

## The complaint

Mr A complains that Revolut Limited ('Revolut') won't refund the money he lost when he fell victim to a scam.

## What happened

### *What Mr A says*

Mr A says that in June 2022 he saw an advert online for a celebrity endorsed cryptocurrency trading investment opportunity. He completed an enquiry form and soon after he received a call from someone I'll refer to as G who said he was a senior broker at a company I'll refer to as R.

G opened an account for Mr A on R's trading platform and told Mr A that if he invested £5,000, he could easily make £20,000 to £25,000 every six months. Over three transactions Mr A deposited £5,000 and after a month the platform showed a £6,000 profit. Later Mr A asked G about closing a trade, but G said that it wasn't possible to close the trade at that stage, and that to do so he would need to upgrade his account by paying just over £17,000. Mr A didn't have funds available so G suggested that R could loan him this amount and then Mr A could repay the loan when the trade closed. Mr A agreed to take out the loan with R and signed R's loan agreement in November 2022.

G then told Mr A that he had to have cryptocurrency assets worth 50% of his account balance before the money in his trading account could be released. Again, Mr A said he didn't have funds available. G pressured Mr A to take out loans to cover the amount required, promising him the loans could be repaid quickly when his profits were released. Mr A paid further funds and was told by G that R would buy tokens on his behalf to secure in a cryptocurrency wallet with another provider. When Mr A asked for his profit to be transferred to his Revolut account though, he was told he needed to pay more. He became concerned and ultimately contacted the cryptocurrency provider that was meant to hold his tokens. Mr A was told his tokens were fake and held no value, and that whoever gave them to him was a scammer.

I have set out in the table below all the payments Mr A was advised to make to two cryptocurrency exchanges.

Transaction	Date	Payee	Amount	Method
1	22/06/22	Crypto exchange 1	€5	Transfer
2	22/06/22	Crypto exchange 1	€1,158.14	Transfer
3	23/06/22	Crypto exchange 1	€3,479.98	Transfer
4	27/06/22	Crypto exchange 1	€1,153.96	Transfer
5	21/11/22	Crypto exchange 1	£17,008.82	Card
6	15/12/22	Crypto exchange 1	£4,995.02	Card
7	19/12/22	Crypto exchange 1	£7,466.78	Card

8	21/12/22	Crypto exchange 2	£50	Card
9	21/12/22	Crypto exchange 2	£11,950	Card
10	02/01/23	Crypto exchange 2	£30,000	Card
11	09/01/23	Crypto exchange 2	£20,000	Card
<b>Total</b>			<b>£91,470.62 plus €5,797.09</b>	

Most of the funds lost in the scam came from loans or credit Mr A took out and credited to other accounts before transferring to his Revolut account.

Mr A didn't report the scam to Revolut at the time but sent a letter of complaint through a professional representative in July 2023. Mr A said that Revolut should have asked him questions about the high value transactions he was making given the high risk associated with cryptocurrency payments. He believes that if Revolut had done so, the scam would have been uncovered as there was an FCA warning in respect of R which would have come to light.

#### *What Revolut say*

Revolut didn't agree to reimburse Mr A. In respect of the card payments, Revolut said that it had no chargeback rights. Turning to the transfers, Revolut noted that it provided Mr A with a warning when a new payee was set up and scam education in emails and blogs. Revolut also said that it had tried to recover Mr A's funds but hadn't been successful.

Mr A was unhappy with Revolut's response and brought a complaint to this service via a professional representative.

#### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld in part. She said that payment five should have triggered Revolut's fraud detection systems and led it to intervene and ask questions about the purpose of the payment. If Revolut had done so, the investigator thought the scam would have been uncovered. But the investigator said that liability should be split between Mr A and Revolut for a number of reasons, including that the returns Mr A was offered were unrealistic, he was unable to withdraw funds and had doubts.

Revolut didn't agree with the investigator's findings, so Mr A's complaint was passed to me to decide. In summary, it said:

- The payments Mr A made were "Self-to-Self", so Mr A owned and controlled the beneficiary accounts he was paying from his Revolut account, and his funds were lost from these cryptocurrency platforms. Revolut was merely an intermediary in the process.
- As the payments were self to self, there is no Authorised Push Payment (APP) fraud as defined in DISP rules. The transfers also don't meet the Contingent Reimbursement Model Code (CRM Code) definition of APP fraud or the definition in the PSR mandatory reimbursement scheme. So, for this service to effectively apply the reimbursement rules to such self to self transactions executed by Revolut is an error of law. Alternatively, this service has irrationally failed to consider that the transactions are self to self payments.
- Revolut isn't able to obtain information from sending banks about the warnings they provide when customers credit Revolut accounts. But the rules under which this service operates allows us to get this information, which may prove effective in getting a clearer understanding of what happened in this case.

- It may be appropriate for this service to exercise its power to inform Mr A that it may be appropriate to make a complaint against another respondent.
- The allocation of responsibility set out by this service is at odds with the approach the Payment Services Regulator (PSR) is due to take and is irrational.
- Overall, it is irrational and illogical of this service to hold Revolut responsible in these circumstances when there are other financial institutions in the payment chain that have comparatively greater data on a customer than Revolut but is not being held responsible in the same way.

I reached the same outcome as the investigator but wanted to include some additional reasoning, so I issued a provisional decision on 16 October 2024. In the 'What I've provisionally decided – and why' section of my provisional decision I said:

"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 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.

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 late 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;
- 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

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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.

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.

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 that when the payments were made 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

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

- 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.

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

I've gone onto consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr A might be at a heightened risk of fraud.

Mr A opened an account with Revolut on 16 June 2022, just before he started to make the scam payments. So I recognise that initially Revolut had no previous data to understand Mr A's normal account activity. Bearing this in mind, as well as the relatively low value of the transfers, I'm not persuaded that Revolut ought reasonably to have had any concerns about payments one to four. Many Revolut customers use their accounts to buy cryptocurrency legitimately and Revolut needs to strike a balance between protecting its customers and minimising disruption to legitimate payment journeys. And a concerning pattern of payments hadn't emerged at that stage.

Almost five months later Mr A made a high value payment to a cryptocurrency exchange. The value of the transaction was much greater than for any previous transaction on the account, which had been dormant for some time. I consider Revolut should have identified payment five carried a heightened risk of financial harm and should have taken additional steps before allowing it to debit Mr A's account.

*What did Revolut do to warn Mr A?*

Revolut say that when one of the transactions was made Mr A received a new payee warning that said,

*"Do you know and trust this payee?"*

*If you're unsure, don't pay them, as we may not be able to help you get your money back. Remember, fraudsters can impersonate others and we will never ask you to make a payment."*

Revolut hasn't specified at what point the warning was made, but as it relates to a new payee it most likely was shown before payment one or eight. No further warnings were given to Mr A.

The new payee warning is very general in nature and it's difficult to see how it would resonate with Mr A. I don't think it was a proportionate or sufficiently specific response to the risk that payment five presented so Revolut needed to do more.

*What kind of warning should Revolut have provided?*

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've 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.

When Mr A attempted to make transaction five, I think Revolut ought fairly and reasonably to have recognised there was a heightened possibility that the transaction was linked to a scam. In line with the good industry practice that I've set out above, I think a proportionate response to that risk would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr A's account. I think it should have done this by, for example, directing Mr A to its in-app chat to discuss the payment further or by discussing it with him.

I consider that Revolut should have asked questions about the reason for the payment to satisfy itself Mr A wasn't at risk of financial harm. It could have asked questions like how Mr A found out about the investment opportunity, what he was investing in, the expected rate of return, whether R was FCA registered and whether someone was advising him. Based on its enquiries in the chat, Revolut should also have provided a warning covering the common features of cryptocurrency investment scams.

*If Revolut had provided a warning of the type described, would that have prevented the losses Mr A suffered from payment five?*

I'm satisfied that if Revolut had asked the kind of questions I consider it should have the scam would have come to light and Mr A's further loss prevented. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mr A's payments, such as celebrity endorsement, being assisted by a broker, and too good to be true returns.

Mr A made payment five to repay a loan supposedly provided by a company he was investing in, and the funds had been borrowed to upgrade his account to allow him to withdraw profits. I consider questions about the reason for the payment would have elicited at least some of this information and that if Revolut had raised concerns, and provided appropriate warnings, it would have resonated with Mr A and led him to look into things more closely before proceeding.

Mr A says he wasn't given a cover story. And, as Revolut didn't question the payment Mr A made, it can provide no compelling evidence that he would have misled it about the purpose of the payment or the surrounding circumstances if it had effectively intervened when I think it should have. There is also no evidence that any other firm involved intervened and warned Mr A.

*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 original source of the funds for the money Mr A lost to the scam. Mr A had moved the money from other banks to his Revolut account, before sending the funds onto a cryptocurrency wallet.

But 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 five, 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 Mr A suffered. The fact that the money used to fund the scam came from elsewhere and/or 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 Mr A'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 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 Mr A has not chosen to do that and ultimately, I cannot compel them 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 payment five (subject to a deduction for Mr A's own contribution which I will consider below).

I'm also aware that the Payment Service Regulator's ("PSR") proposed mandatory reimbursement scheme would not require Revolut to reimburse Mr A.

The PSR's proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint. But I do not consider the fact that the PSR does not propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Revolut should not compensate Mr A in circumstances when it failed to act fairly and reasonably, as I have found was the case here. Indeed, the PSR has recently reminded firms that fraud victims have a right to make complaints and refer them to the Financial Ombudsman Service that exists separately from the intended reimbursement rights and that APP scam victims will still be able to bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules).

I do not consider it to be relevant that the circumstances here do not fall under the specific definition of an APP scam set out in the CRM Code and DISP rules. Those definitions define the scope of the CRM Code and eligibility of payers to complain about a payee's PSP respectively. They do not preclude me from considering whether Revolut failed to act fairly and reasonably when it made payment five without asking Mr A questions to understand the reason for the payment or providing any warnings. So, I'm satisfied Revolut should fairly and reasonably have made further enquiries before processing any further payments. If it had, it is more likely than not that the scam would have been exposed and Mr A would not have lost any more money. In those circumstances I am satisfied it is fair to hold Revolut responsible for some of Mr A's loss.

### **Should Mr A 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.



Mr A has provided limited evidence of his communications with the scammers. He has sent this service messages he exchanged with representatives of R from 16 June to 3 November 2022 and some emails.

I recognise that there were relatively sophisticated aspects to this scam. Mr A had access to a platform that allowed him to see the profit he was making. He was also required to securely sign an “Auto Trading Disclaimer” and received some emails from R. And Mr A believed the investment was celebrity endorsed which reassured him it was genuine.

But on balance, I agree with the investigator that a 50% deduction is fair and reasonable in all the circumstances of this case. Mr A had made a relatively small investment of £5,000 and was led to believe he could earn £20,000 to £25,000 in six months. I consider this rate of return to be too good to be true. Mr A made payment five because the scammers told him he needed to pay around £17,000 to upgrade his account to complete a trade. Mr A wasn't advised that he would be required to make such a significant payment at the time he invested. As Mr A didn't have the funds, he was advised that R could loan him the funds for a two week period, which also seems unusual.

As I said above, I've only seen very limited evidence of Mr A's communications with R. Messages he sent in September 2022 (so some time before payment five) show Mr A asked if he could take out £20,000 and why a profit hadn't been made. He referred to the fact he'd already lost £8,000 and asked why he was still losing money. So it appears things weren't going well before Mr A made payment five.

Mr A couldn't afford to make the later payments and was asked to take out multiple loans. I think he ought reasonably to have concerns about being asked to take out loans to make deposits to secure a withdrawal of profits.

Overall, I consider it fair to reduce the amount Revolut pays Mr A to reflect the role he played in what happened.”

#### *Responses to my provisional decision*

Mr A let me know he accepts my provisional findings. Revolut didn't respond.

#### **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.

As neither party has raised any new points or evidence for me to consider my final decision is the same as my provisional decision. I have set out my reasoning in full above so will not repeat it here. I consider Revolut should have recognised that payment five in the table above carried a heightened risk of being related to a scam and asked Mr A questions about it. If Revolut had done so, for the reasons given above, I think the scam would have been uncovered and Mr A's further loss prevented. But I consider Mr A should share responsibility for his loss.

#### **My final decision**

For the reasons stated I uphold this complaint and require Revolut Ltd to:

- Pay Mr A 50% of payment 5 onwards; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Revolut Ltd considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it has taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 November 2024.

Jay Hadfield  
**Ombudsman**