Financial Ombudsman Service

The complaint

Mr L complains that Revolut Ltd won't refund money he lost when he fell victim to a scam.

Mr L is represented by a solicitor but for simplicity I will refer to Mr L throughout this decision, even when referencing what his representatives have said on his behalf.

What happened

Mr L saw an avert online for an investment opportunity with a company which I'll call P. He followed a link and saw that there was an offer which would mean he would get his investment back if he didn't make a profit in the first month. Mr L thought this was a good deal and so made enquiries with P.

He was assigned an account manager who helped him through setting up his trading account and assisted him with trades. Mr L could see his trades on P's trading platform, and believed he was making good profits. Unfortunately, and unknown to Mr L, P was not legitimate, he was dealing with a scammer.

To fund his 'investment' Mr L used some of his own savings, he also borrowed money from friends and family. He also received some money back into his account, apparently from the scammer, which encouraged him to invest further. In total, Mr P made payments in Euros and in Sterling which totalled over £25,000. The payments he made are detailed below.

Payment	Date	Time	Amount	Payee
Payment 1	31/08/2022	12:11	€7,510	Transfer to Lithuanian account
Payment 2	05/09/2022	08:40	£2,600	Card payment to crypto
Credit	05/09/2022	08:51	€10	From scammer
Credit	05/09/2022	08:52	€3,490	From scammer
Payment 3	05/09/2022	08:53	€3,479.43	Card payment to crypto
Payment 4	06/09/2022	07:14	€1,500	Transfer to Lithuanian account
Payment 5	06/09/2022	09:39	€4,500	Transfer to Lithuanian account
Payment 6	06/09/2022	10:00	€4,005	Transfer to Lithuanian account
Payment 7	08/09/2022	14:53	€1,735	Transfer to Lithuanian account
Payment 8	09/09/2022	11:29	€3,400	Transfer to Lithuanian account
Payment 9	22/09/2022	11:45	€3,550	Transfer to Lithuanian account

Towards the end of the scam Mr L asked to withdraw his profits. He was told he'd need to pay various fees and taxes. He paid some of these fees, but when the scammers continued to ask for more, he realised he had been scammed.

Mr L contacted Revolut to let it know what had happened, but it declined to refund any of the disputed payments. Revolut said that the payments were not out of character for Mr L, given his previous account usage, but it nonetheless said it had intercepted the first payment Mr L made to the scam, and had provided appropriate warnings based on what Mr L had said the payment as for.

Unhappy with this, Mr L referred his complaint to our service. Ultimately, our investigator thought Revolut could perhaps have intervened more directly at the time of the first scam payment, but they did not think any such intervention would have stopped the scam, as they considered that Mr L was far enough under the spell of the scammers that he would have likely not been fully honest with Revolut about what he was doing and so would have continued with the payments.

Mr L did not accept the investigator's findings. He says that the payment purpose he selected for the first payment to the scam – 'payment to a safe account' – should have put Revolut on notice that he was at risk of falling victim to a scam and that it should therefore have intervened more directly. He maintains that appropriate intervention would have stopped the scam.

I issued my provisional decision on this case on 3 October 2024, explaining why I felt that Revolut should refund Mr L's loss – minus a 50% deduction for contributory negligence. Mr L asked for some clarification of the redress due to him, but otherwise indicated he would accept my findings, Revolut did not respond to the provisional 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.

In my provisional decision I explained the following:

"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 L 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 L 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 immediately[1]. 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.

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 2022 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;[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.*

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[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).

[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_/

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). [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 Code[4], 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 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*

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[3] 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.
[4] BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

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.*

<u>*What did Revolut do to warn Mr L and what should it have done?*</u>

It isn't in dispute that Mr L fell victim to a cruel scam. Nor is it disputed that he authorised the payments which he now seeks reimbursement for.

Revolut has said that Mr L's previous account history meant that the payments Mr L was making would not have been obviously out of character or suspicious. But Revolut evidently did identify the first scam payment as potentially suspicious, as it was flagged for checks on Revolut's fraud detection systems.

As Revolut recognised the transaction as possibly scam related, I've considered whether it intervened appropriately when it held the transaction and made further enquiries.

Before making the first payment to the scam Mr L had already attempted this payment once before, earlier that same day. When that attempted payment was stopped by Revolut Mr L was shown a screen which warned that the recipient might be a scammer, and that Mr L would need to chat to an agent first before he would be able to go ahead with the payment. Mr L cancelled the payment. Mr L has said he then spoke with the scammer, who told him that this kind of intervention was not uncommon, but that Mr L should just say that the payment was going to his own account (and he was sending it to a cryptocurrency account that he had control over, so this was not inaccurate). A few minutes later Mr L then attempted the payment again, this time Revolut asked him to select the payment purpose from a list of options. It then displayed a warning relevant to the option chosen. Mr L selected 'transfer to a safe account' and Revolut provided a written warning covering common features of safe account scams.

Revolut says Mr L should have selected 'investment' which was an available option when he was prompted for a payment purpose. It says it would have provided a warning about investment scams had Mr L selected the true purpose.

But regardless of what option Mr L should have selected, Revolut ought to have been concerned when 'safe account' was selected, given safe account scams are very common and it is not likely to be a legitimate reason for sending money to another account. In the circumstances, I don't consider displaying a scam warning on the screen and giving Mr L the option to cancel the payment or go ahead with it was a proportionate response to the risk identified.

Having thought carefully about the risk the transaction presented based on Mr L's response, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the transaction before allowing it to debit Mr L's account. I think it should have done this by, for example, directing Mr L to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr L suffered?

I've considered this point carefully. Our investigator felt that Mr L was far enough under the scammers spell that he would have nonetheless gone ahead with the payment even if Revolut had intervened in this way. But I don't agree, I've not seen anything to suggest that Mr L was given any cover story to use regarding the payments he was making, so I consider it very likely that, had Revolut asked him, Mr L would have been open and honest about what he was making the payments for – transferring his money to a cryptocurrency account for the purposes of an investment. I appreciate that Mr L has said the scammer told him to say the payment was to his own account, but that was not actually a lie, it was going to a crypto account in his name, and what Mr L has said the scammers said to him does not suggest to me that he was being coached in any detail about how to respond to questions from Revolut. And I consider that there were several features of the scam which would have been easily brought to light by some direct questioning, and which would have rung significant alarm bells for Revolut.

For example, Mr L had been asked to download remote access software by the scammers and had found the investment via an online advert on YouTube, he'd also been promised a refund of his capital if he didn't make any profit in the first month. These are all common features of this kind of cryptocurrency investment scam, and Revolut would have been aware of such scams at the time of the payment. I think this would have been enough to put Revolut on notice that Mr L could be at risk of falling victim to a scam, and a reasonable action at that stage would have been to provide a more detailed scam warning relevant to cryptocurrency investment. With all this in mind, I think that it would have been possible for Revolut to identity that Mr L was the victim of a scam and to provide him with an appropriate warning that would have resonated with him and so prevented him from making any payments.

I'm aware that Mr L moved some funds from an account he held with another bank into his Revolut account to fund the scam. But that other bank did not intervene in the payment Mr L made, and in any case this was later on in the scam. So, at the time I think Revolut should have intervened, Mr L had not seen (or ignored) any detailed warnings regarding what he was doing. With this in mind, I think it's fair to say that, had Revolut intervened appropriately, then it is likely that the spell of the scam would have been broken and that Mr L wouldn't have proceeded with the payments. So, I think Revolut could have prevented the losses Mr L incurred.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr L moved some funds into his Revolut account from another UK bank, and that many of the payments he made out of his Revolut account were to a cryptocurrency account in his own name that he had access to.

But as I've set out above, I think that Revolut still should have recognised that Mr L might have been at risk of financial harm from fraud when he made the first scam 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 Mr L 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 Mr L's crypto account does not alter that fact and I think Revolut can fairly be held responsible for Mr L'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 Mr L has only complained against Revolut. I accept that it's possible that other firms might also have missed the opportunity to intervene – although I've seen nothing to suggest that those firms did intervene – or failed to act fairly and reasonably in some other way, and Mr L could instead, or in addition, have sought to complain against those firms. But Mr L has not chosen to do that and ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr L'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 Mr L's loss (subject to a deduction for Mr L's own contribution which I will consider below).

Should Mr L bear any responsibility for his 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.

There's a general principle that consumers must take responsibility for their decisions. I've duly considered whether Mr L should bear some responsibility by way of contributory negligence. And considering the details of this scam I do think it is fair that he bear some responsibility for his losses.

I say this because Mr L has said he came across this investment via an advert on YouTube, not the usual route where one would find legitimate investment advice. And the claim that he would receive a return of his capital if he failed to make a profit in the first month does strike me as really being too good to be true, this is not something that a legitimate investment would generally offer. Mr L has said he received official looking paperwork regarding the investment, but the paperwork I have seen all appears to be from much later on in the scam. It would appear that at the time Mr L made the first payment he was doing so on the basis of a YouTube advert and a conversation with the scammer, without having seen or signed any official documents regarding his investment. I understand that Mr L says P's website appeared professional, but I've been unable to locate any independent reviews (either positive or negative) of P, so it would seem that Mr L decided to invest without seeking any independent opinions regarding whether it was a legitimate or trustworthy business.

So, having thought carefully about this, I do think that Mr L ought to bear some responsibility for his losses and that the refund due to him should be reduced by 50% accordingly. I also note hat Mr L appears to have received some funds from the scammer at a later stage in the scam, and those funds should also be deducted from any refund due to him."

As Revolut has not replied to my provisional decision, and Mr L has indicated he is happy to accept it (following clarification of the redress which I have set out below) I see no reason to depart from the findings set out above.

Putting things right

Mr L's loss here is the total amount sent to the scammers, minus any returns he received.

So, once those returns have been deducted, his loss is:

- £2,600; and
- €26,179.43

To resolve this complaint Revolut Ltd should:

- Refund 50% of Mr L's loss; and
- Pay 8% simple interest per annum on that refund from the date of each payment to the date of settlement (less any tax properly deductible).

My final decision

I uphold this complaint. Revolut Ltd should now put things right in the way I've set out above.

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

Sophie Mitchell
Ombudsman