut. I'll explain why.*

*I'm not sure I agree with the investigator that more due diligence from Ms B would necessarily have raised concerns with her at the outset of the scam. Ms B's representative says she did investigate the 'recovery' company online and found nothing to concern her. And I can't see there was much information which should have caused Ms B to have concerns about this company at the time she was approached or before she made the £12,000 payment. A warning was added to the Financial Conduct Authority's register on 29 July 2022 - which was the day Ms B made the payment - to say that this company name had been cloned. There's some information online about the company not being legitimate, but apart from one Trust Pilot review added on 28 July 2022, it all seems to have been added in the months after Ms B was scammed.*

*However, I also need to consider that Ms B's representative says she was cold-called by the company and the chat via a messaging app led on from there. I think the method of the initial approach and the subsequent communication, along with its informal tone, should have raised some red flags with Ms B that the company may not be all it seemed.*

*I'm also bearing in mind that Ms B seems to have already been the victim of a number of similar scams. Her representative has told us she was a victim of an investment type scam in 2019. In the chat with the scammer Ms B mentions losing money to a scam a year earlier, which suggests she may have been the victim of another scam in 2021. I'm also aware that she fell victim to a 'romance' type scam in 2020. Although this scam, as a 'recovery' type scam, was initially different in nature to these scams, I think it's likely there would have been similarities in the fundamentals of the scams, such as being asked to make payments via cryptocurrency and communicating over messaging apps, which should potentially have raised concerns with Ms B given her previous experiences of being scammed.*



*Taking all this into account, I think it would be fair for Ms B to share liability equally with Revolut. So overall, I think Revolut should refund 50% of the loss it ought to have prevented. It should pay 8% simple interest on top of this to compensate Ms B for the loss of use of the funds.*

Ms B's representative replied to say she accepted my provisional decision.

Revolut didn't reply to my provisional decision.

### **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 had anything to add after my provisional decision, I see no reason to depart from it.

### **My final decision**

My final decision is that I uphold Ms B's complaint, in part.

To put things right Revolut Ltd should:

- Refund 50% of Ms B's loss of £12,000 to the scam.
- Pay 8% simple interest per year from the date of the payment to the date of settlement (less any tax lawfully deductible.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 15 November 2024.

Helen Sutcliffe  
**Ombudsman**