

## The complaint

Mr G complains that Revolut Ltd (Revolut) is refusing to refund him the amount he lost as the result of a scam.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr G tells us that he saw an advertisement online for a company that appeared to be endorsed by a well-known celebrity; I will call the company X. X was offering an investment that would gain a greater return than interest from a bank.

Mr G contacted X and agreed to make an initial small payment. Mr G continued to communicate with X and trust built between them.

Mr G agreed to make further payments into the investment believing when X told him that he was making a substantial profit.

When Mr G decided to make a withdrawal, he was told he would have to make other payments first, but when he made the payments, he was still unable to withdraw his profits and realised he had fallen victim to a scam.

Various accounts were created throughout the scam including Mr G's account with Revolut, and other accounts with different cryptocurrency exchanges. It's not clear how these accounts were opened, and Mr G has been unable to give a full explanation as to how they came about.

However, Mr G seems to have been aware at the time that payments were being made from his Revolut account in relation to what he thought was an investment, and that Mr G had downloaded remote access software on X's request. The following payments were made from Mr G's Revolut account:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	24 May 2022	Kraken	Transfer	£350.00
2	7 June 2022	Bitthebank	Debit Card	£890.95
3	20 June 2022	Bitthebank	Debit Card	£2,537.70
4	21 June 2022	Bitthebank	Debit Card	£2,549.25
5	2 August 2022	Binance	Debit Card	£2,500.00
6	23 September 2022	Binance	Debit Card	£2,500.00
7	9 November 2022	Binance	Debit Card	£4,900.00
8	9 November 2022	Binance	Debit Card	£2,708.00
9	9 November 2022	Binance	Debit Card	£4,900.00
10	9 November 2022	Binance	Debit Card	£2,708.00
11	22 November 2022	Binance	Debit Card	£4,900.00
12	22 November 2022	Binance	Debit Card	£800.00
13	29 November 2022	Moonpay	Debit Card	£1,000.00

14	30 November 2022	Simplex_elastumou	Debit Card	£1,269.69
15	30 November 2022	Simplex_elastumou	Debit Card	£1,100.00

Our Investigator considered Mr G's complaint and thought it should be upheld in part. Revolut disagreed. In summary it said:

- In a "self to self" scenario, there is no APP fraud as the payments are not passing from "person A" to any other person. The payments are leaving Revolut to an account held by and accessed by the customer at another financial institution. "Self to self" transfers also do not meet the definition of APP fraud in the Code [DS1(2)] or the mandatory APP reimbursement scheme [PS23/3].
- neither the Code nor the mandatory reimbursement rules apply to "self-to-self" transactions the PSR has, under PS23/2, expressly identified and excluded "self to self" transfers from the mandatory APP reimbursement scheme to be implemented next year.
- For the Financial Ombudsman Service to effectively apply the reimbursement rules to self-to-self transactions executed by Revolut is an error of law. Alternatively, the FOS has irrationally failed to consider the fact that these transactions are self-to-self and therefore obviously distinguishable from transactions subject to the regulatory regime concerning APP fraud.
- The Financial Ombudsman Service appears to have decided as a matter of policy, that Revolut should be left "holding the baby" because, subsequent to the self-to-self transfer involving a Revolut account, customers have transferred funds to their own account with a third party.
- Revolut are aware of no rational explanation as to why the Financial Ombudsman Service considers Revolut should be held responsible the customer's loss in these scenarios, particularly where the relevant transaction is self-to-self.
- It is irrational (and illogical) to hold Revolut liable for customer losses in circumstances where Revolut is merely an intermediate link, and there are typically other authorised banks and other financial institutions in the payment chain that have comparatively greater data on the customer than Revolut, but which the Financial Ombudsman Service has not held responsible in the same way as Revolut.

As an informal outcome could not be reached this complaint has been passed to me to decide.

### **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.

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 G modified the starting position described in Philipp, by – among other things – 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” (section 20).

So Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

I must also take into account that 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 May 2022 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 did 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;

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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/)

- 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.

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>2</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>3</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).
- 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.
- 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

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<sup>2</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>3</sup> BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse

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,

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 date 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.

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 May 2022, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr G has fallen victim to a cruel scam here. I think it's likely from the evidence provided that he authorised the disputed payments made in relation to the scam.

Whilst I have set out above the circumstances which led to the payments being made from Mr G's Revolut account, I am mindful that Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr G might be the victim of a scam

But I think it could be argued that while Mr G's account had no history to compare the disputed payments to (due to it being opened for the purpose of the scam), that some of the early payments should reasonably have caused Revolut to have concerns, and prompted it to intervene providing an automated warning when they were made. I think this type of intervention would have been proportionate to the risk associated to these payments.

But Mr G has told us he had little control over the payments that were being made, and X had control of his devices with the use of remote access software. Mr G says he trusted X at the time. So, I don't think an automated warning would have likely uncovered the scam. I think either X would have clicked through the screens provided by Revolut, or prompted Mr G to do so.

However, by the time Mr G made payment 9 he had made payments totalling more than £12,500 in a single day to an identifiable cryptocurrency exchange. Considering the high value of the payments I think Revolut should have identified the potential risks associated with the payments and intervened providing a proportionate response.

*What did Revolut do to warn Mr G?*

Revolut has told us that the payments made in relation to the scam required Mr G to confirm it was him making them via 3DS secure using his registered device, which he did on each occasion.

*What kind of warning should Revolut have provided?*

Overall, as I've said above, I'm satisfied that Revolut should have identified payment 9 as carrying a heightened risk of financial harm and should have taken additional steps before allowing it to be made.

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 be made. I think it should have done this by, for example, directing Mr G to its in-app chat to discuss the payment further.

*If Revolut had attempted to establish the circumstances surrounding payment 9, would the scam have come to light and Mr G's loss been prevented?*

I have no compelling evidence to suggest Mr G would have misled Revolut about the purpose of the payment he was attempting to make or the surrounding circumstances.

So, if Revolut had intervened as I think it should have, I think it's likely Revolut would have found that Mr G had found an investment opportunity online that had been endorsed by a well-known celebrity and had been required to download remote access software as part of the investment. By the time payment 9 was being made Mr G was also making payments to allow him to withdraw from the investment.

With the above information provided to Revolut I think it would have immediately recognised that Mr G was falling victim to a scam. It would have been able to provide a very clear warning and, given that Mr G had no desire to lose his money, it's very likely that he would have stopped, not followed the fraudster's instructions and his loss would have been prevented.

I'm satisfied that had Revolut established the circumstances surrounding payment 9, as I think it ought to have done, and provided a clear warning, Mr G's loss from and including payment 9 would have been prevented.

Other banks Mr G made payments from have also provided reasonable refunds to Mr G and it would be fair to deduct these amounts from what Revolut is required to refund to Mr G.

*Should Mr G bear any responsibility for his loss?*

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

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

The tactics employed by X are common, but nonetheless captivating to anyone unfamiliar with them. X had taken time to build confidence with Mr G over a period of months and I

don't think he had any reasonable doubts about the investment being genuine, so would not have recognised the risk associated to the payments being made from his account.

### **Putting things right**

To put things right Revolut Ltd should refund Mr G the payments made in relation to the scam from payment 9 onwards which totals £16,677.69 less credits received from other banks following the scam of £7,361.41, leaving a balance to be refunded of £9,316.28.

Revolut should add 8% simple interest per year to this payment from the date of loss to the date the payment is made (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 December 2024.

Terry Woodham  
**Ombudsman**