

## Complaint

Mr A complains that Revolut Ltd has declined to reimburse the money he lost to an investment scam.

## Background

In 2023, Mr A encountered an advertisement on YouTube for an investment opportunity. He had been actively looking for ways to increase his income and decided to explore the opportunity by entering his details into an online form.

Shortly after, Mr A was contacted by an individual claiming to represent a company I will refer to as "C." Mr A didn't realise it at the time, but C was not a legitimate company. It was a fraudulent operation. The fraudster described an investment strategy, claiming that he would invest on Mr A's behalf, and assured him of significant returns. Mr A believed he was investing in cryptocurrencies. The fraudster conducted what appeared to be authentic Know-Your-Customer (KYC) and Anti-Money Laundering (AML) checks, which made the operation seem legitimate.

As part of the process, the fraudster instructed Mr A to download remote access software, purportedly to assist him with the investments. Mr A also researched C, noting that it was listed on the Companies House register and had positive online reviews. These factors reinforced his confidence in the company. Mr A was given access to a trading platform that appeared to show the performance of his investments. The platform displayed apparent profits, which further encouraged him to continue investing.

He transferred his funds into an e-wallet with a third-party cryptocurrency exchange. Those funds were then converted into cryptocurrency and transferred into the control of the fraudsters. Between 10 and 26 April 2023, Mr A made the following payments from his Revolut account via debit card:

- **10 April 2023:** £1,931.78
- **19 April 2023:** £4,408.36
- **19 April 2023:** £1,785.59
- **26 April 2023:** £4,430.86
- **26 April 2023:** £1,772.18

Mr A realised he had been scammed when he attempted to withdraw his profits and was told he needed to pay a tax to access his funds. He reported the scam to Revolut, which attempted to recover his funds through the chargeback process. However, the chargeback was unsuccessful. Revolut declined to reimburse Mr A, stating that his payments were authorised and that it was not liable for his loss.

Mr A wasn't happy with that response and so he referred his complaint to this service. One of our Investigators reviewed the complaint and partially upheld it.

The Investigator concluded that Revolut should have identified a risk of financial harm by the time of the second payment on 19 April 2023 (£4,408.36) and taken action. The Investigator

believed that appropriate intervention at this point could have prevented Mr A's subsequent losses. However, the Investigator also found that Mr A bore some responsibility for his losses due to contributory negligence and recommended a 50% deduction from the redress payable.

Revolut disagreed with the Investigator's opinion, 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 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 Mr A 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. In practice, Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 must also 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 April 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 EMIs 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;
- 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 April 2023, Revolut, where 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).

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 *"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

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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/)

<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.

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 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 April 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;

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

- in some circumstances, irrespective of the payment channel used, have taken additional steps, or undertaken 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 April 2023, Revolut should in any event have taken these steps.

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

I'm aware that cryptocurrency exchanges generally stipulate that the card used to purchase cryptocurrency at its exchange must be held in the name of the account holder, as must the account used to receive cash payments from the exchange. Revolut would likely have been aware of this fact too. So, it could have reasonably assumed that payments 1 and 2 would be credited to a cryptocurrency wallet held in Mr A's name.

By April 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions

This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr A made in April 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

I acknowledge that Revolut faced some difficulties in identifying the fraud risk here. Mr A had opened a new account. Revolut was expected to be on the lookout for payments that were out of character, but it didn't have any historic account data to serve as a basis for comparison. Nonetheless, I think that by the time of the second payment on 19 April 2023 (£4,408.36) there were sufficient indicators of risk that it ought to have been concerned. The value of the payments combined with the fact that their destination was a third-party cryptocurrency exchange meant Revolut should've been concerned about the risk of fraud.

*What kind of warning should Revolut have provided?*

From the evidence that's been provided to me, Revolut didn't attempt to warn Mr A when he made payment 2. It needed to take some action, but that needed to be proportionate to the risk the payment presented. I've considered what a proportionate warning would be in the circumstances of this case. I'm mindful of the fact that payments similar to Mr A's will often be entirely genuine. I've also given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, when Mr A attempted to make payment 2 knowing (or strongly suspecting) that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022.

In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact. So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams. It should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value. I recognise that a warning of that kind could not have covered off all scenarios, but I think it would've been the proportionate way for Revolut to minimise the risk of financial harm to Mr A.

On the balance of probabilities, I'm persuaded that such a warning would've likely prevented Mr A's subsequent losses. Many of the hallmarks of cryptocurrency investment scams were observable in the circumstances surrounding Mr A's payments, such as the use of remote access software and being assisted by a 'broker.' Significantly, there was a live warning on the website of the regulator, the Financial Conduct Authority, about C. I think a proportionate warning might have recommended Mr A consult that website and, if he'd done so, he'd have promptly recognise that he was dealing with a fraudulent company and not proceeded to make any further payments.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut wasn't the point of loss here. The payments from Mr A's Revolut account went into another account that was in his name. Further steps were necessary before his money ended up in the control of fraudsters.

However, as I've set out in some detail above, I think that Revolut still should have recognised that Mr A might have been at risk of financial harm from fraud when he made payment 2, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the

losses he 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 A's own account does not alter that fact and I think Revolut can fairly be held responsible for his 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 A 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 Mr A could instead, or in addition, have sought to complain against those firms. But he hasn't 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 A'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 A's loss from the second payment listed above (subject to a deduction for his own contribution which I will consider below).

#### *Should Mr A bear any responsibility for his losses?*

I've considered whether Mr A should bear any responsibility for his own losses here. In doing so, I've taken into account what the law says about contributory negligence, while keeping in mind that I must reach a decision here based on what I consider to be fair and reasonable in the circumstances.

Assessing this issue is not straightforward, given the lack of contemporaneous evidence about the interactions between Mr A and the fraudsters. The communications Mr A has provided as evidence weren't written in clear English, although they were informal messages so perhaps errors were understandable. The official verification email he received asking for identification documents was of a notably poor standard. While it is possible he did not scrutinise this closely at the time, such details might reasonably have raised concerns.

It is a common feature of such scams that victims are promised unrealistic returns on their money. Mr A has said he was not promised a specific return. Nonetheless, screenshots from the trading platform suggest he was presented with implausible returns later on, including a profit of over £27,000 in just a few days. I do note, however, that that took place after he'd made all the payments listed above - so I don't know that he was made unrealistic promises before agreeing to invest.

There were no apparent formalities to the arrangement — e.g., no terms and conditions or a written contract. Given the significant sums of money involved, I think Mr A should've been more reticent about going ahead. His representatives have explained that he conducted online research into the company and was reassured by finding a Companies House entry. However, it is noteworthy that the address listed on Companies House differed significantly from the prime central London location the scammers claimed to be operating from. Additionally, the FCA had published a warning at the time about the company being cloned

by fraudsters. Either Mr A's research wasn't detailed enough to uncover this warning, or he saw it and chose to proceed regardless.

Considering these factors, I find that Mr A bears some responsibility for his losses. On balance, I consider it fair and reasonable for Revolut to make a 50% deduction from any compensation payable to him.

### **Final decision**

For the reasons I've set out above, I uphold this complaint. If Mr A accepts my final decision, Revolut Ltd need to:

- Refund 50% of the payments from the second payment in the list above (on 19 April 2023 for £4,408.36).
- Refund 50% of any fees that were paid in connection with those payments.
- Pay 8% simple interest per annum on those sums calculated to run from the date those payments left Mr A's account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 January 2025.

James Kimmitt  
**Ombudsman**