

The complaint

Mr C complains that Revolut Ltd didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr C was the victim of an investment scam. In August 2021 he was introduced by a friend to someone I'll refer to as "the scammer" who claimed to work for an investment company I'll refer to as "M". Mr C was added to a Telegram group and told he could make returns of up to 10% by investing in cryptocurrency.

The scammer asked him to transfer money to his Revolut account from an account he held with another electronic money institute ("EMI") which I'll refer to as W. From there he would purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "B" and then load it onto an online wallet. Between 19 August 2021 and 4 November 2021, he made four debit card payments to B and six faster payments to two individuals totalling £20,796.86.

Mr C realised he'd been scammed when he was unable to withdraw his funds. He complained to Revolut but it refused to refund any of the money he'd lost. It said he didn't respond to messages from its Fraud Investigation team and based on the information it had it was unable to uphold the complaint.

Mr C wasn't satisfied and so he complained to this service. Responding to the complaint, Revolut said on 4 November 2021 Mr C transferred funds to two new payees. Each time, he was given a written warning which stated: '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.'

It's system then intercepted the payments further and he was warned the transfers were possibly high-risk. He was also provided with a link to StopFraud, where customers are informed about different types of scam. Both payments were automatically cancelled, and Mr C initiated them again.

Revolut said the transactions weren't out of character and when Mr C opened the account, he said the purpose of the account was 'to make transfers', so the payments were in line with the reason given for the account opening and the payments made in quick succession. And he failed to do due diligence before making the transfers, having been give warnings when he set up the new payee.

It also said he was out of time to raise a chargeback dispute and B had provided the service in full so there would have been no prospect of a successful chargeback.

It said concerns about the scam should be directed to B as the transactions from Revolut weren't fraudulent and as Mr C had transferred the funds to an account in his name and control, they wouldn't be covered under the Contingent Reimbursement Model ("CRM") code. Finally, it said recovery of the funds was impossible because the beneficiary accounts had been terminated by the time he reported the scam.

Our investigator didn't think the complaint should be upheld. He noted Mr C was out of time to raise a chargeback request in respect of the debit card payments and to the time that had passed, he didn't think there was a reasonable prospect of a successful recovery.

He didn't think any of the card payments were suspicious, given their values and the fact they were made to an existing payee. There were no warnings on either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites that could have alerted Revolut that the payments should be stopped. And the payments were made to an account in Mr C's own name that he held with a legitimate cryptocurrency exchange, so Revolut had no reason to be concerned.

He noted Revolut had declined three of the card payments and gave a written warning when Mr C set up new payees on 4 November 2021, and he was satisfied there was nothing else it could reasonably have done on those occasions to stop the scam. He thought Revolut should have intervened when Mr C transferred £5,000 to the same payee later that day because the payment was out of character for the account. But he didn't think an intervention would have made a difference because he didn't think questioning from Revolut would have uncovered the scam.

Mr C has asked for his complaint to be reviewed by an Ombudsman, suggesting Revolut should refund the faster payments because our investigator accepted it had missed an opportunity to intervene on 4 November 2021 and if Revolut had intervened, the transfers could have been prevented.

My provisional findings

I explained that 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 transfers immediately. Revolut could comply with the requirement to carry out transfers 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 August 2021 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;
- 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 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).

- 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 August 2021 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 Mr C was at risk of financial harm from fraud?

It isn't in dispute that Mr C has fallen victim to a cruel scam here, nor that he authorised the payments he made.

Whilst I have set out in detail in this decision the circumstances which led Mr C to make the payments using her Revolut account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr C might be the victim of a scam.

I considered the debit card transactions in the context of whether they were unusual or uncharacteristic of how Mr C normally ran the account, and I didn't think they were. All the payments were to a legitimate cryptocurrency exchange, he was paying an account in his own name, and the payments weren't out of character for the account.

The second faster payment he made on 4 November 2021 was for £5,000. I was satisfied this was out of character for the normal spending on the account, but the payment wasn't identifiably for cryptocurrency, so I didn't think it was unreasonable that Revolut didn't intervene.

However, he went on to make a further three payments that day to the same individual, bringing the cumulative total of the payments to that payee to £18,076.80. In the circumstances I thought Revolut ought to have intervened when he made the third payment to that payee, which was the eleventh payment overall.

What did Revolut do to warn Mr C?

Mr C set up two new payees on 4 November 2021. For each new payee, he was given a written warning asking if he trusted the payee and warning him about the risk of impersonation scams. He was also warned the transfers were high risk and offered further scam education. I considered whether this was proportionate to the risk and as the payments were low value, I was satisfied it was.

What kind of warning should Revolut have provided?

I thought Revolut ought to have been concerned about the pattern and cumulative value of the transactions and contacted Mr C either by phone or its live-chat facility and asked him some questions about the payment including why he was making the payments, whether there was a third party involved and if so how he'd met them, whether he'd downloaded remote access software, whether he'd been promised unrealistic returns, whether he'd made any withdrawals, whether he'd been coached to lie, whether he'd done any due diligence and whether he'd been advised to make an onwards payment from the cryptocurrency exchange.

Had it done so, there's no evidence Mr C had been coached to lie and so I thought it was likely he'd have said he was buying cryptocurrency and he was being assisted by a broker to whom he'd been referred by a friend. He might also have disclosed he'd been advised to make an onward payment from the cryptocurrency exchange and that he understood he would be joining a mining pool. It's also likely he'd have told Revolut that he'd been told to pay 30% of the balance of his trading account to unfreeze the account because he was very worried that he'd lose his money.

I accepted there were no warnings or negative reviews available online to confirm M was operating a scam, but I was satisfied there were enough red flags present (primarily the involvement of a broker and the fact he was being asked to pay to unfreeze his account) for Revolut to have detected the scam and so it would have been in a position to warn Mr C that the investment was probably a scam and to provide a tailored cryptocurrency investment scam warning and advice on additional due diligence.

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

I thought it was clear from the communications I'd seen between Mr C and the scammer that he was having trouble raising the further funds and that he was extremely alarmed at having to pay to unfreeze his account. I thought that if Revolut had warned him that this (and other factors) was a strong indicator for fraud, he wouldn't have made any further payments, particularly as he was having trouble finding the funds.

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

In reaching my decision about what is fair and reasonable, I took into account that Mr C purchased cryptocurrency which was credited to an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters.

I thought Revolut still should have recognised that Mr C might have been at risk of financial harm from fraud when he made the eleventh payment, and in those circumstances, it should have made further enquiries about the payment before processing it. If it had done that, I was satisfied it would have prevented the losses Mr C 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 Mr C's own account does not alter that fact and I thought Revolut can fairly be held responsible for Mr C's loss in such circumstances. I didn'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.

Should Mr C bear any responsibility for his losses?

In considering this point, I considered what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I said I accepted there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence but, in the circumstances, I didn't think Mr C was to blame for the fact he didn't foresee the risk.

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I didn't think it was unreasonable for Mr C to have believed what he was told by the broker in terms of the returns he was told were possible.

He hadn't invested in cryptocurrency before and so this was an area with which he was unfamiliar. This unfamiliarity was compounded by the sophisticated nature of the scam, the fact he trusted the broker and the fact he believed the trading platform was genuine and that his investments were doing well. I said there wasn't anything suspicious about the way he'd learned about the investment, he wasn't coached to lie, and I hadn't seen any negative reviews or warnings which might have alerted him to the fact the investment was a scam.

Mr C had made payments from W, but W didn't intervene or present him with any warnings. I accepted he went ahead with payments having received written warnings from Revolut, but the warning wasn't relevant to the circumstances, and he had believed the investment was genuine. So, I didn't think there should be a reduction to the element of the settlement which relates to the debit card transactions.

However, on 4 November 2021, Mr C was making large payments having been told he would have to pay 30% of the balance to unfreeze the account. It was clear from his communications with the scammer that he was alarmed because he was having trouble finding the funds required to unfreeze the account and he's explained that he only made those further payments because he feared he would lose his money. Having considered the circumstances under which he made these payments, I thought he ought reasonably to have questioned why he was being asked to pay additional funds to unfreeze his account and taken some advice concerning what he was being asked to do. So I said I was minded to direct that this element of the settlement should be reduced by 50% for contributory negligence.

Compensation

As the main cause for the upset was the scammer who persuaded Mr C to part with his funds and I hadn't found any errors or delays to Revolut's investigation, I didn't think he was entitled to any compensation.

Recovery

I didn't think there was a realistic prospect of a successful recovery because Mr C paid an account in his own name and moved the funds onwards from there.

Developments

Mr C has indicated that he accepts my provisional findings and Revolut hasn't provided a response.

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 submitted any additional evidence or arguments for me to consider, the findings in my final decision will be the same as the findings in my provisional decision.

My final decision

My final decision is that Revolut Ltd should:

- refund the money Mr C lost from the eleventh payment onwards, less any credits received during the scam period.
- the settlement relating to the payments Mr C made on 4 November 2021 should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Revolut Ltd deducts tax in relation to the interest element of this award it should provide Mr C with the appropriate tax deduction certificate.

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

Carolyn Bonnell
Ombudsman