

The complaint

Mr R complains that Revolut Ltd won't refund money he lost when he fell victim to an investment scam.

Mr R is being represented by solicitors in his complaint.

What happened

The detailed background to this complaint is well known to both parties and has been previously set out by the investigator in their assessment. So, I won't repeat everything again here. Instead, I'll focus on giving my reasons for my decision.

The complaint concerns six transactions totalling approximately £23,000 which Mr R sent from his Revolut account between November 2022 and January 2023. They were made in connection with a cryptocurrency investment opportunity using artificial intelligence, which Mr R says he found advertised on a social media platform while looking to improve his financial position. In the summer of 2023, Mr R discovered that he had been scammed.

Under the instructions of his 'account manager', Mr R opened an account with a cryptocurrency exchange as well as an e-money account with Revolut. To make deposits into his 'investment' account, Mr R sent money from his bank account to his e-money account with Revolut. He then made debit card payments to purchase cryptocurrency from the cryptocurrency exchange, before sending it on to wallets as instructed. At the time, he believed the cryptocurrency was being deposited into his investment account, given its balance increased by the corresponding amount.

Between January and April 2023, Mr R was able to make four withdrawals totalling just over £13,500 from his investment account via the cryptocurrency exchange. When he asked to make a further withdrawal a few months later, Mr R was told he needed to pay capital gains tax on his profits. It was at that point that he realised he had been scammed.

I issued my provisional decision earlier this month and gave reasons for why I didn't intend upholding the complaint. I said:

"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.

But, 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 November 2022 that Revolut should:

- *have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;*

- *have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;*
- *in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does including in relation to card payments); 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.*

EMIs are set up with the purpose of sending and receiving money and the type of payments they're generally used for tends to be somewhat different to banks and building societies. Often, the payments will be for larger sums. Where there's no previous account history, as was the case here given the account was opened the day of the first disputed transaction, what should reasonably strike Revolut as concerning for a first payment isn't down solely to the transaction amount involved.

I haven't seen any other factors at play here such that, in my view, Revolut should have been concerned and ought to have taken additional steps when Mr R authorised the first disputed transaction, a card payment of £1,000 on 3 November 2022. I accept that Mr R was sending money to a cryptocurrency exchange. But that in and of itself doesn't mean that the transaction ought to have flagged as suspicious. Buying cryptocurrency is a legitimate exercise. And cryptocurrency was listed as one of the account opening reasons. So, the transaction was in keeping with the purpose for which the account was opened.

But by the time Mr R authorised the second transaction – a card payment of £5,000 on 24 January 2023 – Revolut ought to have recognised that it carried a heightened risk of financial harm from fraud. This is because a pattern of increased activity on cryptocurrency spending had emerged. And there was a significant jump in the amount involved. I consider Revolut should have taken additional steps when it received Mr R's instruction.

I think that a proportionate response to that risk would have been for Revolut to have provided a written warning specific to the scam risk identified. In this instance, the transaction was identifiably cryptocurrency related. So, I would have expected Revolut to have provided a written warning about cryptocurrency investment scams, tackling some of the key features.

The investigator concluded that such a warning would have made Mr R stop in his tracks, thereby preventing further loss. But I'm not persuaded. I'll explain why.

Mr R's representative has told us that Mr R had conducted background research in the company involved and found an abundance of positive reviews. We've also been advised that Mr R considered the concerned social media platform to be reputable regarding advertisements and believed they were legitimate. Against that background, on balance, I'm not convinced that a written warning covering the key

features of investment scams involving cryptocurrency would have necessarily resonated with Mr R in the way the investigator has suggested.

This isn't a finding I've made lightly. Just a day later, a payment Mr R authorised from his bank to Revolut was flagged as suspicious by that bank. Mr R was required to phone the bank to discuss the payment. I've listened to a recording of the call, a summary of which the investigator recently shared with Mr R's representative. The agent informed Mr R that the transaction in question had flagged as high risk and observed that he had made several transfers to the Revolut account recently. The agent told Mr R that there had been an increase in scams involving money being transferred to Revolut accounts and said it was possibly because funds could be immediately transferred into cryptocurrency.

After asking a few questions about being cold called, having control over his Revolut account, and how he accessed his bank accounts, the agent noted that a £3 payment Mr R had attempted to send to a cryptocurrency exchange a few days ago had been blocked by the bank. Mr R said he had tried to send money but then gave up when it didn't go through. The agent explained that the bank had 'blacklisted' certain cryptocurrency beneficiaries given how frequently customers were being scammed.

The agent went on to ask Mr R to confirm the nature of the payment (to his Revolut account) which had flagged for further checks. Mr R told the agent he had opened the Revolut account a few months ago to keep an account separate from his working account. He elaborated that he wanted to keep funds separate so they weren't being used for day-to-day payments. But we know that the Revolut account was opened under the suggestion of the scammer to facilitate the scam payments. I accept that Mr R didn't know he was being scammed at the time, but he didn't tell his bank the true purpose for sending money to his Revolut account when asked about it.

Our investigator asked Mr R's representative about why Mr R answered the way he did. They state that Mr R didn't send out to mislead anyone. He recalls that at the time there was mention of capital gains tax and for this reason it was better to keep a separate account. Mr R also wanted to keep the cryptocurrency transactions separate from his day-to-day bank account. I've carefully considered the submissions and I'm mindful that that this is not the answer he gave his bank when asked about the reason for transferring money to Revolut. He didn't tell the bank that it was because he wanted a separate account to make cryptocurrency transactions – a response which would have given the bank cause for concern.

After completing the verification checks, the agent ended the call by telling Mr R to avoid certain cryptocurrency beneficiaries if he intended to invest again (referring to the £3 he had attempted from that bank account). The agent named a few firms, including the one Mr R had been sending payments to from his Revolut account. The agent encouraged Mr R to invest through companies that were regulated by the Financial Conduct Authority ("FCA") so that he had some protection in case something went wrong. Mr R acknowledged the information provided before the call came to an end.

I acknowledge that the bank in question didn't have the same level of knowledge about the payee as Revolut, given the transactions in that situation were between Mr R's own accounts. Revolut, on the other hand, knew that Mr R's payments were identifiably cryptocurrency related. However, I'm satisfied that the risks associated with cryptocurrency related transactions – including the payee Mr R's payments went

to – were highlighted during Mr R's call with his bank. It was suggested to Mr R that he should only deal with firms that were regulated by the FCA.

But it doesn't appear that Mr R seems to have followed that advice from his trusted bank – with whom he had an existing relationship – as he could have discovered that the company he had been dealing with wasn't regulated by the FCA or any other regulator in the world. What I can see instead is that once the funds were credited to his Revolut account, he sent them on to the cryptocurrency exchange for onward transfer to that company.

Given the above, I'm not persuaded that a written warning at the time of the second disputed transaction, or during subsequent transactions, is likely to have positively impacted Mr R's decision-making. Even if there had been a direct intervention by Revolut, such as an in-app chat with one of its agents, on balance I think it's unlikely that the scam would have unravelled. Mr R has told us he had done some checks on the company concerned and was happy with the results. By that suggested intervention point, he'd also made a withdrawal. And his main bank had already suggested dealing only with FCA-regulated entities.

What this means is that in the circumstances of this case, I don't consider Revolut acted unfairly in executing the payment instructions it received from Mr R. It follows that I don't find it liable for his financial loss.

I've also thought about whether Revolut could have done more to recover the funds once it became aware of the situation, as in some circumstances the money can be recovered. These were card transactions, so the recovery avenue would have been limited to raising a chargeback. But Mr R's payments didn't go to the scammer directly, they went to a cryptocurrency exchange. He wouldn't be able to make a successful chargeback claim in the circumstances because the merchant he paid did provide the service requested (i.e., conversion of fiat money into cryptocurrency).

Also, time limits apply to chargebacks. Mr R didn't report the matter to Revolut until several months later – outside the chargeback time limits."

I invited further comments from both parties.

Revolut didn't respond by the deadline given, so I've assumed it has nothing further to add. Mr R disagreed with my provisional findings. In summary, he's said that:

- my conclusions are based solely on conjecture and supposition,
- the Financial Ombudsman Service has absolved Revolut of any responsibility, despite making a finding that it could and should have done more, by claiming that he would have ignored any warnings it may have issued,
- he accepts he ignored the mild warnings provided by his main bank, but only because he felt the bank was more interested in protecting its investment than protecting him from being scammed.
- he didn't check the FCA Register in respect of the cryptocurrency provider as he didn't consider himself to be investing funds with it; he did check the scam company at that point and found nothing,
- given his ongoing nervousness about his crypto activities, had Revolut issued a warning – on top of that issued by his bank – he thinks he may well have not gone ahead with the payments,

- he fully accepts the role he played in the financial loss suffered, but Revolut played an equally big role and at the very least it should own and pay for the breach of longstanding rules and codes of practice.

Additionally, Mr R's representative has said:

- despite recognising that the second transaction carried a heightened risk of financial harm, my decision concludes that Revolut's duty to monitor and warn was not breached,
- Revolut did not meet the high standards of consumer protection and so the complaint should be upheld.

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.

I thank Mr R and his representative for their comments which I've carefully considered. But they don't persuade me to change the outcome I reached in my provisional decision.

Mr R's representative has received several decisions from our service, so knows or ought to know that causation is a critical determinative factor in every scam case. It isn't enough that Revolut failed to identify a specific scam risk. In order to uphold this complaint, I would also need to be satisfied that such an intervention would more likely than not have positively impacted Mr R's decision making.

Mr R states that I don't know his thought processes. That I don't know for sure what action he would have taken had Revolut issued him with a warning, given no such warning was issued. Mr R is right; I can't say for certain how he would have responded to Revolut's warning. But I don't need to be certain. In such circumstances, I make my decision on the balance of probabilities. In other words, what I consider to be more likely than not Mr R's response based on the information that is available.

What I have is contemporaneous evidence of Mr R not being forthcoming with another business when he was questioned over the phone. He ignored that bank's warning about cryptocurrency investment because he thought it was more interested in protecting its investment. That logic could also apply to any warning provided by Revolut, given it also provides cryptocurrency. I think it's important to note that Mr R's bank suggested that he deals only with FCA-regulated entities. If Mr R is now saying that he did check the FCA Register for the company he was dealing with and found nothing, that suggests he wasn't concerned about the fact that his dealings weren't with an FCA-regulated company.

Having carefully considered Mr R's and his representative's comments in conjunction with the available evidence, on balance, I'm not convinced that the provision of a tailored written warning by Revolut during the payment flow on 24 January 2023 would have stopped Mr R in his tracks like it has been suggested.

Mr R submits that Revolut should own and pay for the breach of longstanding rules and codes of practice. We're not the regulator and it's not my role to punish firms for possible breaches. My role is to decide the complaint before me and where something has gone wrong, I need to consider whether the firm's acts or omissions have led to the complainant suffering detriment. If yes, how to put things right for them. In this case, given my findings on causation, I'm not persuaded that any failure on Revolut's part – the lack of a tailored warning – is the proximate cause for Mr R's loss.

I know that Mr R will be disappointed with this outcome. Not least because of the sum of money involved and the investigator originally upheld the complaint. Having considered the matter very carefully, for the reasons given, it wouldn't be fair of me to hold Revolut responsible for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 November 2024.

Gagandeep Singh
Ombudsman