

Complaint

Ms S is unhappy that Revolut Ltd didn't refund her losses after she told it she'd fallen victim to an investment scam.

Background

In late 2023, Ms S came across an advertisement on a social media platform promoting the services of an investment company. Interested in the opportunity, she filled out an enquiry form. Shortly afterwards, she was contacted by someone who discussed investment options with her. Although she didn't know it at the time, this individual was not an employee of a genuine investment company but a fraudster. She recalls thinking that the individual who called her came across as knowledgeable and he explained to her that the return she could expect to earn on her investment was a little over 7%.

She already had an account with a bank that I'll refer to as Bank S. However, the fraudsters recommend she create two new accounts – one with Bank C and the other with Revolut. She used the Revolut account to make the following payments to the fraudsters:

- £15,000 on 18 October 2023.
- £25,000 on 20 October 2023.

Ms S isn't entirely sure, but it seems likely that these funds were deposited into an e-wallet with a third-party cryptocurrency exchange. It's likely that account was in her name, but Ms S has told me that the fraudsters persuaded her to download remote access software. It's therefore possible that the account was only notionally under her control. In addition to that, the two payments listed above were funded by two unsecured personal loans taken out in her name. The proceeds of these loans were initially deposited into her account with Bank S, then transferred to Bank C, and subsequently moved to Revolut. From there, the funds were sent to an account controlled by the fraudster. Ms S realised she had been scammed when the fraudsters began making unreasonable requests for further funds, including pressuring her to sell her home. She then reported the scam to Revolut, as well as to Banks S and C.

Revolut declined to refund her losses. Ms S was unhappy with that response and so she referred her complaint to this service. An Investigator considered the case and upheld the complaint in part. He found that Revolut ought to have done more in relation to the first payment and that, had it done so, it could have prevented her losses. However, he also concluded that Ms S should bear some responsibility for her losses due to contributory negligence. Given that Banks S and C had also facilitated the movement of funds, he determined they should share liability with Revolut. He recommended that Revolut refund 25% of Ms S's losses, with Banks S and C responsible for 50%.

Ms S agreed with the Investigator's view. Revolut hasn't responded and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that an Electronic Money Institution ("EMI") such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In *Philipp*, the contract permitted Barclays not to follow its customer'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 S 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 S 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 immediately¹. 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.

¹ 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).

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 October 2023 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 EMIs like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- 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 *“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 Code³, 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).

² 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/

³ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

- Since 31 July 2023, under the FCA's Consumer Duty⁴, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *"consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers"*⁵.
- 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 October 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.

⁴ Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

⁵ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

Should Revolut have recognised that Ms S was at risk of financial harm from fraud?

I recognise that Revolut was in a slightly more difficult position in respect of spotting potentially fraudulent payments. Ms S had opened up her Revolut account specifically for the purpose of making these payments. That meant that Revolut didn't have a history of her payment activity to allow it to determine whether or not either of these payments were unusual or out of character. However, I think even if I grant that it was slightly more difficult for Revolut, I still think it ought to have recognised that she was at risk of financial harm at the point of the first payment. This was a transaction of significant value, and it was directed to a third-party cryptocurrency exchange - something Revolut would have been aware of. The combination of these factors should have prompted closer scrutiny of the payment.

In fairness, Revolut did spot that there was potential risk here. Unfortunately, I'm not persuaded that its response was a particularly effective one. Immediately before this transaction, Ms S had attempted to send £15,000 to a different recipient. Revolut did block that payment and asked her some questions about it. These were automated, requiring her to select from pre-set answers. They led to its systems generating a warning intended to highlight some of the key risks that might have been relevant.

She did go on to communicate with an employee via the chat function in the app. She attempted to reassure Revolut that she understood what she was doing and that it needn't block any further payments. She explicitly said that she was buying cryptocurrency of her own volition. A brief interaction followed in which Ms S was asked to provide a selfie to confirm that she was the person who had initiated the payment. The Revolut agent then sent the following message:

Make sure any research you do is your own – fraudsters may appear knowledgeable, create convincing-looking posts on social media, or share articles about investing. If someone says you need to send money as a tax or fee to access your funds, you are being scammed. Our fraud detection systems show that there's a strong chance that this investment is a scam [...] Do you still want to proceed?

Ms S confirmed that she did. This exchange was, to my mind, superficial and represented a missed opportunity for Revolut to properly assess whether Ms S was at risk. Revolut should have asked her more probing questions to understand the circumstances of the transaction. It could have queried why, when answering its automated questions, she initially selected *"foreign exchange, commodities, stocks or bonds"* as the nature of the payment, yet later told the employee she was buying cryptocurrency independently. Revolut should have sought clarification on whether anyone was assisting her with the investment and how she had come across the opportunity.

I accept that she appears to have given some misleading responses to questions posed by Revolut and that it's likely this was at the recommendation of the fraudsters. Nonetheless, I think it's likely that Revolut could've established the reality of the situation if it had questioned her. For example, after the second payment, Ms S described the reasons for her payments as *"investing with a brokerage company."* This statement, which was made before she realised she had been scammed, was a red flag. Cryptocurrency investments supposedly made under the direction of brokers are a significant indication of fraud risk. I'd have expected Revolut to have spotted that if Ms S had shared this information earlier. I'd have expected it to warn her explicitly that she was at serious risk of financial harm due to fraud. If it had done so, I'm satisfied that she'd have been dissuaded from making this payment and the subsequent one.

Is it fair and reasonable for Revolut to be held responsible for the loss?

In reaching my decision about what is fair and reasonable, I have taken into account that it appears Ms S made these payments to another account in her own name. It's likely therefore that the losses she experienced didn't take place on her Revolut account. I've also taken into account the fact that the funds she lost originated elsewhere.

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

There are two other firms that were involved in the movement of this money and Ms S has complained about them too. Final decisions will be issued separately on her complaints against those businesses.

Should Ms S bear any responsibility for her losses?

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. Having done so, I'm satisfied that it is fair and reasonable for Ms S to bear partial responsibility for her own losses here.

The fraudsters asked that she download remote access software to help her with the process of investing. At an earlier point, Bank C warned her about the risks posed by remote access software in connection with earlier transactions. She later discovered that the fraudsters had used this remote access software to access and read personal emails. I think it ought to have occurred to her that this sort of conduct would be very unusual for a supposed investment professional, particularly in light of what Bank C had told her.

Significantly, although it's not entirely clear to me how the loans came about, it looks as if the fraudsters might have made the applications in her name and without her consent. Nonetheless, she was aware that they'd been paid into her account, and she was willing to go ahead with making these two payments anyway. I find it surprising that she'd agree to do so if, as she says, she didn't consent to those loan applications being made.

I've also determined the complaints Ms S made about Bank S and Bank C in relation to these funds and found each to have been at fault in failing to prevent her losses to fraud. In other words, there are four parties here that are partially responsible for the losses Ms S suffered. It is, therefore, fair and reasonable to each to bear responsibility for 25% of the loss. In view of that, this decision will direct that Revolut refund 25% of the funds Ms S lost to the scam.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Ms S accepts my final decision, Revolut Ltd needs to:

- Refund 25% of the payments made from her Revolut account detailed above; and

- Add 8% simple interest per annum to those payments calculated to run from the date they left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 28 April 2025.

James Kimmitt
Ombudsman