

The complaint

Miss W is unhappy that Revolut Ltd ('Revolut') won't refund the money she lost after falling victim to a scam.

What happened

In early 2023, Miss W was looking for a home working opportunity and found a company (I'll refer to as F) advertising on a social media site. F was offering a job that involved reviewing shopping channel items. As part of the work, Miss W had to pay for sets of tasks and was told she would earn between 50 and 100 USDT per day. Miss W says she researched F online and found positive reviews.

Miss W was added to a group on a messaging app and spoke with others who shared information about their daily profits and the withdrawals they'd made. Miss W had to purchase cryptocurrency, which she transferred to a cryptocurrency wallet, then used to buy the task sets on F's platform. The task sets became more and more expensive until eventually Miss W couldn't afford to pay for any more tasks.

Miss W made her first payments to the job scam from an account held with a bank, not Revolut. When that bank blocked some payments, Miss W transferred funds from her other bank account to her Revolut account, to continue making payments. There is no indication that the other bank intervened or gave Miss W any warnings in relation to the payments she made.

Initially, Miss W was able to withdraw her earnings from F, which convinced her it was legitimate. But when she was unable to clear the negative balance caused by the expensive task sets and couldn't withdraw the earnings she had accrued, she realised it was a scam and reported it to Revolut.

These are the payments that Miss W made from her Revolut account.

| Date | Pmt no | Place/location | Type of transaction | Amount |
|-----------|--------|---|---------------------|------------|
| 13.3.2023 | | <i>Account opened</i> | | |
| 19.3.2023 | 1 | Card payment to M – a cryptocurrency exchange | | £200.00 |
| 20.3.2023 | 2 | Card payment to M – a cryptocurrency exchange | | £1,765.00 |
| 20.3.2023 | 3 | Card payment to M – a cryptocurrency exchange | | £3,500.00 |
| 20.3.2023 | 4 | Card payment to M – a cryptocurrency exchange | | £2,900.00 |
| 20.3.2023 | 5 | Card payment to M – a cryptocurrency exchange | | £2,900.00 |
| | | <i>4 attempted card payments declined by Revolut</i> | | |
| 24.3.2023 | 6 | Card payment to C – a cryptocurrency exchange | | £20.00 |
| 24.3.2023 | 7 | Card payment to C – a cryptocurrency exchange | | £20.00 |
| 25.3.2023 | 8 | Card payment to C – a cryptocurrency exchange | | £150.00 |
| 26.3.2023 | 9 | Card payment to C – a cryptocurrency exchange | | £50.00 |
| 27.3.2023 | | <i>Credit received from C – a cryptocurrency exchange</i> | | £207.64 cr |
| 27.3.2023 | 10 | Card payment to B – a cryptocurrency exchange | | £290.00 |

| | | | |
|-----------|----|---|-----------|
| 27.3.2023 | 11 | Card payment to B – a cryptocurrency exchange | £30.00 |
| 28.3.2023 | 12 | Card payment to M – a cryptocurrency exchange | £2,000.00 |
| 28.3.2023 | 13 | Card payment to M – a cryptocurrency exchange | £2,000.00 |
| 30.3.2023 | 14 | Card payment to M – a cryptocurrency exchange | £1,000.00 |
| 30.3.2023 | 15 | Card payment to M – a cryptocurrency exchange | £30.00 |
| 30.3.2023 | 16 | Card payment to M – a cryptocurrency exchange | £3,127.00 |
| 31.3.2023 | 17 | Card payment to M – a cryptocurrency exchange | £2,500.00 |
| 31.3.2023 | 18 | Card payment to M – a cryptocurrency exchange | £2,500.00 |
| 31.3.2023 | 19 | Card payment to B – a cryptocurrency exchange | £2,500.00 |
| 31.3.2023 | 20 | Card payment to B – a cryptocurrency exchange | £1,975.00 |
| 31.3.2023 | 21 | Card payment to B – a cryptocurrency exchange | £167.36 |

Revolut declined to refund Miss W, saying she ignored warnings. Also, that Miss W didn't give honest answers to questions they asked which prevented them from uncovering the scam.

Miss W wasn't happy with Revolut's response, so she brought a complaint to our service.

An investigator looked into Miss W's complaint and didn't uphold it. The investigator wasn't satisfied that Revolut could've uncovered the scam based on the incorrect information Miss W gave them. Also, the investigator felt Revolut had appropriately intervened, and it was unlikely that further intervention would've prevented Miss W from making the payments.

Miss W disagreed with the investigator's opinion and asked for an ombudsman to review her case. Miss W said she wasn't coached by the scammer and feels she answered Revolut's questions honestly. If Revolut had asked basic questions relating to cryptocurrency, the scam would've been uncovered and her losses prevented.

Having reviewed the case, I intended reaching a different answer than the investigator. So, I issued a provisional decision and give all parties a chance to provide further evidence before I issued a final decision.

My provisional decision

In my provisional decision I said:

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 Miss W 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 Miss W and the Payment Services Regulations to carry out their 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.

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 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 March 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 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;¹
- 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 in, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat). Which it did in this case.

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 Code², 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

¹ 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/

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

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 cryptocurrency³ 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.
- 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 March 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

³ 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.

what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in March 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Miss W was at risk of financial harm from fraud?

On 20 March 2023, Miss W attempted four card payments which were declined by Revolut for security reasons. I think it was appropriate that Revolut intervene at this point as Miss W had made four payments within a 24 hour period which totalled over £10,000. So, I would've expected an intervention.

As part of their intervention, through their in-app chat, Revolut let Miss W know that her payments had been blocked because they had a security system in place to prevent fraudulent card transactions. Revolut asked Miss W a number of questions which included whether Miss W had recently downloaded any screen sharing application, what the purpose of the payment was, and whether she had received any calls from someone telling her to create a Revolut account.

In response Miss W told Revolut that she was making the payments to buy cryptocurrency, nobody had told her to do it, and she did her own research on the best account to use for that purpose.

Revolut then warned Miss W that "it is important to take your time before making investment decisions" and asked a follow up question about whether anyone was pressuring her to act quickly at risk of missing out on an investment opportunity.

Revolut also asked whether Miss W had been promised returns which seemed too good to be true or a guaranteed return. Miss W told Revolut she hadn't been promised anything and was acting alone.

What did Revolut do to warn Miss W?

In response to the answers Miss W gave, Revolut gave two warnings which said:

- It is important to only purchase cryptocurrency from a reputable company. Scammers often use tactics to trick you into buying cryptocurrencies from fake websites and investment platforms.
- Scammers are using increasingly sophisticated techniques to gather personal information and convince customers to transfer funds in complex scams. If you have any concerns then do not proceed and let us know, we will be here to assist you further.

What kind of warning should Revolut have provided, and would it have prevented Miss W's loss?

I think as part of the questions Revolut asked, based on the information available to them, they should've queried why Miss W had made four separate payments all within 24 hours and why the payment sizes were escalating. This is a common pattern in scams and isn't just consistent with an investment scam. I also think Revolut should've asked why Miss W was using her Revolut account to make the payments and not the account that she was using to fund her Revolut account.

I think had Revolut asked these questions, Miss W would've provided more clarification about why she was making the payments and that the job scam would've been uncovered. Miss W wasn't given a cover story by the scammer and, while her initial answers to Revolut's questions didn't include information about the job opportunity, I'm not satisfied that Revolut's assertion that she lied is entirely fair. Miss W told them she was buying cryptocurrency,

which was true. I think the problem was that the questions Revolut asked didn't draw out the right information from Miss W for them to identify the actual scam she was falling victim to. I think based on the additional information that Miss W would've given if Revolut asked more questions, Revolut would've been concerned that Miss W was the victim of a job scam. In response Revolut should've highlighted the features of a job scam to Miss W, which I think would've resonated with Miss W and that she wouldn't have proceeded with making payments.

I say this because Miss W was already having some concerns at the point Revolut intervened. She had told her daughter about the job opportunity and her daughter had been concerned about whether it was legitimate. As a result of those concerns, Miss W's daughter had completed some checks to verify the legitimacy of the job. However, she was unable to find anything that indicated it wasn't genuine.

So, I think if Revolut had talked about what job scams look like and the tell-tale signs, Miss W would've realised she was the victim of a scam and not made any more payments.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut wasn't the original source of the funds for the money Miss W lost to the scam. Miss W had moved the money from another bank to her Revolut account, before sending the funds onto a cryptocurrency wallet.

But as I've set out in some detail above, I think that Revolut still should have recognised that Miss W might have been at risk of financial harm from fraud when she had the four declined payments, before making payment six. While Revolut did intervene, I'm not satisfied that it asked enough questions, based on the information available to it from the pattern of payments Miss W had already made. If it had asked questions as suggested above, I think it would've identified that Miss W was most likely the victim of a job scam, which would've warranted a warning highlighting the features of a job scam.

If it had taken those steps, I am satisfied it would have prevented the losses Miss W suffered. The fact that the money used to fund the scam came from elsewhere does not alter that fact and I think Revolut can fairly be held responsible for Miss W'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 Miss W 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 Miss W could instead, or in addition, have sought to complain against those firms. But Miss W has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Miss W'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 Miss W's loss from payment six onwards (subject to a deduction for Miss W's own contribution which I will consider below).

Should Miss W bear any responsibility for her losses?

In this case I think it is fair for Miss W to share responsibility for her loss with Revolut. I say this because I think a reasonable person would've been concerned at being required to pay over £10,000 within a 24 hour period for the type of job that Miss W believed she had. Especially taking into account the type of income she had been told she could earn, which was 50 to 100 USDT.

I appreciate that Miss W carried out some checks, however she had an opportunity when Revolut intervened and provided her with the investment scam warning to ask questions to satisfy herself that the job opportunity was legitimate. She told her contact at F that she was concerned it was a scam, but I'm not satisfied that she took enough steps to reasonably verify the legitimacy of the job.

So, I think it's fair to reduce the refund from Revolut by 50%, from payment 6 onwards.

My provisional decision was that I intended to uphold this complaint, asking Revolut to refund 50% from payment six onwards but deducting the £207.64 credit that Miss W received. I also intended to ask Revolut to pay interest on the refund at 8% simple interest per year, calculated from the date of the payments until the date of settlement.

Responses to my provisional decision

Miss W responded, saying she accepted my provisional decision. However, Revolut didn't respond.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Revolut) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final 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.

Neither Miss W or Revolut have provided any new evidence or arguments that they want me to consider, so I see no reason to reach a different answer than I did in my provisional decision. I'll summarise the outcome and my reasons, following on from what I said in the provisional decision.

Revolut's intervention

I'm not persuaded that Revolut should've intervened on the first five payments, based on it being a new account with no previous account activity to compare the payments to.

However, when Miss W attempted four card payments on 20 March 2023, I would've expected Revolut to intervene – which it did. I say this based on the number of payments made in quick succession, as well as the value of the payments Miss W attempted to make on that day.

Through their in-app chat, Revolut asked Miss W a number of questions about her payments and provided her with two warnings in response to the answers she gave. However, I don't think Revolut asked sufficient questions, based on the payment pattern and the information they had available, about the payments she was attempting.

If Revolut had asked the type of questions I would've expected, I think it's more likely than not that the job scam Miss W was falling victim to would've been uncovered. And, if Revolut had given Miss W a job scam warning that it would've resonated with Miss W and her loss would've been prevented from payment six onwards.

So Revolut should refund Miss W from payment six onwards.

Should Miss W bear any responsibility for her losses?

I'm satisfied that it's fair for Miss W to share liability for her loss with Revolut, as I think a reasonable person would've been concerned at being asked to pay £10,000 within 24 hours for a job that told could earn 50 to 100 USDT per day. Also, based on the chat messages with the scammer, Miss W already had concerns, and I'm not satisfied that Miss W did sufficient checks to verify the job was genuine.

On that basis, I'm satisfied it's fair to reduce the refund by 50%.

It's also fair for Revolut to deduct from the refund the value of the payments Miss W was able to withdraw from her account with F, which total £207.64.

Also, I require Revolut to pay interest on the refund as Miss W has been deprived of the use of the funds. Interest should be calculated at 8% simple per year from the date of the payments until the date of settlement.

Putting things right

To put things right I require Revolut Ltd to:

- Refund Miss W 50% from payment six onwards.
- Revolut can deduct the £207.64 credit that Miss W received from the refund amount.
- Pay interest on the refund at 8% simple interest per year, calculated from the date of the payments until the date of settlement*

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

My final decision

My final decision is that I uphold this complaint against Revolut Ltd and require them to compensate Miss W, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 19 November 2024.

Lisa Lowe
Ombudsman